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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 230, 301, 316, 337, and 410

RIN 3206–AJ99

Organization of the Government for Personnel Management, Overseas Employment, Temporary and Term Employment, Recruitment and Selection for Temporary and Term Appointments Outside the Register, Examining System, and Training

AGENCY: Office of Personnel Management.

ACTION: Final rule; correction.

SUMMARY: The Office of Personnel Management (OPM) is correcting the effective date of the final rule published on Tuesday, June 15, 2004, at 69 FR 33271. This final rule is effective on June 15, 2004, not on July 15, 2004, as published. In light of this correction, included below is supplementary information explaining the need for this effective date. This final rule revised regulations that provide agencies with: the ability to appoint qualified candidates for positions in the competitive service using direct-hire procedures; increased flexibility in assessing applicants using alternative (category-based) rating and selection procedures; the authority to pay or reimburse the costs of academic degree training from appropriated or other available funds under specified conditions; and increased flexibility to use academic degree training to address agency-specific human capital requirements and objectives. In addition, OPM is correcting the contact information by providing the correct email address for Mr. Larry Lorenz.

EFFECTIVE DATE: The effective date of the final rule published in the **Federal Register** on Tuesday, June 15, 2004, at 69 FR 33271, is corrected to read June 15, 2004.

FOR FURTHER INFORMATION CONTACT: On alternative rating and selection procedures, Ms. Linda Watson by telephone at (202) 606–0830, fax at (202) 606–2329 or by e-mail at *lmwatson@opm.gov.* On direct-hire authority, emergency indefinite appointments, overseas employment, TAPER, and outside the register appointments, Mr. Larry Lorenz by telephone at (202) 606–0830, fax at (202) 606–2329 or by e-mail at *ltlorenz@opm.gov.* On academic degree training, Ms. LaVeen M. Ponds by telephone at (202) 606–1394, fax at (202) 606–2329 or by e-mail at *lmponds@opm.gov.* Ms. Watson, Mr. Lorenz, and Ms. Ponds may also be contacted by TTY at (202) 418–3134.

SUPPLEMENTARY INFORMATION:

Waiver of Delay of Effective Date

Pursuant to 5 U.S.C. 553(d)(3), I find that good cause exists to waive the delay in effective date and make these regulations effective in less than 30 days. The delay in the effective date is being waived because the program changes do not mandate but will give agencies needed flexibilities to recruit, hire and retain high quality candidates quickly and effectively to respond to changing and critical mission requirements. The General Accounting Office has designated strategic human capital management as a Governmentwide high-risk area citing serious human capital shortfalls that erode the ability of agencies to ''economically, efficiently and effectively perform their missions.'' The President's Management Agenda calls for agencies to ''flatten the Federal hierarchy, reduce the time to make decisions, and increase the number of employees that provide services to citizens. The reform also will pursue targeted civil service reforms, such as performance-based compensation and management flexibilities to recruit, retain, and reward a high-quality workforce.'' With 50% of Federal employees eligible for retirement in the coming years, agencies must have contemporary, flexible tools for workforce management. Recent media articles have highlighted the public perception that getting a Federal job takes too long and is far too complicated. The Government needs the very best applicants; in turn applicants deserve a streamlined, understandable application process. These changes will accommodate that need.

None of the three flexibilities proposed by these regulations is new or untried. In fact, category rating has been used successfully by some agencies for a decade or more under demonstration authority and enabling legislation. Studies of category rating as implemented by the Department of Agriculture indicate that employment of veterans increases and diversity is not reduced. Private-sector companies routinely use tuition payment as a strategy to attract and retain high quality employees.

These flexibilities were proposed after broad consultation with a variety of stakeholders including employees, managers and the human resources community. They long have been advocated by numerous public and private groups including the Merit Systems Protection Board and the Partnership for Public Service as forward thinking, solid human capital strategies that should be available Governmentwide rather that to a few select agencies.

Direct hire, in particular, is critical if agencies are to respond effectively to the needs of the Nation. With a nationwide shortage of nurses and other healthcare workers, the Government must be able to move quickly and efficiently to hire excellent candidates—direct hire would provide that flexibility. Without it, the staffing to provide care to veterans and others in Federal medical facilities is diminished. Similarly, the critical need to hire talented, highly skilled workers to respond to a national crisis including an environmental threat such a raging wildfire can not be left to traditional hiring methods designed decades ago.

The alternatives provided by these regulations are not mandatory, but may be used strategically by agencies to improve the management of human capital, to meet mission requirements and to respond to the President's call for a Government that is citizen focus and results oriented. There is a compelling need to continue these flexibilities without delay.

Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 04–14299 Filed 6–21–04; 10:17 am]

BILLING CODE 6325–39–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1124

[Docket No. AO–368–A29; DA–01–06]

Milk in the Pacific Northwest Marketing Area: Order Amending the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This document adopts as a final rule order language contained in the final decision published in the **Federal Register** on April 9, 2004, concerning pooling provisions of the Pacific Northwest Federal milk order. More than the required number of producers in the Pacific Northwest marketing area approved the issuance of the final order amendments.

DATES: *Effective Date:* July 1, 2004.

FOR FURTHER INFORMATION CONTACT: Gino Tosi, Marketing Specialist, USDA/AMS/Dairy Programs, Order Formulation and Enforcement Branch, Stop 0231–Room 2971, 1400 Independence Avenue, SW., Washington, DC 20250–0231, (202) 690–1366, e-mail: *gino.tosi@usda.gov*.

SUPPLEMENTARY INFORMATION: This administrative rule is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with the rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), 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 request modification or exemption from such order by filing with the Department of Agriculture (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 the law. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Department 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 its principal place of business, has jurisdiction in equity to review the Department's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Regulatory Flexibility Act and Paperwork Reduction Act

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Agricultural Marketing Service has considered the economic impact of this action on small entities and has certified that this rule will not have a significant economic impact on a substantial number of small entities. For the purpose of the Regulatory Flexibility Act, a dairy farm is considered a ''small business'' if it has an annual gross revenue of less than $750,000, and a dairy products manufacturer is a ''small business'' if it has fewer than 500 employees.

For the purposes of determining which dairy farms are ''small businesses,'' the $750,000 per year criterion was used to establish a production guideline of 500,000 pounds per month. Although this guideline does not factor in additional monies that may be received by dairy producers, it should be an inclusive standard for most ''small'' dairy farmers. For purposes of determining a handler's size, if the plant is part of a larger company operating multiple plants that collectively exceed the 500-employee limit, the plant will be considered a large business even if the local plant has fewer than 500 employees.

During June 2003, there were 897 producers pooled on, and 71 plants associated with, the Pacific Northwest order. Based on these criteria, 574 producers or 64 percent of producers and 37 plants or 52 percent of the associated plants would be considered small businesses. The adoption of the proposed pooling standards serves to revise established criteria that determine those producers, producer milk, and plants that have a reasonable association with, and are consistently serving the fluid needs of, the Pacific Northwest milk marketing. Criteria for pooling are established on the basis of performance levels that are considered adequate to meet the Class I fluid needs and, by doing so, determine those that are eligible to share in the revenue that arises from the classified pricing of milk. Criteria for pooling are established without regard to the size of any dairy industry organization or entity. The criteria established are applied in an equal fashion to both large and small businesses. Therefore, the amendments will not have a significant economic impact on a substantial number of small entities.

A review of reporting requirements was completed under the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). It was determined that these amendments would have no impact on reporting, recordkeeping, or other compliance requirements because they would remain identical to the current requirements. No new forms are proposed and no additional reporting requirements would be necessary.

This action does not require additional information collection that requires clearance by the Office of Management and Budget (OMB) beyond currently approved information collection. The primary sources of data used to complete the forms are routinely used in most business transactions. Forms require only a minimal amount of information, which can be supplied without data processing equipment or a trained statistical staff. Thus, the information collection and reporting burden is relatively small. Requiring the same reports for all handlers does not significantly disadvantage any handler that is smaller than the industry average.

Prior documents in this proceeding:

Notice of Hearing: Issued November 14, 2001; published November 19 2001 (66 FR 57889).

Tentative Final Decision: Issued August 30 2002; published September 6, 2002 (67 FR 56942).

Interim Final Rule: Issued November 8 2002; published November 19, 2002 (67 FR 69668).

Final Decision: Issued April 5, 2004; published April 9, 2004 (69 FR 18834).

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the Pacific Northwest order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

The following findings are hereby made with respect to the Pacific Northwest order:

(a) *Findings upon the basis of the hearing record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of

milk in the Pacific Northwest marketing area.

Upon the basis of the evidence introduced at such hearing and the record thereof it is found that:

(1) The Pacific Northwest order, as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the order, as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The Pacific Northwest order, as hereby amended, regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

(b) *Additional Findings.* It is necessary in the public interest to make these amendments to the Pacific Northwest order effective July 1, 2004. Any delay beyond that date would tend to disrupt the orderly marketing of milk in the aforesaid marketing area.

The amendments to these orders are known to handlers. The final decision containing the proposed amendments to these orders was issued on April 5, 2004.

The changes that result from these amendments will not require extensive preparation or substantial alteration in the method of operation for handlers. In view of the foregoing, it is hereby found and determined that good cause exists for making these order amendments effective July 1, 2004. It would be contrary to the public interest to delay the effective date of these amendments for 30 days after their publication in the **Federal Register**. (Section 553(d), Administrative Procedure Act, 5 U.S.C. 551–559.)

(c) *Determinations.* It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in Sec. 8c(9) of the Act) of more than 50 percent of the milk that is marketed within the specified marketing area to sign a proposed marketing agreement tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of this order amending the Pacific Northwest order is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in the order as hereby amended;

(3) The issuance of the order amending the Pacific Northwest order is favored by at least two-thirds of the producers who were engaged in the production of milk for sale in the marketing area.

Specifically, this final rule permanently adopts a ''cooperative pool manufacturing plant'' provision and continues system pooling for cooperative manufacturing plants. Additionally, this final rule permanently adopts a diversion limit of 80 percent of total producer receipts for a pool plant, continues the standard for the number of days during the month that the milk of a producer would need to be delivered to a pool plant in order for the rest of the milk of that producer to be eligible to be diverted to nonpool plants, and maintains the authority granted to the market administrator to adjust the touch-base standard.

List of Subjects in 7 CFR Part 1124

Milk marketing orders.

Order Relative to Handling

■ *It is therefore ordered,* that on and after the effective date hereof, the handling of milk in the Pacific Northwest marketing area shall be in conformity to and in compliance with the terms and conditions of the order, as amended, and as hereby further amended, as follows:

PART 1124—MILK IN THE PACIFIC NORTHWEST MARKETING AREA

■ The interim final rule amending 7 CFR part 1124 which was published at 67 FR 69668 on November 19, 2002, is adopted as a final rule without change.

Dated: June 16, 2004.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 04–14061 Filed 6–22–04; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF HOMELAND SECURITY

8 CFR Part 274a

Seizure and Forfeiture of Conveyances

CFR Correction

■ In Title 8 of the Code of Federal Regulations, revised as of Jan. 1, 2004, on page 656, § 274a.12 is corrected in paragraph (c)(5) by removing text beginning with ''Ill(6)'' to the end of the paragraph.

[FR Doc. 04–55513 Filed 6–22–04; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF JUSTICE

Executive Office for Immigration Review

8 CFR Part 1274a

Control of Employment of Aliens

CFR Correction

In Title 8 of the Code of Federal Regulations, revised as of Jan. 1, 2004, on page 1094, § 1274a.12 is corrected in paragraph (c)(5) by removing text beginning with ''Ill(6)'' to the end of the paragraph.

[FR Doc. 04–55514 Filed 6–22–04; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Part 319

[Docket No. 96–006F]

RIN 0583–AC09

Beef or Pork with Barbecue Sauce; Revision of Standard

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is amending its regulations by removing meat yield requirements in the standard of identity for ''Beef with Barbecue Sauce'' and ''Pork with Barbecue Sauce.'' This action is in response to a petition. The petitioner states that the current food standard, promulgated in 1952, places producers of these products at a competitive disadvantage because producers of other meat and sauce products do not have a cooked meat yield requirement or a raw meat yield requirement. This action provides consistent requirements for most meat with sauce producers.

EFFECTIVE DATE: This rule is effective July 23, 2004.

FOR FURTHER INFORMATION CONTACT: Robert C. Post, Ph.D., Director, Labeling and Consumer Protection Staff, 1400 Independence Avenue, SW., Cotton Annex, Washington, DC 20250–3700, (202) 205–0279.

SUPPLEMENTARY INFORMATION:

Background

Section 319.312 of FSIS regulations requires that the products labeled as ''Beef with Barbecue Sauce'' and ''Pork with Barbecue Sauce'' contain a minimum of 50 percent cooked meat of the species identified on the label, that the cooked meat be reduced by cooking to no more than 70 percent of the weight of the uncooked meat, and if uncooked meat is used to produce the product, the product contain at least 72 percent meat computed on the weight of the uncooked meat.

Some standards of identity have been promulgated with meat yield requirements, *e.g.*, ''Hash'' (§ 319.302), ''Corned Beef Hash'' (§ 319.303) and ''Beef or Pork with Barbecue Sauce'' (§ 319.312). Other meat and sauce products, such as ''Meat Stews'' (§ 319.304), ''Beans with Frankfurters in Sauce, Sauerkraut with Wieners and Juice, and similar products' (§ 319.309), and ''Beef with Gravy and Gravy with Beef'' (§ 319.313), have minimum meat content requirements but do not require specific cooked or uncooked meat yields. There is no yield requirement for these mentioned products because the meat component used to make these latter products is typically pre-cooked and not cooked in the sauce.

FSIS was petitioned by the American Meat Institute to amend FSIS'' regulations by removing a cooked meat yield requirement and a raw meat yield requirement for the food standards ''Beef with Barbecue Sauce'' and ''Pork with Barbecue Sauce.'' The petitioner stated that the food standard, promulgated in 1952, does not reflect the conditions of commercial marketability of beef or pork with barbecue sauce, and that given today's cooking methods and leaner meat cuts, a beef or pork item can be fully cooked at yields well above 70 percent. Further, these obsolete requirements place producers of these products at a competitive disadvantage with respect to manufacturers of similar products, such as ''Beef with Gravy'', who do not have such requirements.

FSIS agrees with the petitioner's assertion that the subject standard of identity does not reflect the current conditions of commercial marketability of beef or pork with barbecue sauce. FSIS believes consumers are best served by promoting consistent standards among similar types of meat and poultry with sauce products. In this way, consumers can be assured that the same types of rules are applied to protect them from deceptive products so that they receive products with the essential components and the characteristics they expect.

Therefore, on September 3, 1997 (62 FR 46450), FSIS proposed to revise 9 CFR part 319 by removing the meat yield requirements for the beef and pork with barbecue sauce food standards. FSIS had not acted to remove the meat yield requirements sooner because of other, higher-priority regulatory initiatives.

In response to the proposed rule, FSIS received 7 comments. After carefully analyzing the comments, FSIS has decided to adopt the proposed rule.

Comments and Responses

FSIS received 7 comments from trade and professional organizations and food companies. Five commenters supported the revision and two opposed it. FSIS responses to the comments follow.

Comment: One commenter stated that 9 CFR 319.312 is outdated and does not accurately reflect cooking yields resulting from today's advanced cooking methods. This commenter also stated that a revision of the standard will encourage broader competition and will result in a wider variety of products of this type in the marketplace.

Response: FSIS agrees with this position. Revision of the regulation should promote the development of new and innovative products.

Comment: Three commenters expressed the opinion that the rule should be expanded to include other competitive products that require maximum cooking yields as part of the product's standards.

Response: FSIS does not agree with this comment. An expansion of this proposal to include other competitive products would not be within the scope of this rulemaking.

Comment: One commenter stated that FSIS should consider the potential impact of this rulemaking on manufacturers of standardized poultry products.

Response: This rulemaking will achieve consistency between the meat and poultry standards of identity in the regulations. The poultry standards do not include yield requirements.

Comment: Three commenters stated that this rulemaking would provide consistency with requirements for other meat with sauce products.

Response: FSIS agrees with this statement. The revision will eliminate the requirement for specific cooked meat yields for these two products and result in a standard that is consistent with requirements for other similar meat and poultry with sauce-type standardized products, *e.g.*, beef with gravy. Consumers can be assured that the same types of rules apply to protect them from deceptive meat and poultry sauce-type products so that they receive products with the essential characteristics they expect.

Comment: Two commenters who produce beef and pork with barbecue sauce were opposed to the revision of the regulation. They stated that such a revision would result in an economic hardship for their food companies given the large investments in equipment that they have made to facilitate manufacture of their product lines. These two commenters stated that the proposed revision would result in products containing less protein and more moisture and fat, resulting in economic adulteration.

Response: FSIS does not believe that an economic hardship would result from the proposed revision of the regulation. As explained in the section on the benefits of this final rule below, manufacturers will not need to purchase new equipment. They will modify their yield by altering cooking times and temperatures. FSIS also disagrees with the commenters' position that products containing less protein and more fat and moisture automatically constitute economic adulteration. Consumers can rely on the nutrition facts and ingredients statement that are required on the labels of meat and poultry products to be informed of the protein, fat, and other constituents of the products they purchase. They can use this information to make comparisons between products they wish to purchase.

Executive Order 12866: Benefit-Cost Analysis

This rule has been determined to be not significant and therefore has not been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

Need for the Rule

The current standard, 9 CFR 319.312, requires that products labeled as ''Beef with Barbecue Sauce'' and ''Pork with Barbecue Sauce'' must contain a minimum of 50 percent cooked meat of the species identified on the label, that the cooked meat must be reduced by cooking to no more than 70 percent of the weight of the uncooked meat, and that if uncooked meat is used to produce the product, the product must contain at least 72 percent meat computed on the weight of the uncooked meat. This final rule will provide consistency among meat and sauce food standards by removing the meat yield requirements for the food standard ''Beef with Barbecue Sauce''

and ''Pork with Barbecue Sauce''. It will leave unchanged the minimum meat content requirement. Removal of the meat yield requirement will bring this food standard in line with other food standards for other meat and sauce products.

Description of Affected Product

The standard for beef with barbecue sauce and pork with barbecue sauce requires the product be cooked and have not less than 50 percent beef or pork. Usually the beef or pork meat used in this product is derived from larger cuts of beef or pork. Mechanically separated pork may be used in accordance with 9 CFR 319.6 (FSIS has determined that mechanically separated beef is inedible and has prohibited its use for human food). Beef or pork with barbecue sauce is marketed in supermarkets and merchandise discount stores as either frozen or canned.

Description of Affected Industry

The industry is comprised of several hundred manufacturers who either conduct beef or pork slaughter and processing operations or only processing operations. Typically, these firms produce a broad range of processed products using beef, pork, or other meats. The majority of the manufacturers of beef with barbecue sauce or pork with barbecue sauce are located in the southeastern region of the United States and are considered small entities because they employ fewer than 500 employees.[1]

Benefits

The final rule will modernize the food standard for beef with barbecue sauce and pork with barbecue sauce to provide consistency with other meat and sauce food standards. Second, it will reflect the improvements in technology and the marketing of beef with barbecue sauce and pork with barbecue sauce products. Third, it will potentially reduce manufacturers highest component (meat) cost in producing beef or pork with barbecue sauce, and, therefore, it will result in savings that can be passed along to consumers through lower prices. Fourth, it will permit manufacturers to produce meat products with 70 percent or greater yield without requiring the purchase of new injection equipment.

Deleting the yield requirement in the food standard for beef or pork with barbecue sauce will allow manufacturers of these products to compete on an equitable basis with manufacturers who produce other meat with sauce products, because food standards for other meat with sauce products do not include a cooking yield requirement.

Current injection and tumbling technology permits manufacturers to produce cooked meat that will exceed 70 percent yield of the uncooked meat. The Agency believes that the current standard for beef or pork with barbecue sauce is outdated and does not reflect modern processing practices.[2]

The current practice is to supply meat products with high cook yields. Because of the technology that produces pumped meat, manufacturers can now supply cuts of meat that are moist and tender, which consumers have grown to expect. When the current standard was promulgated in 1952, the vacuum tumbling technology did not exist, and therefore the resulting pumped products were not available to consumers. Consumer expectations and preferences have evolved since the introduction of the vacuum tumbling technology. This final rule will permit manufacturers to supply pumped beef with barbecue sauce and pumped pork with barbecue sauce, meeting consumers' demands and preferences for pumped products.

This final rule also will permit manufacturers to increase their least costly component (barbecue sauce), while reducing their highest cost component (the cooked meat portion). For example, a manufacturer processes 100 pounds of beef and cooks it to a yield of 70% (per the existing regulations) to 70 pounds. The manufacturer is then allowed to make a maximum of 140 pounds of beef with barbecue sauce in order to meet the requirement for a 50% minimum of cooked meat content. Under this final rule, the manufacturer is allowed to cook the same 100 pounds of beef until it yields 75%. The manufacturer is then allowed to make a maximum of 150 pounds of beef with barbecue sauce. Thus the additional 10 pounds of beef with barbecue sauce is made up of an extra 5 pounds of the least costly component of the product, barbecue sauce.[3] Because of the lower cost of production to process these products, manufacturers can pass these cost savings to consumers in the form of lower prices.

Manufacturers may continue to produce products of beef with barbecue sauce and pork with barbecue sauce with 70 percent or greater yield without purchasing new injection equipment by (1) shortening the present cooking time, and (2) changing the cooking temperature so that fewer of the juices are cooked out of the meat and, therefore, the meat will reach a higher yield. By not requiring a cook yield, the final rule will open new markets for manufacturers in which they may produce products that exceed the current cook yield requirement.

Costs

The final rule should not impose any new cost burden on manufacturers of beef with barbecue sauce and pork with barbecue sauce because these manufacturers are producing other products that meet the no meat yield requirement for cooked meat. All manufacturers who cook these products to meet the existing 70 percent yield requirement and those manufacturers who exceed the yield requirement will be in compliance.

Regulatory Flexibility Analysis

FSIS has examined the economic implications of the 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 lessen the economic effect of the rule on small entities. The agency has determined that the final rule will not have a significant impact on a substantial number of small entities.

Since the majority of the industry is comprised of small entities, and the final rule does not impose additional cost, these small entities will not suffer a significant adverse impact on their business operations and profits.

Small entities that are offering beef with barbecue sauce and pork with barbecue sauce products that do not exceed the 70 percent meat yield requirement when cooked will not be put at a disadvantage by the final rule. These small entities can continue to produce meat products that meet the 70 percent yield content.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court

[1] The exact number of firms that process beef or pork with barbecue sauce is unavailable and indeterminate.

[2] This standard was adopted in the 1950's. 51 FR 32058 (September 9, 1986).

[3] Example is a simplified view of the final rule. Example does not take into consideration small amount of other ingredients and components that can be added to the beef or pork with barbecue sauce.

challenging this rule. However, the administrative procedures specified in 9 CFR 390.7 must be exhausted prior to any judicial challenge of the application of the provisions of this rule, if the challenge involves any decision of an FSIS employee relating to a denial of access of information.

Paperwork Requirements

There are no paperwork or recordkeeping requirements associated with this rule under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that the public and in particular minorities, women, and persons with disabilities, are aware of this final rule, FSIS will announce it on-line through the FSIS Web page located at *http://www.fsis.usda.gov.*

The Regulations.gov Web site is the central online rulemaking portal of the United States government. It is being offered as a public service to increase participation in the Federal government's regulatory activities. FSIS participates in Regulations.gov and will accept comments on documents published on the site. The site allows visitors to search by keyword or Department or Agency for rulemakings that allow for public comment. Each entry provides a quick link to a comment form so that visitors can type in their comments and submit them to FSIS. The Web site is located at *http://www.regulations.gov.*

FSIS also will make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and other types of information that could affect or would be of interest to our constituents and stakeholders. The update is communicated via Listserv, a free e-mail subscription service consisting of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals who have requested to be included. The update also is available on the FSIS Web page. Through Listserv and the Web page, FSIS is able to provide information to a much broader, more diverse audience.

List of Subjects in 9 CFR Part 319

Meat inspection, Standards of identity or composition.

■ For the reasons set forth in the preamble, 9 CFR part 319 is amended to read as follows:

PART 319—DEFINITIONS AND STANDARDS OF IDENTITY OR COMPOSITION

■ 1. The authority citation for part 319 is revised as follows:

Authority: 7 U.S.C. 450, 1901–1906; 21 U.S.C. 601–695; 7 CFR 2.18, 2.53.

■ 2. Section 319.312 is revised to read as follows:

§ 319.312 Pork with barbecue sauce and beef with barbecue sauce.

''Pork with Barbecue Sauce'' and ''Beef with Barbecue Sauce'' shall consist of not less than 50 percent cooked meat of the species specified on the label. Mechanically Separated (Pork) may be used in accordance with § 319.6.

Done at Washington, DC, on: June 18, 2004.

Barbara J. Masters,

Administrator.

[FR Doc. 04–14194 Filed 6–22–04; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–18012; Airspace Docket No. 04–ACE–41]

Modification of Class E Airspace; Chardron, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends Title 14 Code of Federal Regulations, part 71 (14 CFR part 71) by revising Class E airspace areas at Chadron, NE. A review of the Class E airspace surface area and the Class E airspace area extending upward from 700 feet above ground level (AGL) at Chadron, NE reveals the Class E airspace surface area does not comply with criteria for extensions and neither area complies with criteria for diverse departures. Also, the Class E airspace area extending upward from 700 feet AGL does not reflect the current Chadron Municipal Airport airport reference point (ARO). These airspace areas are enlarged and modified to conform to the criteria in FAA Orders.

DATES: This direct final rule is effective on 0901 UTC, September 30, 2004. Comments for inclusion in the Rules Docket must be received on or before July 29, 2004.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2004–18012/Airspace Docket No. 04–ACE–41, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

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

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 modifies the Class E surface area and the Class E airspace area extending upward from 700 feet AGL at Chadron, NE. An examination of controlled airspace for Chadron, NE revealed that neither airspace area is in compliance with FAA Orders 7400.2E, Procedures for Handling Airspace Matters, and 8260.19C, Flight Procedures and Airspace. The extension to the Class E surface area is redefined relative to the Whitney nondirectional radio beacon and the area is enlarged from a 4.2 to a 5.7-mile radius of Chadron Municipal Airport. The Class E airspace area extending upward from 700 feet AGL is increased from a 7.4 to a 10.7-mile radius of Chadron Municipal Airport in order to provide required airspace for diverse departures. The Chadron Municipal Airport ARP is corrected in the legal description. These modifications bring the legal descriptions of the Chadron, NW Class E airspace areas into compliance with FAA Orders 7400.2E and 8260.19C. Class E airspace areas designated as surface areas are published in Paragraph 6002 of FAA Order 7400.9L, Airspace Designations and Reporting Points, dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR 71.1. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of the same Order. The Class E airspace designations listed in

this document would be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Interested parties are invited to participate in this 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 re specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitting in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2004–18012/Airspace Docket No. 04–ACE–41.'' The postcard will be date/time stamped and returned to the commenter.

Agency Findings

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 noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that 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) 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.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9L, dated September 2, 2003, and effective September 16, 2003, is amended as follows:

Paragraph 6002 Class E Airspace Designated as Surface Areas.

* * * * *

ACE NE E2 Chadron, NE

Chadron Municipal Airport, NE
(Lat. 42°50′15″ N., long. 103°05′44″ W.)
Whitney NDB
(Lat. 42°49′44″ N., long. 103°05′37″ W.)

Within a 5.7-mile radius of Chadron Municipal Airport and within 2.5 miles each side of the 021° bearing from Whitney NDB extending from the 5.7-mile radius of the airport to 7 miles northeast of the NDB. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

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

* * * * *

ACE NE E5 Chadron, NE

Chadron Municipal Airport, NE
(Lat. 42°50′15″ N., long. 103°05′44″ W.)

That airspace extending upward from 700 feet above the surface within a 10.7-mile radius of Chadron Municipal Airport.

* * * * *

Issued in Kansas City, MO, on June 10, 2004.

Paul J. Sheridan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 04–14202 Filed 6–22–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 868, 870, and 882

[Docket No. 2003N–0468]

Medical Devices; Effective Date of Requirement for Premarket Approval for Three Class III Preamendments Devices

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is requiring the filing of a premarket approval application (PMA) or a notice of completion of a product development protocol (PDP) for the following three class III preamendments devices: Indwelling blood oxyhemoglobin concentration analyzer, cardiopulmonary bypass pulsatile flow generator, and the ocular plethysmograph. The agency also is summarizing its proposed findings regarding the degree of risk of illness or injury designed to be eliminated or reduced by requiring the devices to meet the statute's approval requirements and the benefits to the public from the use of the devices. This action implements certain statutory requirements.

DATES: This rule is effective June 23, 2004. Under the final rule, a PMA or a notice of completion of a PDP is required to be filed on or before September 21, 2004, for any indwelling blood oxyhemoglobin concentration analyzer, cardiopulmonary bypass pulsatile flow generator, or ocular plethysmograph that was in commercial

distribution before May 28, 1976, or that has been found by FDA to be substantially equivalent to such a device on or before September 21, 2004.

FOR FURTHER INFORMATION CONTACT: Joseph M. Sheehan, Center for Devices and Radiological Health (HFZ–215), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–827–2974.

SUPPLEMENTARY INFORMATION:

I. Background—Regulatory Authorities

The Federal Food, Drug, and Cosmetic Act (the act), as amended by the Medical Device Amendments of 1976 (the 1976 amendments) (Public Law 94–295) and the Safe Medical Devices Act of 1990 (the SMDA) (Public Law 101–629), established a comprehensive system for the regulation of medical devices intended for human use. Section 513 of the act (21 U.S.C. 360c) established three categories (classes) of devices, depending on the regulatory controls needed to provide reasonable assurance of their safety and effectiveness. The three categories of devices are class I (general controls), class II (special controls), and class III (premarket approval).

Section 515(b)(1) of the act (21 U.S.C. 360e(b)(1)) established the requirement that a preamendments device that FDA has classified into class III is subject to premarket approval. A preamendments class III device may be commercially distributed without an approved PMA or a notice of completion of a PDP until 90 days after FDA issues a final rule requiring premarket approval for the device, or 30 months after final classification of the device under section 513 of the act, whichever is later. Also, a preamendments device subject to the rulemaking procedure under section 515(b) of the act is not required to have an approved investigational device exemption (IDE) (see part 812 (21 CFR part 812)) contemporaneous with its interstate distribution until the date identified by FDA in the final rule requiring the submission of a PMA for the device. At that time, an IDE is required only if a PMA has not been submitted or a PDP completed.

When a rule to require premarket approval for a preamendments device is finalized, section 501(f)(2)(B) of the act (21 U.S.C. 351(f)(2)(B)) requires that a PMA or notice of completion of a PDP for any such device be filed within 90 days of the date of issuance of the final rule or 30 months after the final classification of the device under section 513 of the act, whichever is later. If a PMA or notice of completion of a PDP is not filed by the later of the two dates, commercial distribution of the device is required to cease.

The device may, however, be distributed for investigational use if the manufacturer, importer, or other sponsor of the device complies with the IDE regulations. If a PMA or notice of completion of a PDP is not filed by the later of the two dates, and no IDE is in effect, the device is deemed to be adulterated within the meaning of section 501(f)(1)(A) of the act, and subject to seizure and condemnation under section 304 of the act (21 U.S.C. 334) if its distribution continues. Shipment of devices in interstate commerce will be subject to injunction under section 302 of the act (21 U.S.C. 332), and the individuals responsible for such shipment will be subject to prosecution under section 303 of the act (21 U.S.C. 333). In the past, FDA has requested that manufacturers take action to prevent the further use of devices for which no PMA has been filed and may determine that such a request is appropriate for the class III devices that are the subjects of this regulation.

The act does not permit an extension of the 90-day period after issuance of a final rule within which an application or a notice is required to be filed. The House Report on the 1976 amendments states that:

> [t]he thirty month 'grace period' afforded after classification of a device into class III * * * is sufficient time for manufacturers and importers to develop the data and conduct the investigations necessary to support an application for premarket approval (H. Rept. 94–853, 94th Cong., 2d sess. 42 (1976)).

In the **Federal Register** of November 18, 2003 (68 FR 65014) (the November 18, 2003, proposed rule), FDA issued a proposed rule to require the filing of a PMA or a notice of completion of a PDP for the indwelling blood oxyhemoglobin concentration analyzer, the cardiopulmonary bypass pulsatile flow generator, and the ocular plethysmograph. In accordance with section 515(b)(2)(A) of the act, FDA included in the preamble to the proposed rule the agency's proposed findings regarding the degree of risk of illness or injury intended to be eliminated or reduced by requiring the device to meet the statute's approval requirements as well as the benefits to the public from use of the device.

The November 18, 2003, proposed rule also provided an opportunity for interested persons to submit comments on the proposed rule and the agency's proposed findings. In accordance with section 515(b)(2)(A) of the act, FDA also provided an opportunity for interested persons to request a change in the classification of the device based on new information relevant to its classification. Any petition requesting a change in the classification of these devices was required to be submitted by December 3, 2003. The comment period closed February 17, 2004.

FDA received no petitions requesting a change in the classification of any of the three devices. One comment was addressed to the docket of the proposed rule. This comment inquired as to when FDA would approve a certain device that was not one of the devices that were the subject of the November 18, 2003, proposed rule. The comment was irrelevant and FDA addressed it outside of the rulemaking process.

II. Devices Subject to This Proposal

A. Indwelling Blood Oxyhemoglobin Concentration Analyzer (21 CFR 868.1120)

An indwelling blood oxyhemoglobin concentration analyzer is a photo electric device used to measure, in vivo, the oxygen carrying capacity of hemoglobin in blood to aid in determining the patient's physiological status.

B. Cardiopulmonary Bypass Pulsatile Flow Generator (21 CFR 870.4320)

A cardiopulmonary bypass pulsatile flow generator is an electrically and pneumatically operated device used to create pulsatile blood flow. The device is placed in a cardiopulmonary bypass circuit downstream from the oxygenator.

C. Ocular Plethysmograph (21 CFR 882.1790)

An ocular plethysmograph is a device used to measure or detect volume changes in the eye produced by pulsations of the artery, to diagnose carotid artery occlusive disease (restrictions on blood flow in the carotid artery).

III. Findings With Respect to Risks and Benefits

Under section 515(b)(3) of the act, FDA is adopting the findings as published in the November 18, 2003, proposed rule. As required by section 515(b) of the act, FDA published its findings regarding the following information: (1) The degree of risk of illness or injury designed to be eliminated or reduced by requiring that these devices have an approved PMA or a declared completed PDP, and (2) the benefits to the public from the use of the device.

These findings are based on the reports and recommendations of the

advisory committees (panels) for the classification of these devices along with any additional information that FDA has discovered. Additional information can be found in the following proposed and final rules published in the **Federal Register** on these dates: Anesthesiology devices, 21 CFR part 868 (44 FR 63292, November 2, 1979, and 47 FR 31130, July 16, 1982); cardiovascular devices, 21 CFR part 870 (44 FR 13284, March 9, 1979 and 45 FR 7903, February 5, 1980); and neurological devices, 21 CFR part 882 (43 FR 55639, November 28, 1978, and 44 FR 51725, September 4, 1979).

IV. The Final Rule

Under section 515(b)(3) of the act, FDA adopts the findings as published in the preamble of the November 18, 2003, proposed rule and issues this final rule to require premarket approval of the indwelling blood oxyhemoglobin concentration analyzer, cardiopulmonary bypass pulsatile flow generator, and the ocular plethysmograph. This final rule revises parts 868, 870, and 882 (21 CFR parts 868, 870, and 882).

Under the final rule, a PMA or a notice of completion of a PDP is required to be filed within 90 days after date of publication of this rule in the **Federal Register** (see **DATES**), for any indwelling blood oxyhemoglobin concentration analyzer, cardiopulmonary bypass pulsatile flow generator, or ocular plethysmograph that was in commercial distribution before May 28, 1976, or that has been found by FDA to be substantially equivalent to such a device on or before that date. If a PMA or notice of completion of a PDP is filed for any such device within this time limit, the applicant will be permitted to continue marketing its device during FDA's review of its submission. Any other indwelling blood oxyhemoglobin concentration analyzer, cardiopulmonary bypass pulsatile flow generator, or ocular plethysmograph that was not in commercial distribution before May 28, 1976, is required to have an approved PMA or a declared completed PDP in effect before it may be marketed.

If a PMA or a notice of completion of a PDP for an indwelling blood oxyhemoglobin concentration analyzer, cardiopulmonary bypass pulsatile flow generator, or ocular plethysmograph is not filed on or before 90 days after date of publication of this rule in the **Federal Register**, that device is deemed adulterated under section 501(f)(1)(A) of the act, and commercial distribution of the device must cease immediately. The device may, however, be distributed for investigational use, if the requirements of the investigational device exemption (IDE) regulations (part 812) are met.

The exemptions in § 812.2(c)(1) and (c)(2) from the requirements of the IDE regulations for preamendments class III devices cease to apply to any indwelling blood oxyhemoglobin concentration analyzer, cardiopulmonary bypass pulsatile flow generator, or ocular plethysmograph that is: (1) Not legally on the market 90 days after date of publication of this rule in the **Federal Register**; or (2) legally on the market by, but for which a PMA or notice of completion of a PDP is not filed by 90 days after date of publication of this rule in the **Federal Register**, or for which PMA approval has been denied or withdrawn. FDA cautions that manufacturers who are not immediately planning to submit a PMA or notice of completion of a PDP should submit IDE applications to FDA by 60 days after date of publication of this rule in the **Federal Register**, to minimize the possibility of interrupting shipment of the device. At this time, FDA is not aware of any firm that is marketing these devices.

V. PMA Requirements

A PMA for these devices must include the information required by section 515(c)(1) of the act. Such a PMA should also include a detailed discussion of the risks identified previously, as well as a discussion of the effectiveness of the device for which premarket approval is sought. In addition, a PMA must include all data and information on the following requirements: (1) Any risks known, or that should be reasonably known, to the applicant that have not been identified in this document; (2) the effectiveness of the device that is the subject of the application; and (3) full reports of all preclinical and clinical information from investigations on the safety and effectiveness of the device for which premarket approval is sought.

A PMA should include valid scientific evidence ''obtained from well-controlled clinical studies, with detailed data,'' in order to provide reasonable assurance of the safety and effectiveness of the device for its intended use. (See 21 CFR 860.7(c)(2)).)

Information about the premarket approval process is available from FDA's Center for Devices and Radiological Health (CDRH) on the Internet at *http://www.fda.gov/cdrh/devadvice/pma/.*

VI. PDP Requirements

A PDP for any of these devices may be submitted in lieu of a PMA, and must follow the procedures outlined in section 515(f) of the act. A PDP should provide the following information: (1) A description of the device, (2) preclinical trial information (if any), (3) clinical trial information (if any), (4) a description of the manufacturing and processing of the devices, (5) the labeling of the device, and (6) all other relevant information about the device. In addition, the PDP must include progress reports and records of the trials conducted under the protocol on the safety and effectiveness of the device for which the completed PDP is sought.

Information about the PDP process is also available from CDRH on the on the Internet at *http://www.fda.gov/cdrh/devadvice/pma/app__methods.html#product__dev.*

VII. Environmental Impact

The agency has determined under 21 CFR 25.30(h) 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.

VIII. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). 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 agency believes that this final rule is not a significant regulatory action under the Executive order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because there have been no premarket submissions for these devices in the past 5 years, and because FDA is not aware of any firms marketing these devices, the agency has concluded that there is little or no interest in marketing these devices. The agency, therefore, certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement, which includes an assessment of anticipated costs and

benefits, before proposing ''any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.'' The current threshold after adjustment for inflation is $110 million. FDA does not expect this final rule to result in any 1-year expenditure that would meet or exceed this amount.

IX. Paperwork Reduction Act of 1995

This final rule contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA). The burden hours required for § 884.5320(c), included in the collection entitled ''Premarket Approval of Medical Devices—21 CFR Part 814,'' are reported and approved under OMB control number 0910–0231. Therefore, clearance by OMB under the PRA is not required.

List of Subjects in 21 CFR Parts 868, 870, and 882

Medical devices.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 868, 870, and 882 are amended as follows:

PART 868—ANESTHESIOLOGY DEVICES

■ 1. The authority citation for 21 CFR part 868 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

■ 2. Section 868.1120 is amended by revising paragraph (c) to read as follows:

§ 868.1120 Indwelling blood oxyhemoglobin concentration analyzer.

* * * * *

(c) Date PMA or notice of completion of PDP is required. A PMA or notice of completion of a PDP is required to be filed with the Food and Drug Administration on or before September 21, 2004, for any indwelling blood oxyhemoglobin concentration analyzer that was in commercial distribution before May 28, 1976, or that has, on or before September 21, 2004, been found to be substantially equivalent to an indwelling blood oxyhemoglobin concentration analyzer that was in commercial distribution before May 28, 1976. Any other indwelling blood oxyhemoglobin concentration analyzer shall have an approved PMA or declared completed PDP in effect before being placed in commercial distribution.

PART 870—CARDIOVASCULAR DEVICES

■ 3. The authority citation for 21 CFR part 870 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

■ 4. Section 870.4320 is amended by revising paragraph (c) to read as follows:

§ 870.4320 Cardiopulmonary bypass pulsatile flow generator.

* * * * *

(c) Date PMA or notice of completion of PDP is required. A PMA or notice of completion of a PDP is required to be filed with the Food and Drug Administration on or before September 21, 2004, for any cardiopulmonary bypass pulsatile flow generator that was in commercial distribution before May 28, 1976, or that has, on or before September 21, 2004, been found to be substantially equivalent to any cardiopulmonary bypass pulsatile flow generator that was in commercial distribution before May 28, 1976. Any other cardiopulmonary bypass pulsatile flow generator shall have an approved PMA or declared completed PDP in effect before being placed in commercial distribution.

PART 882—NEUROLOGICAL DEVICES

■ 5. The authority citation for 21 CFR part 882 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

■ 6. Section 882.1790 is amended by revising paragraph (c) to read as follows:

§ 882.1790 Ocular plethysmograph.

* * * * *

(c) Date PMA or notice of completion of PDP is required. A PMA or notice of completion of a PDP is required to be filed with the Food and Drug Administration on or before September 21, 2004, for any ocular plethysmograph that was in commercial distribution before May 28, 1976. Any other ocular plethysmograph shall have an approved PMA or declared completed PDP in effect before being placed in commercial distribution.

Dated: June 14, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–14126 Filed 6–22–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Part 2590

RIN 1210–AA60

Health Care Continuation Coverage, Correction

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Final rule, technical corrections.

SUMMARY: The Department published in the **Federal Register** of May 26, 2004, (69 FR 30084) final rules implementing the notice requirements of the health care continuation coverage (COBRA) provisions of part 6 of title I of the Employee Retirement Income Security Act of 1974 (ERISA or the Act). This document makes technical corrections to one of the final rules and to a model notice published in an appendix to one of the final rules.

DATES: *Effective date:* The regulations that are being corrected are effective on July 26, 2004, and these corrections are effective July 26, 2004.

Applicability date: The regulations that are being corrected apply to notice obligations arising under the COBRA provisions of part 6 of title I of ERISA on or after the first day of the first plan year beginning on or after the date that is six months after May 26, 2004.

FOR FURTHER INFORMATION CONTACT: Lisa M. Alexander or Suzanne M. Adelman, Office of Regulations and Interpretations, Employee Benefits Security Administration, (202) 693-8500. this is not a toll-free number.

SUPPLEMENTARY INFORMATION: On May 26, 2004, the Department of Labor published final regulations on the notice provisions of part 6 of title I of ERISA. The regulations comprise four sections. Section 2590.606–1 establishes the time frames within which the general notice of continuation coverage must be provided and describes the specific information that the general notice must contain. Paragraph (d) of § 2590.606–1 permits delivery of a single notice addressed to a covered employee and the covered employee's spouse at their joint residence, provided that the plan's latest information indicates that both reside at that address. paragraph (d) states, on page 30097, that ''nothing in this section shall be construed to create a requirement to provide a separate notice to dependent children who share a residence with a covered employer or a covered employee's spouse to whom notice is provided in accordance with

this section.'' The term ''covered employer'' in this sentence is an inadvertent error and should instead be ''covered employee.''

In an appendix to § 2590.606–4, the Department also published a Model COBRA Continuation Coverage Election Notice for use by single-employer group health plans. The section of the model notice entitled ''Important Information About Your COBRA Continuation Coverage Rights'' states, on page 30108, that continuation coverage will be terminated before the end of the maximum period if, among other things, ''a covered employee becomes entitled to Medicare benefits (under part A, Part B, or both) after electing continuation coverage.'' The term ''covered employee'' on this page is an inadvertent error and should be changed ''qualified beneficiary.''

This correction replaces two phrases with the correct terminology to prevent confusion and improve the clarity of the regulation and model notice.

■ Accordingly, in the Health Care Continuation Coverage Final Rule, FR Doc. 04–11796, published in the **Federal Register** on May 26, 2004, on pages 30084–112, make the following corrections:

§ 2590.606–1 [Corrected]

■ 1. On page 30097, in the third column, in paragraph (d), which is entitled *Single notice rule,* in the last sentence, remove the words ''covered employer'' and add in their place the words ''covered employee.''

Appendix to § 2590.606–4 [Corrected]

■ 2. On page 30108, in the appendix to § 2590.606–4, the page titled ''Important Information About Your COBRA Continuation Coverage Rights'' is revised to read as follows:

BILLING CODE 4510–29–M

IMPORTANT INFORMATION ABOUT YOUR COBRA CONTINUATION COVERAGE RIGHTS

What is continuation coverage?

Federal law requires that most group health plans (including this Plan) give employees and their families the opportunity to continue their health care coverage when there is a "qualifying event" that would result in a loss of coverage under an employer's plan. Depending on the type of qualifying event, "qualified beneficiaries" can include the employee (or retired employee) covered under the group health plan, the covered employee's spouse, and the dependent children of the covered employee.

Continuation coverage is the same coverage that the Plan gives to other participants or beneficiaries under the Plan who are not receiving continuation coverage. Each qualified beneficiary who elects continuation coverage will have the same rights under the Plan as other participants or beneficiaries covered under the Plan, including [*add if applicable:* open enrollment and] special enrollment rights.

How long will continuation coverage last?

In the case of a loss of coverage due to end of employment or reduction in hours of employment, coverage generally may be continued only for up to a total of 18 months. In the case of losses of coverage due to an employee's death, divorce or legal separation, the employee's becoming entitled to Medicare benefits or a dependent child ceasing to be a dependent under the terms of the plan, coverage may be continued for up to a total of 36 months. When the qualifying event is the end of employment or reduction of the employee's hours of employment, and the employee became entitled to Medicare benefits less than 18 months before the qualifying event, COBRA continuation coverage for qualified beneficiaries other than the employee lasts until 36 months after the date of Medicare entitlement. This notice shows the maximum period of continuation coverage available to the qualified beneficiaries.

Continuation coverage will be terminated before the end of the maximum period if:

- any required premium is not paid in full on time,
- a qualified beneficiary becomes covered, after electing continuation coverage, under another group health plan that does not impose any pre-existing condition exclusion for a pre-existing condition of the qualified beneficiary,
- a qualified beneficiary becomes entitled to Medicare benefits (under Part A, Part B, or both) after electing continuation coverage, or
- the employer ceases to provide any group health plan for its employees.

Continuation coverage may also be terminated for any reason the Plan would terminate coverage of a participant or beneficiary not receiving continuation coverage (such as fraud).

[*If the maximum period shown on page 1 of this notice is less than 36 months, add the following three paragraphs:*]

Signed at Washington, DC, this 15th day of June, 2004.

Ann L. Combs,

Assistant Secretary, Employee Benefits Security Administration, Department of Labor.

[FR Doc. 04–13949 Filed 6–22–04; 8:45 am]

BILLING CODE 4510–29–C

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 4, 19, 84, 101, 104, 118, 127, 140, 154, 161, 164, 169, 174, 181, and 183

[USCG–2004–18057]

RIN 1625–ZA02

Navigation and Navigable Waters; Technical, Organizational, and Conforming Amendments

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: This rule makes non-substantive changes throughout the Code of Federal Regulations. The purpose of this rule is to update organization names and addresses and make conforming amendments and technical corrections to Coast Guard navigation and navigable water regulations. This rule will have no substantive effect on the regulated public.

DATES: This rule is effective June 30, 2004.

ADDRESSES: Any comments and material received from the public will be made part of docket, USCG–2004–18057, and will be available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call Robert S. Spears, Coast Guard, telephone 202–267–1099. If you have questions on viewing the docket, call Andrea M. Jenkins, Program Manager, Docket Operations, telephone 202–366–0271.

SUPPLEMENTARY INFORMATION:

Regulatory History

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under both 5 U.S.C. 553(b)(A) and (b)(B), the Coast Guard finds that this rule is exempt from notice and comment rulemaking requirements because some of these changes involve agency organization and practices, and good cause exists for not publishing an NPRM for all revisions in the rule because they are all non-substantive changes. This rule consists only of corrections and editorial, organizational, and conforming amendments. These changes will have no substantive effect on the public; therefore, it is unnecessary to publish an NPRM. Under 5 U.S.C. 553(d)(3), the Coast Guard finds that, for the same reasons, good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

Discussion of the Rule

Each year title 33 of the Code of Federal Regulations is updated on July 1. This rule, which becomes effective June 30, 2004, corrects organization names and addresses, and makes other technical and editorial corrections throughout title 33. This rule does not create any substantive requirements.

Some of the revisions in this rule are not necessarily self-explanatory changes. For example, in § 4.02 we updated the listing of approved collections of information based on information requirements in Title 33. In parts 101 and 104, we replaced SOLAS ''Chapter XI'' references with ''Chapter XI–1 or Chapter XI–2'' to conform these chapter references to the **Federal Register** approved reference, used in the relevant incorporation by reference section, § 101.115(b). In §§ 118.3, 127.003, 140.7, 154.106, 164.03, 181.4, and 183.5, we changed references to material incorporated by reference as being ''available for inspection'' rather than merely ''on file'' to align these sections with other incorporation by reference sections.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS). We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. As this rule involves internal agency practices and procedures and non-substantive changes, it will not impose any costs on the public.

Small Entities

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

This rule will have no substantive effect on the regulated public. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). We note, however, that in 33 CFR 4.02, this rule updates the listing of approved collections of information based on information requirements contained in title 33.

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies. This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraphs (34)(a) and (b), of the Instruction from further environmental documentation because this rule involves editorial, procedural, and internal agency functions. A final ''Environmental Analysis Check List'' and a final ''Categorical Exclusion Determination'' are available in the docket where indicated under **ADDRESSES**.

List of Subjects

33 CFR Part 4

Reporting and recordkeeping requirements.

33 CFR Part 19

Navigation (water), Vessels.

33 CFR Part 84

Navigation (water), Waterways.

33 CFR Part 101

Harbors, Maritime security, Reporting and recordkeeping requirements, Security measures, Vessels, Waterways.

33 CFR Part 104

Maritime security, Reporting and recordkeeping requirements, Security measures, Vessels.

33 CFR Part 118

Bridges.

33 CFR Part 127

Fire prevention, Harbors, Hazardous substances, Natural gas, Reporting and recordkeeping requirements, Security measures.

33 CFR Part 140

Continental shelf, Investigations, Marine safety, Occupational safety and health, Penalties, Reporting and recordkeeping requirements.

33 CFR Part 154

Alaska, Fire prevention, Hazardous substances, Oil pollution, Reporting and recordkeeping requirements.

33 CFR Part 161

Harbors, Navigation (water), Reporting and recordkeeping requirements, Waterways.

33 CFR Part 164

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

33 CFR Part 169

Endangered and threatened species, Marine mammals, Navigation (water), Radio, Reporting and recordkeeping requirements, Vessels, Water pollution control.

33 CFR Part 174

Intergovernmental relations, Marine safety, Reporting and recordkeeping requirements.

33 CFR Part 181

Labeling, Marine safety, Reporting and recordkeeping requirements.

33 CFR Part 183

Marine safety.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR parts 4, 19, 84, 101, 104, 118, 127, 140, 154, 161, 164, 169, 174, 181, and 183.

PART 4—OMB CONTROL NUMBERS ASSIGNED PURSUANT TO THE PAPERWORK REDUCTION ACT

■ 1. The authority citation for part 4 is revised to read as follows:

Authority: 44 U.S.C. 3507; Department of Homeland Security Delegation No. 0170.1.

■ 2. Revise § 4.02 to read as follows:

§ 4.02 Display.

33 CFR part or section where identified and described	Current OMB control No.
Part 6	1625–0020
Part 67	1625–0011
Part 96	1625–0084
Part 100	1625–0008
Part 101	1625–0077
Section 101.115	1625–0017
Part 103	1625–0077
Part 104	1625–0077
Section 104.297	1625–0017
Part 105	1625–0077
Part 106	1625–0077
Part 115	1625–0015
Part 116	1625–0073
Part 120	1625–0077
Section 126.15(c)	1625–0016
Section 126.17	1625–0005
Part 127	1625–0049

33 CFR part or section where identified and described	Current OMB control No.
Section 127.617	1625–0016
Section 127.1603	1625–0016
Part 128	1625–0077
Part 130	1625–0046
Part 138	1625–0046
Section 140.15	1625–0050
Section 140.103	1625–0054
Section 141.35	1625–0098
Part 143	1625–0059
Part 144	1625–0059
Part 145	1625–0059
Part 146	1625–0001 and 1625–0059
Section 146.130	1625–0044
Section 146.140	1625–0059
Section 146.210	1625–0059
Part 151	1625–0009
Section 151.19	1625–0041
Section 151.21	1625–0041
Section 151.43	1625–0045
Section 151.55	1625–0072
Section 151.57	1625–0072
Section 151.2040	1625–0069
Section 153.203	1625–0096
Section 154.107	1625–0095
Section 154.108	1625–0095
Section 154.110	1625–0093
Section 154.300 through 154.325.	1625–0021
Section 154.710	1625–0039
Section 154.740	1625–0039
Section 154.804	1625–0060
Section 154.806	1625–0060
Section 154.1220	1625–0066
Section 154.1225	1625–0066
Section 155.120	1625–0051 and 1625–0095
Section 155.130	1625–0051 and 1625–0095
Section 155.710	1625–0072
Section 155.715	1625–0072
Section 155.720	1625–0030
Section 155.740	1625–0030
Section 155.750	1625–0030
Section 155.820	1625–0030
Section 155.820(d)	1625–0039
Section 156.107	1625–0095
Section 156.110	1625–0095
Section 156.120	1625–0039
Section 156.150	1625–0039
Part 156, Subpart B	1625–0042
Section 156.200	1625–0042
Part 157	1625–0036 and 1625–0041
Section 157.37	1625–0041
Section 157.415	1625–0083
Section 157.420	1625–0083
Section 157.430	1625–0083
Section 157.435	1625–0083
Section 157.450	1625–0083
Section 157.455	1625–0083
Part 158	1625–0045
Section 158.140	1625–0045
Section 158.150	1625–0045
Section 158.165	1625–0045
Section 158.190	1625–0045
Part 159	1625–0041 and 1625–0092
Part 160	1625–0043 and 1625–0100
Part 161	1625–0043
Part 164	1625–0043 and 1625–0082
Part 165	1625–0020 and 1625–0043
Section 165.100	1625–0088
Section 165.803(i)	1625–0023
Section 165.1709	1625–0043
Section 169.140	1625–0103
Section 173.55	1625–0003
Section 179.13	1625–0010
Section 179.15	1625–0010
Section 181.21 through 181.31.	1625–0056
Part 183	1625–0056
Part 187	1625–0070

PART 19—WAIVERS OF NAVIGATION AND VESSEL INSPECTION LAWS AND REGULATIONS

■ 3. The authority citation for part 19 is revised to read as follows:

Authority: Sec. 1, 64 Stat. 1120, sec. 6(b)(1), 80 Stat. 937; 46 U.S.C. note prec. 1, 49 U.S.C. 108; Department of Homeland Security Delegation No. 0170.1

§ 19.06 [Amended]

■ 4. In § 19.06, in paragraphs (a), (b), (b)(2), and (d), remove the words ''Military Sea Transportation Service'' wherever they appear, and add, in their place, the words ''Military Sealift Command''.

PART 84—ANNEX I: POSITIONING AND TECHNICAL DETAILS OF LIGHTS AND SHAPES

■ 5. The authority citation for part 84 is revised to read as follows:

Authority: 33 U.S.C. 2071; Department of Homeland Security Delegation No. 0170.1.

§ 84.13 [Amended]

■ 6. In § 84.13(a), insert the words ''and is available for inspection at the Coast Guard, Ocean Engineering Division (G–SEC–2), 2100 Second Street SW, Washington, DC 20593–0001'' immediately after the zip code ''10017''.

* * * * *

PART 101—GENERAL PROVISIONS

■ 7. The authority citation for part 101 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 192; Executive Order 12656, 3 CFR 1988 Comp., p. 585; 33 CFR 1.05–1, 6.04–11, 6.14, 6.16, and 6.19; Department of Homeland Security Delegation No. 0170.1.

§ 101.105 [Amended]

■ 8. In § 101.105, in the definition for ''Public access facility'', remove the words ''SOLAS Chapter XI'' and replace them with the words, ''SOLAS Chapter XI–1 or SOLAS Chapter XI–2''.

§ 101.305 [Amended]

■ 9. In § 101.305(a), remove the words ''Email: *lst-nrcinfo@comdt.uscg.mil*'', and add, in their place, the words ''use the NRC Web Reporting function located on the NRC Web Site: *http://www.nrc.uscg.mil/*''.

PART 104—MARITIME SECURITY: VESSELS

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

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–11, 6.14, 6.16, and 6.19; Department of Homeland Security Delegation No. 0170.1.

§ 104.105 [Amended]

■ 11. In § 104.105, in paragraph (a)(1) remove the words ''Chapter XI'' and add, in their place, the words, ''Chapter XI–1 or Chapter XI–2''.

§ 104.115 [Amended]

■ 12. In § 104.115 (c)(1) and (c)(2), remove the words ''Chapter XI'', and add, in their place, the words ''Chapter XI–1 or Chapter XI–2''.

§ 104.120 [Amended]

■ 13. In § 104.120(a)(4), remove the words ''Chapter XI'', and add, in their place, the words ''Chapter XI–1 or Chapter XI–2''.

§ 104.400 [Amended]

■ 14. In § 104.400(b), remove the words ''Chapter XI'', and add, in their place, the words ''Chapter XI–1 or Chapter XI–2''.

PART 118—BRIDGE LIGHTING AND OTHER SIGNALS

■ 15. The authority for part 118 is revised to read as follows:

Authority: 33 U.S.C. 494; 14 U.S.C. 85, 633; Department of Homeland Security Delegation No. 0170.1.

§ 118.3 [Amended]

■ 16. In § 118.3(b), remove the words ''on file'', and add, in their place, the words ''available for inspection''.

PART 127—WATERFRONT FACILITIES HANDLING LIQUEFIED NATURAL GAS AND LIQUEFIED HAZARDOUS GAS

■ 17. The authority citation for part 127 is revised to read as follows:

Authority: 33 U.S.C. 1231; Department of Homeland Security Delegation No. 0170.1.

§ 127.003 [Amended]

■ 18. In § 127.003(a), remove the words ''on file'', and add, in their place, the words ''available for inspection''.

PART 140—GENERAL

■ 19. The authority citation for part 140 is revised to read as follows:

Authority: 43 U.S.C. 1333, 1348, 1350, 1356; Department of Homeland Security Delegation No. 0170.1.

§ 140.7 [Amended]

■ 20. In § 140.7(a), remove the words ''on file'', and add, in their place, the words ''available for inspection''.

PART 154—FACILITIES TRANSFERRING OIL OR HAZARDOUS MATERIAL IN BULK

■ 21. The authority citation for part 154 is revised to read as follows:

Authority: 33 U.S.C. 1231, 1321(j)(1)(C), (j)(5), (j)(6), and (m)(2); sec. 2, E.O. 12777, 56 FR 54757; Department of Homeland Security Delegation No. 0170.1. Subpart F is also issued under 33 U.S.C. 2735.

§ 154.106 [Amended]

■ 22. In § 154.106(a), remove the words ''on file'', and add, in their place, the words ''available for inspection''.

PART 161—VESSEL TRAFFIC MANAGEMENT

■ 23. The authority citation for part 161 continues to read as follows:

Authority: 33 U.S.C. 1223, 1231; 46 U.S.C. 70114, 70117; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

§ 161.12 [Amended]

■ 24. In § 161.12(c), in Table 161.12(c), in the third column of the three ''New York Traffic'' rows, insert the degree symbol, ''°'', immediately after, ''40'' and ''74'', wherever those numbers appear.

PART 164—NAVIGATION SAFETY REGULATIONS

■ 25. The authority citation for part 164 is revised to read as follows:

Authority: 33 U.S.C. 1222(5), 1223, 1231; 46 U.S.C. 2103, 3703; Department of Homeland Security Delegation No. 0170.1. Sec. 164.13 also issued under 46 U.S.C. 8502. Sec. 164.61 also issued under 46 U.S.C. 6101.

§ 164.03 [Amended]

■ 26. In § 164.03(a), remove the words ''on file'', and add, in their place, the words ''available for inspection''.

PART 169—SHIP REPORTING SYSTEMS

■ 27. The authority citation for part 169 is revised to read as follows:

Authority: 33 U.S.C. 1230(d), Department of Homeland Security Delegation No. 0170.1.

PART 169—[AMENDED]

■ 28. In the Table of Contents for part 169, insert the words, ''Subpart A—General'' immediately after the title of the part and before the listing of sections.

PART 174—STATE NUMBERING AND CASUALTY REPORTING SYSTEMS

■ 29. The authority citation for part 174 is revised to read as follows:

Authority: 46 U.S.C. 6101, 12302; Department of Homeland Security Delegation No. 0170.1.

§ 174.121 [Amended]

■ 30. In § 174.121, remove the abbreviation ''(G–OCC)'', and add, in its place, the abbreviation ''(G–OPB)''.

PART 181—MANUFACTURER REQUIREMENTS

■ 31. The authority citation for part 181 is revised to read as follows:

Authority: 46 U.S.C. 4302 and 4310; Pub. L. 103–206, 107 Stat. 2439; Department of Homeland Security Delegation No. 0170.1.

§ 181.4 [Amended]

■ 32. In § 181.4(a), remove the words ''on file'', and add, in their place, the words ''available for inspection''.

PART 183—BOATS AND ASSOCIATED EQUIPMENT

■ 33. The authority citation for part 183 continues to read as follows:

Authority: 46 U.S.C. 4302; Pub. L 103–206, 107 Stat. 2439; Department of Homeland Security Delegation No. 0170.1.

§ 183.5 [Amended]

■ 34. In § 183.5(a), remove the words ''on file'', and add, in their place, the words ''available for inspection''.

Dated: June 17, 2004.

Howard L. Hime,

Acting Director of Standards, Marine Safety, Security and Environmental Protection, U.S. Coast Guard.

[FR Doc. 04–14199 Filed 6–22–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD09–04–030]

RIN 1625–AA00

Safety Zone; Heart Island, Alexandria Bay, NY

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone in the vicinity of Heart Island. This safety zone is necessary to ensure the safety of spectators and vessels from the hazards associated with fireworks displays. This safety zone is intended to restrict vessel traffic from a portion of the St. Lawrence River, Heart Island, Alexandria Bay, New York.

DATES: This rule is effective from 9:30 p.m. until 11:30 p.m. (local) on July 4, 2004.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket (CGD09–04–030) and are available for inspection or copying at: U.S. Coast Guard Marine Safety Office Buffalo, 1 Fuhrmann Blvd, Buffalo, New York 14203, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LT Craig A. Wyatt, U.S. Coast Guard Marine Safety Office Buffalo, at (716) 843–9570.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. The permit application was not received in time to publish an NPRM followed by a final rule before the effective date. Delaying this rule would be contrary to the public interest of ensuring the safety of spectators and vessels during this event and immediate action is necessary to prevent possible loss of life or property. The Coast Guard has not received any complaints or negative comments previously with regard to this event.

Background and Purpose

Temporary safety zones are necessary to ensure the safety of vessels and spectators from the hazards associated with fireworks displays. Based on recent accidents that have occurred in other

Captain of the Port zones, and the explosive hazard of fireworks, the Captain of the Port Buffalo has determined fireworks launches in close proximity to watercraft pose significant risks to public safety and property. The likely combination of large numbers of recreational vessels, congested waterways, darkness punctuated by bright flashes of light, alcohol use, and debris falling into the water could easily result in serious injuries or fatalities. Establishing a safety zone to control vessel movement around the locations of the launch platforms will help ensure the safety of persons and property at these events and help minimize the associated risk.

The safety zone consists of all navigable waters of the St Lawrence River within a 300-yard radius of the fireworks display on Heart Island located in position 44°20′40″ N, 075°55′21″ W. All Geographic coordinates are North American Datum of 1983 (NAD 83). The size of this zone was determined using the National Fire Prevention Association guidelines and local knowledge concerning wind, waves, and currents.

All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or his designated on-scene patrol representative. The designated on-scene patrol representative will be the patrol commander. Entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Buffalo or his designated on-scene representative. The Captain of the Port or his designated on-scene representative may be contacted via VHF Channel 16.

Regulatory Evaluation

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

This determination is based on the minimal time that vessels will be restricted from the zone, and therefore minor if any impacts to Mariners.

Small Entities

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

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

This rule will affect the following entities, some of which might be small entities: The owners or operators of commercial vessels intending to transit a portion of an activated safety zone.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: This safety zone is only in effect from 9:30 p.m. until 11:30 p.m. (local) on the day of the event.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (*see* **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects and participate in the rulemaking process. If the rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Marine Safety Office Buffalo (*see* **ADDRESSES.**)

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

Collection of Information

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

Federalism

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. A written categorical exclusion determination is available in the docket for inspection or copying where indicated under **ADDRESSES.**

Indian Tribal Governments

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

responsibilities between the Federal government and Indian tribes.

Technical Standards

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

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

Energy Effects

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

List of Subjects in 33 CFR Part 165

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

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1

■ 2. A new temporary § 165.T09–030 is added to read as follows:

§ 165.T09–030 Safety Zone; Heart Island, Alexandria Bay, NY.

(a) *Location.* The following area is a temporary safety zone: all waters of the St Lawrence River within a 300-yard radius of the fireworks display on Heart Island located in position 44°20′40″ N, 075°55′21″ W (NAD 83).

(b) *Effective period.* This section is effective from 9:30 p.m. until 11:30 p.m. (local) on July 4, 2004.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into this safety zone is prohibited unless authorized by the Coast Guard Captain of the Port Buffalo, or his designated on-scene representative.

Dated: June 1, 2004.

P.M. Gugg,

Commander, U.S. Coast Guard, Captain of the Port Buffalo.

[FR Doc. 04–14198 Filed 6–22–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD09–04–031]

RIN 1625–AA00

Safety Zone; Lake Oneida, Brewerton, NY

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone encompassing the navigable waters of Lake Oneida. This safety zone is necessary to ensure the safety of spectators and vessels from the hazards associated with fireworks displays. This safety zone is intended to restrict vessel traffic from a portion of Lake Oneida, Brewerton, New York.

DATES: This rule is effective from 9:30 p.m. until 11:30 p.m. (local) on July 3, 2004.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket (CGD09–04–031) and are available for inspection or copying at: U.S. Coast Guard Marine Safety Office Buffalo, 1 Fuhrmann Blvd., Buffalo, New York 14203, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LT Craig A. Wyatt, U.S. Coast Guard Marine Safety Office Buffalo, at (716) 843–9570.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B) and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for not publishing an NPRM and for making this rule effective less than 30 days after publication in the **Federal Register**. The permit application was not received in time to publish an NPRM followed by a final rule before the effective date. Delaying this rule would be contrary to the public interest of ensuring the safety of spectators and vessels during this event and immediate action is necessary to prevent possible loss of life or property. The Coast Guard has not received any complaints or negative comments previously with regard to this event.

Background and Purpose

Temporary safety zones are necessary to ensure the safety of vessels and spectators from the hazards associated with fireworks displays. Based on recent accidents that have occurred in other Captain of the Port zones, and the explosive hazard of fireworks, the Captain of the Port Buffalo has determined fireworks launches in close proximity to watercraft pose significant risks to public safety and property. The likely combination of large numbers of recreational vessels, congested waterways, darkness punctuated by bright flashes of light, alcohol use, and debris falling into the water could easily result in serious injuries or fatalities. Establishing a safety zone to control vessel movement around the locations of the launch platforms will help ensure the safety of persons and property at these events and help minimize the associated risk.

The safety zone consists of all navigable waters of Lake Oneida within a 200-yard radius of the fireworks display around a barge located in position 43°14′15″ N, 076°08′03″ W. All Geographic coordinates are North American Datum of 1983 (NAD 83). The size of this proposed zone was determined using the National Fire Prevention Association guidelines and local knowledge concerning wind, waves, and currents.

All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or his designated on-scene patrol representative. The designated on-scene patrol representative will be the patrol commander. Entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the

Captain of the Port Buffalo or his designated on-scene representative. The Captain of the Port or his designated on-scene representative may be contacted via VHF Channel 16.

Regulatory Evaluation

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

This determination is based on the minimal time that vessels will be restricted from the zone, and therefore minor if any impacts to mariners.

Small Entities

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

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

This rule will affect the following entities, some of which might be small entities: The owners or operators of commercial vessels intending to transit or anchor in the activated safety zone.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: This safety zone is only in effect from 9:30 p.m. until 11:30 p.m. (local) on the day of the event.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (*see* **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule will economically affect it.

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. A written categorical exclusion determination is available in the docket for inspection or copying where indicated under **ADDRESSES**.

Indian Tribal Governments

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

Technical Standards

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

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

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of

energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

List of Subjects in 33 CFR Part 165

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

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1

■ 2. A new temporary § 165.T09–031 is added to read as follows:

§ 165.T09–031 Safety Zone; Lake Oneida, Brewerton, NY.

(a) *Location.* The following area is a temporary safety zone: All waters of Lake Oneida within a 200-yard radius of the fireworks display around a barge located in position 43°14′15″ N, 076°08′03″ W (NAD 83).

(b) *Effective period.* This section is effective from 9:30 p.m. until 11:30 p.m. (local) on July 3, 2004.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into this safety zone is prohibited unless authorized by the Coast Guard Captain of the Port Buffalo, or his designated on-scene representative.

Dated: June 1, 2004.

P.M. Gugg,

Commander, U.S. Coast Guard, Captain of the Port Buffalo.

[FR Doc. 04–14197 Filed 6–22–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD09–04–027]

RIN 1625–AA00

Safety Zone; Lake Huron, Harbor Beach, MI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the Harbor Beach Fireworks on July 17, 2004. This safety zone is necessary to control vessel traffic within the immediate location of the fireworks launch site and to ensure the safety of life and property during the event. This safety zone is intended to restrict vessel traffic from a portion of Lake Huron.

DATES: This temporary final rule is effective from 8 p.m. until 11 p.m. on July 17, 2004.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket (CGD09–04–027) and are available for inspection or copying at U.S. Coast Guard Marine Safety Office Detroit, 110 Mt. Elliott Ave., Detroit, MI 48207, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: ENS Cynthia Lowry, U.S. Coast Guard Marine Safety Office Detroit, at telephone number (313) 568–9580.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM, and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The permit application was not received in time to publish an NPRM followed by a final rule before the necessary effective date. Delaying this rule would be contrary to the public interest of ensuring the safety of spectators and vessels during this event and immediate action is necessary to prevent possible loss of life or property. The Coast Guard has not received any complaints or negative comments previously with regard to this event.

Background and Purpose

A temporary safety zone is necessary to ensure the safety of vessels and spectators from the hazards associated with fireworks displays. Based on accidents that have occurred in other Captain of the Port zones and the explosive hazard of fireworks, the Captain of the Port Detroit has determined fireworks launches in close proximity to watercraft pose significant risks to public safety and property.

The likely combination of large numbers of recreational vessels, congested waterways, darkness punctuated by bright flashes of light, alcohol use, and debris falling into the water could easily result in serious injuries or fatalities. Establishing a safety zone to control vessel movement around the location of the launch platform will help ensure the safety of persons and property at these events and help minimize the associated risks.

The safety zone will encompass all waters of Lake Huron within a 300-yard radius of the fireworks launch platform in approximate position 43°51′00″ N, 082°38′15″ W. The geographic coordinates are based upon North American Datum 1983 (NAD 83). The size of this zone was determined using the National Fire Prevention Association guidelines and local knowledge concerning wind, waves, and currents.

All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene patrol representative. Entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Detroit or his designated on-scene representative. The designated on-scene representative will be the Patrol Commander. The Patrol Commander may be contacted via VHF Channel 16.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed this rule under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DHS is unnecessary. This determination is based on the minimal time that vessels will be restricted from the safety zone.

Small Entities

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

dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities for the following reasons: This safety zone is only in effect from 8 p.m. until 11 p.m. on the day of the event and allows vessel traffic to pass outside of the safety zone. Before the effective period, the Coast Guard will issue maritime advisories widely available to users of Lake Huron by the Ninth Coast Guard District Local Notice to Mariners and Marine Information Broadcasts. Facsimile broadcasts may also be made.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (*see* **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), small entities may be assisted in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. If the rule will affect your small business, organization, or governmental jurisdiction or if you have questions concerning its provisions or options for compliance, please contact Marine Safety Office Detroit (*see* **ADDRESSES**).

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Environment

The Coast Guard has analyzed this rule under Commandant Instruction M16475.1D, which guides their compliance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this rule that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g) of the Instruction, from further environmental documentation. A final ''Environmental Analysis Check List'' and a final ''Categorical Exclusion Determination'' are available in the docket where indicated under **ADDRESSES**.

Indian Tribal Governments

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

Technical Standards

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

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

Energy Effects

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

List of Subjects in 33 CFR Part 165

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

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. A new temporary § 165.T09–027 is added to read as follows:

§ 165.T09–027 Safety Zone; Lake Huron, Harbor Beach, MI.

(a) *Location.* The safety zone will encompass all waters of Lake Huron within a 300-yard radius of the fireworks launch platform in approximate position 43°51′00″ N, 082°38′15″ W (NAD 83).

(b) *Effective period.* This temporary final rule is effective from 8 p.m. until 11 p.m. on July 17, 2004.

(c) *Regulations.* In accordance with the general regulations in section 165.23 of this part, entry into this safety zone is prohibited unless authorized by the Coast Guard Captain of the Port Detroit or his designated on-scene representative. The designated on-scene Patrol Commander may be contacted via VHF Channel 16.

Dated: June 9, 2004.

P.G. Gerrity,

Commander, U.S. Coast Guard, Captain of the Port Detroit.

[FR Doc. 04–14196 Filed 6–22–04; 8:45 am]

BILLING CODE 4910–15–P

POSTAL SERVICE

39 CFR Parts 265 and 266

Release of Information, Privacy of Information

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This rule amends the Postal Service regulations on the release of information and the privacy of information to correct provisions overlooked in a previous general revision of the rules dealing with records and information.

DATES: *Effective Date:* June 23, 2004.

FOR FURTHER INFORMATION CONTACT: Jane Eyre at 202–268–2608.

SUPPLEMENTARY INFORMATION: On October 1, 2003, the Postal Service published a general revision of its rules dealing with records and information (68 FR 56557). This revision updated terminology to reflect the Postal Service's current organizational structure, removed obsolete or duplicative provisions, and revised the fee schedule for disclosure of information where necessary. Further inspection of the affected provisions indicates that minor additional revisions are necessary to remedy oversights in the previous notice and avoid possible confusion. Accordingly, the Postal Service makes the following revisions effective immediately.

List of Subjects

39 CFR Part 265

Administrative practice and procedure, Courts, Freedom of information, Government employees.

39 CFR Part 266

Privacy.

PART 265—[AMENDED]

■ 1. The authority citation for part 265 continues to read as follows:

Authority: 5 U.S.C. 552; 5 U.S.C. App. 3; 39 U.S.C. 401, 403, 410, 1001, 2601.

§ 265.6 [Amended]

■ 2. Amend § 265.6 as follows:

■ (a) In paragraph (d)(1), remove the last sentence.

■ (b) Revise paragraph (d)(5)(i) to read as set forth below;

■ (c) In paragraph (d)(7), remove ''or if the request has been sent to the wrong post office,'' in the last sentence.

■ (d) In paragraph (d)(9)(i), remove ''(d)(8)(iii)'' and insert ''(d)(9)(iii)'' in its place.

■ (e) Following paragraph (g) remove the exhibits and insert the two forms as set forth below:

§ 265.6 Availability of records.

* * * * *

(d) * * *

(5) * * *

(i) To a Federal, State or local government agency upon prior written certification that the information is required for the performance of its duties. The Postal Service requires government agencies to use the format appearing at the end of this section when requesting the verification of a customer's current address or a customer's new mailing address. If the request lacks any of the required information or a proper signature, the postmaster will return the request to the agency, specifying the deficiency in the space marked 'OTHER'.

* * * * *

(g) * * *

BILLING CODE 7710–12–P

Change of Address or Boxholder Request Format—Process Servers

Postmaster Date_____

_____

City, State, ZIP Code

blank

REQUEST FOR CHANGE OF ADDRESS OR BOXHOLDER INFORMATION NEEDED FOR SERVICE OF LEGAL PROCESS

blank

Please furnish the new address or the name and street address (if a boxholder) for the following:

Name:_____

Address:_____

blank

Note: The name and last known address are required for change of address information. The name, if known, and post office box address are required for boxholder information.

blank

The following information is provided in accordance with 39 CFR 265.6(d)(5)(ii). There is no fee for providing boxholder or change of address information.

blank

1. Capacity of requester (e.g., process server, attorney, party representing self): _____
2. Statute or regulation that empowers me to serve process (not required when requester is an attorney or a party acting pro se - except a corporation acting pro se must cite statute):

_____

_____

3. The names of all known parties to the litigation: _____
4. The court in which the case has been or will be heard:_____
5. The docket or other identifying number if one has been issued: _____
6. The capacity in which this individual is to be served (e.g., defendant or witness):_____

WARNING

THE SUBMISSION OF FALSE INFORMATION TO OBTAIN AND USE CHANGE OF ADDRESS INFORMATION OR BOXHOLDER INFORMATION FOR ANY PURPOSE OTHER THAN THE SERVICE OF LEGAL PROCESS IN CONNECTION WITH ACTUAL OR PROSPECTIVE LITIGATION COULD RESULT IN CRIMINAL PENALTIES INCLUDING A FINE OF UP TO $10,000 OR IMPRISONMENT OF NOT MORE THAN 5 YEARS, OR BOTH (TITLE 18 U.S.C. SECTION 1001).

blank

I certify that the above information is true and that the address information is needed and will be used solely for service of legal process in conjunction with actual or prospective litigation.

blank

_____ _____

Signature Address

_____ _____

Printed Name City, State, ZIP Code

POST OFFICE USE ONLY

blank

_____No change of address order on file.

_____Moved, left no forwarding address.

_____No such address.

NEW ADDRESS OR BOXHOLDER'S NAME AND STREET ADDRESS

_____

_____

_____

POSTMARK

blank

Address Information Request Format—Government Agency

(Required Format Referenced at Paragraph 265.6(d)(5)(i) & (7))

(AGENCY LETTERHEAD)

blank

To: Postmaster

_____

blank

Agency Control Number _____

Date _____

blank

ADDRESS INFORMATION REQUEST

blank

Please furnish this agency with the new address, if available, for the following individual or verify whether or not the address given below is one at which mail for this individual is currently being delivered. If the following address is a post office box, please furnish the street address as recorded on the boxholder's application form.

blank

Name: _____

Last Known Address: _____

blank

blank

I certify that the address information for this individual is required for the performance of this agency's official duties.

_____

(Signature of Agency Official)

_____

(Title)

blank

blank

FOR POST OFFICE USE ONLY

blank

[ ] MAIL IS DELIVERED TO ADDRESS GIVEN

[ ] NOT KNOWN AT ADDRESS GIVEN

[ ] MOVED, LEFT NO FORWARDING ADDRESS

[ ] NO SUCH ADDRESS

[ ] OTHER (SPECIFY):

_____

_____

Agency return address

NEW ADDRESS

_____

_____

BOXHOLDER'S STREET ADDRESS

_____

_____

Postmark/Date Stamp

blank

blank

blank

blank

BILLING CODE 7710–12–C

§ 265.7 [Amended]

■ 3. Amend § 265.7 as follows:

■ (a) In paragraph (a)(4), remove ''(*See* § 265.8(g)(3).)'' and insert ''(*See* § 265.9(g)(3).)'' in its place;

■ (b) Remove paragraph (d)(1)(iii) and redesignate paragraph (d)(1)(iv) as paragraph (d)(1)(iii).

§ 265.9 [Amended]

■ 4. In § 265.9(g)(5), remove the sentence: ''This waiver does not apply to fees for services performed in accordance with section 945 of the Domestic Mail Manual.''

§ 265.13 Compliance with subpoenas, summonses, and court orders by postal employees within the Inspection Service where the Postal Service, the United States, or any other Federal agency is not a party.

■ 5. In § 265.13, revise paragraph (a)(4) to read as follows:

(a) * * *

(4) Employees serving as expert witnesses in connection with professional and consultative services under 5 CFR part 7001, provided that employees acting in this capacity must state for the record that their testimony reflects their personal opinions and should not be viewed as the official position of the Postal Service;

* * * * *

PART 266—[AMENDED]

■ 6. The authority citation for part 266 continues to read as follows:

Authority: 5 U.S.C. 552a; 39 U.S.C. 401.

§ 266.5 [Amended]

■ 7. Amend § 266.5 as follows:

■ (a) Revise paragraph (a) to read as set forth below:

■ (b) In paragraph (c), remove ''(See § 266.7(b)(3)'' and insert ''(See § 266.6(c)(1)'' in its place.

§ 265.5 Notification.

(a) Notification of Systems. Upon written request, the Postal Service will notify any individual whether a specific system named by the individual contains a record pertaining to him or her. See § 266.6 for suggested form of request.

* * * * *

§ 266.10 [Amended]

■ 8. In § 266.10 (b), remove ''20260–5202'' and insert ''20260'' in its place.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 04–14135 Filed 6–22–04; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[Docket No.: AK–04–001; FRL–7777–1]

Approval and Promulgation of Implementation Plans: State of Alaska; Anchorage Carbon Monoxide Nonattainment Area; Designation of Areas for Air Quality Planning Purposes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In this action, the EPA is approving the State of Alaska carbon monoxide (CO) maintenance plan for the Anchorage nonattainment area. EPA is also redesignating the Anchorage area from nonattainment to attainment for the National Ambient Air Quality Standard (NAAQS) for CO.

DATES: This final rule is effective on July 23, 2004.

ADDRESSES: EPA has established a docket for this action under Docket ID No. AK–04–001. Publicly available docket materials are available in hard copy at the EPA, Region 10, Office of Air, Waste and Toxics, 1200 Sixth Avenue, Seattle WA. This Docket facility is open from 8:30–4:00, Monday through Friday, excluding legal holidays. The Docket telephone number is (206) 553–4273.

FOR FURTHER INFORMATION CONTACT: Connie L. Robinson, Office of Air, Waste and Toxics (OAQ–107), EPA Region 10, 1200 Sixth Avenue, Seattle WA, 9810; telephone number: (206) 553–1086; fax number: (206) 553–0110; e-mail address: *robinson.connie@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document, wherever ''we,'' ''us,'' or ''our'' is used, we mean the EPA. Information is organized as follows:

I. Background
II. Public Comments on the Proposed Action
III. Final Action
IV. Statutory and Executive Order Reviews

I. Background

On May 10, 2004, EPA published in the **Federal Register**, a proposal to approve the Anchorage, Alaska CO maintenance plan SIP revision and to redesignate the Anchorage CO nonattainment area to ''attainment'' for CO. *See* 69 FR 25869.

The action to redesignate the Anchorage, Alaska nonattainment area to attainment for CO is based on valid monitoring data and projections of ambient air quality made in the maintenance demonstration that accompanies the maintenance plan. Air quality data shows that it has not recorded a violation of the primary or secondary CO air quality standards since 1996. EPA believes the area will continue to meet the National Ambient Air Quality Standards (NAAQS or standards) for CO for at least 10 years beyond this redesignation, as required by the Act.

A detailed description of our action to approve the Anchorage, Alaska CO maintenance plan and redesignation request was published in a proposed rulemaking in the **Federal Register** on May 10, 2004 (69 FR 25869).

II. Public Comments on the Proposed Action

EPA provided a 30-day review and comment period and solicited comments on our proposal published in the May 10, 2004, **Federal Register**. No comments were received for the proposed rulemaking. EPA is now taking final action on the SIP revision consistent with the published proposal.

III. Final Action

EPA is taking final action to approve the Anchorage CO Maintenance Plan and to redesignate the Anchorage CO nonattainment area to attainment. Alaska has demonstrated compliance with the requirements of section 107(d)(3)(E) based on information provided by the Municipality of Anchorage and contained in the Alaska SIP and Anchorage, Alaska CO maintenance plan. A Technical Support Document on file at the EPA Region 10 office contains a detailed analysis and rationale in support of the redesignation of Anchorage's CO nonattainment area to attainment.

IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this

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

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

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 23, 2004. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

40 CFR Part 81

Environmental protection, Air pollution control, National parks, and Wilderness areas.

Dated: June 16, 2004.

Ronald A. Kreizenbeck,

Acting Regional Administrator, Region 10.

Parts 52 and 81, chapter I, title 40 of the Code of Federal Regulations are amended as follows:

PART 52—[AMENDED]

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

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

Subpart C—Alaska

■ 2. Section 52.70 is amended by adding paragraph (c)(34) to read as follows:

§ 52.70 Identification of plan.

* * * * *

(c) * * *

(34) On February 18, 2004, the Alaska Department of Environmental Quality submitted a CO maintenance plan and requested the redesignation of Anchorage to attainment for CO. The State's maintenance plan, attainment year emissions inventory, and the redesignation request meet the requirements of the Clean Air Act.

(i) Incorporation by reference.

(A) 18AAC50.010, Ambient air quality standards, as effective June 21, 1998, except for subsections (7) and (8).

(B) 18AAC50.015, Air quality designations, classifications, and control regions, as in effect February 20, 2004.

(C) 18AAC53.010, Control periods and control areas, as in effect February 20, 2004.

(D) 18AAC53.190, Suspension and reestablishment of control period, as in effect February 20, 2004.

(E) 18AAC50.021, of the State Air Quality Control Plan, as referenced in (c)(19)(i)(C) of this section, effective April 23, 1994, is removed.

■ 3. Paragraph (a)(1)(i) of § 52.73 is revised to read as follows:

§ 52.73 Approval of plans.

(a) * * *

(1) * * *

(i) EPA approves as a revision to the Alaska State Implementation Plan, the Anchorage Carbon Monoxide Maintenance Plan (Volume II Section III.B of the State Air Quality Control Plan, adopted January 2, 2004, effective February 20, 2004 and Volume III of the Appendices adopted January 2, 2004, effective February 20, 2004) submitted by the Alaska Department of Environmental Conservation on February 18, 2004.

PART 81—[AMENDED]

■ 1. The authority citation for part 81 continues to read as follows:

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

■ 2. In § 81.302, the table entitled ''Alaska—Carbon Monoxide'' is amended by revising the entry for ''Anchorage Area Anchorage Election District (part)'' to read as follows:

* * * * *

§ 81.302 Alaska.

ALASKA—CARBON MONOXIDE

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Anchorage Area:				
Anchorage Election District (part) Anchorage nonattainment area boundary.	July 23, 2004	Attainment.		
The Anchorage Nonattainment Area is contained within the boundary described as follows: Beginning at a point on the centerline of the New Seward Highway five hundred (500) feet of the centerline of O'Malley Road; thence, Westerly along a line five hundred (500) south of and parallel to the centerline of O'Malley Road and its westerly extension thereof to a point on the mean high tide line of the Turnagain Arm; thence, Northeasterly along the mean high tide line to a point five hundred (500) feet west of the southerly extension of the centerline of Sand Lake Road; thence, Northerly along a line five hundred (500) feet west of and parallel to the southerly extension of the centerline of Sand Lake Road to a point on the southerly boundary of the International Airport property; thence, Westerly along said property line of the International Airport to an angle point in said property line; thence, Easterly, along said property line and its easterly extension thereof to a point five hundred (500) feet west of the southerly extension of the centerline of Wisconsin Street; thence, Northerly along said line to a point on the mean high tide line of the Knik Arm; thence, Northeasterly along the mean high tide line to a point on a line parallel and five hundred (500) feet north of the centerline of Thompson Street and the westerly extension thereof; thence, Easterly along said line to a point five hundred (55) feet east of Boniface Parkway; thence, Southerly along a line five hundred (500) feet east of and parallel to the centerline of Boniface Parkway to a point five hundred (500) feet north of the Glenn Highway; thence, Easterly and northeasterly along a line five hundred (500) feet north of and parallel to the centerline of the Glenn Highway to a point five hundred (500) feet east of the northerly extension of the centerline of Muldoon Road; thence, Southerly along a line five hundred (500) feet east of and parallel to the centerline of Muldoon Road and continuing southwesterly on a line of curvature five hundred (500) feet southeasterly of the centerline of curvature where Muldoon Road becomes Tudor Road to a point five hundred (500) south of the centerline of Tudor Road; thence, Westerly along a line five hundred (500) feet south of the centerline of Tudor Road to a point five hundred (500) feet east of the centerline to Lake Otis Parkway; thence, Westerly along a line five hundred (500) feet south of the centerline of O'Malley Road, ending at the centerline of the New Seward Highway, which is the point of the beginning.				

* * * * * * *

[1] This date is November 15, 1990 unless otherwise noted.

* * * * *

[FR Doc. 04–14216 Filed 6–22–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2003–0379; FRL–7352–6]

C8, C10, and C12 Straight-Chain Fatty Acid Monoesters of Glycerol and Propylene Glycol; Exemption from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of the C8, C10, and C12 straight-chain fatty acid monoesters of glycerol and propylene glycol on all raw agricultural commodities and food when applied/used in accordance with good agricultural practices. 3M Corporation submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of C8, C10, and C12 straight-chain fatty acid monoesters of glycerol and propylene glycol.

DATES: This regulation is effective June 23, 2004. Objections and requests for hearings, must be received on or before August 23, 2004.

ADDRESSES: To submit a written objection or hearing request follow the detailed instructions provided in Unit VIII. of the **SUPPLEMENTARY INFORMATION**. EPA has established a docket for this action under Docket ID number OPP–2003–0379. All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket*. Although listed in the index, some information is not publicly available, i.e., confidential

business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT:

Carol E. Frazer, Biopesticides and Pollution Prevention Division (7511C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8810; e-mail address: *frazer.carol@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111), e.g., farmer.
- Animal production (NAICS 112), e.g., rancher.
- Food manufacturing (NAICS 311), e.g., restaurant.
- Pesticide manufacturing (NAICS 32532).

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

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

In addition to using EDOCKET (*http://www.epa.gov/edocket/*), you may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*. A frequently updated electronic version of 40 CFR part 180 is available at E-CFR Beta Site Two at *http://www.gpoaccess.gov/ecfr/*.

II. Background and Statutory Findings

In the **Federal Register** of December 12, 2001 (66 FR 64251) (FRL–6809–8), EPA issued a notice pursuant to section 408(d)(3) of the FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide tolerance petition (PP 1F6314) by 3M Corporation, 3M Center, St. Paul, MN 55144–1000. This notice included a summary of the petition prepared by the petitioner 3M Corporation. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR part 180 be amended by establishing an exemption from the requirement of a tolerance for residues of C8, C10, and C12 straight-chain fatty acid monoesters of glycerol and propylene glycol.

Section 408(c)(2)(A)(i) of the FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the exemption is ''safe.'' Section 408(c)(2)(A)(ii) of the FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Pursuant to section 408(c)(2)(B), in establishing or maintaining in effect an exemption from the requirement of a tolerance, EPA must take into account the factors set forth in section 408(b)(2)(C), which require EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . . '' Additionally, section 408(b)(2)(D) of the FFDCA requires that the Agency consider ''available information concerning the cumulative effects of a particular pesticide's residues'' and ''other substances that have a common mechanism of toxicity.''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

III. Toxicological Profile

Consistent with section 408(b)(2)(D) of the FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness, and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

The fatty acid monoesters of glycerol and propylene glycol are six closely-related monoesters of C8, C10, and C12 straight-chain fatty acids. There are three glycerol monoesters (glycerol monocaprylate, glycerol monocaprate, and glycerol monolaurate), and three propylene glycol monoesters (propylene glycol monocaprylate, propylene glycol monocaprate, and propylene glycol monolaurate).

In vertebrate organisms (including humans), glycerol fatty acid monoesters are formed naturally as part of the metabolism of triglycerides. They also occur naturally in vegetable oils (e.g., coconut and palm oils) and in saw palmetto leaves and berries. Glycerol fatty acid monoesters are, in addition, used as direct food additives. Propylene glycol fatty acid monoesters, also used as direct food additives, are naturally metabolized in vertebrate systems in an identical manner to the glycerol fatty acid monoesters.

Toxicity studies supporting this tolerance exemption are referenced below. More detailed analyses of these studies can be found in the specific Agency review of the studies (Ref. 1). Additional information relevant to toxicity also has been published and is cited in Ref. 2.

Acute toxicity studies were generated to support EPA registration of the C8, C10, and C12 straight-chain fatty acid monoesters of glycerol and propylene glycol as biochemical pesticides. In all studies, EPA limit doses were used, and the test compounds were found to be non-toxic at the limit dose, but all tests were not conducted on each of the six active ingredients. Instead, a full acute toxicity test battery (6 studies) was generated for the C8 propylene glycol monoester (propylene glycol monocaprylate) and for the C12 glycerol ester (glycerol monolaurate), thereby bounding the chemical structures of all six active ingredients. In addition, because all six active ingredients are known to be identical with respect to acute toxicity and metabolism, a 90–day

rat oral toxicity study was conducted on propylene glycol monocaprylate only. The registrant requested and was granted waivers from toxicity testing for the additional monoesters (Ref. 3), since the metabolism and toxicity of the active ingredients have been well-documented for many years in the scientific literature. This represented all six active ingredients.

1. *Acute oral toxicity for glycerol monolaurate (OPPTS Harmonized Guideline 870.1100; 152–10; MRID 45405505): Non-toxic.* Fasted rats (three male and three female) received a single oral gavage of glycerol monolaurate formulated in corn oil and administered at a dose level of 5,000 milligrams/kilogram of body weight (mg/kg bwt). All rats survived and gained weight throughout the study with the exception of one female with a slight weight loss on the final day. Piloerection and increased salivation were observed in all rats within minutes of dosing. Normal salivation resumed shortly after dosing and piloerection resolved by day 3 in males and day 4 in females. No abnormalities were revealed in any rats at the macroscopic examination at study termination on day 15. The acute oral lethal dose $(LD)_{50}$ for rats was >5,000 mg/kg. Classification: Acceptable; Toxicity Category IV (Ref. 4).

2. *Acute oral toxicity for propylene glycol monocaprylate (OPPTS Harmonized Guideline 870.1100; 152–10; MRID 45428501): Non-toxic.* Fasted rats (three males and three females) received a single oral gavage of propylene glycol monocaprylate administered at a dose of 5,000 mg/kg bwt. All rats survived and gained weight throughout the study. Piloerection (all rats) and increased salivation (one female only) were evident within a few minutes of dosing, with piloerection persisting for the remainder of day 1. Piloerection was resolved by day 2 in females and by day 4 in males. No abnormalities were revealed in any animal at the macroscopic examination at study termination on day 15. The acute oral LD_{50} for rats was >5,000 mg/kg. Classification: Acceptable; Toxicity Category IV (Ref. 5).

3. *Acute dermal toxicity for glycerol monolaurate (OPPTS Harmonized Guideline 870.1200; 152–11; MRID 45428501): Non-toxic.* Ten rats (five males and five females) received a single topical application of glycerol monolaurate formulated in corn oil and administered at a dose of 5,000 mg/kg bwt. All rats survived and had normal weight gains throughout the study, with the exception of two females with low or no weight gain during week 1. No clinical signs of reaction to treatment were observed in any animal throughout the study, and no macroscopic abnormalities were observed in any animal at study termination on day 15. The acute dermal LD_{50} for rats was >5,000 mg/kg. Classification: Acceptable; Toxicity Category IV (Ref. 6).

4. *Acute dermal toxicity for propylene glycol monocaprylate (OPPTS Harmonized Guideline 870.1200; 152–11; MRID 45428503): Non-toxic.* Ten rats (five males and five females) received a single topical application of propylene glycol monocaprylate at a dose of 5,000 mg/kg bwt. All rats survived and gained weight, with the exception of one female with a slight weight loss during week 2. No macroscopic abnormalities were observed in any animal at study termination on day 15. The acute dermal LD_{50} for rats was >5,000 mg/kg. Classification: Acceptable; Toxicity Category IV (Ref. 7).

5. *Acute inhalation for glycerol monolaurate (OPPTS Harmonized Guideline 870.1300; 152–12; MRID 45405506): Harmless by inhalation.* In all instances, the aerosol generator was blocked following the start of generation. The waxiness of glycerol monolaurate made it impossible to generate aerosols. Because respirable particles cannot be produced from such low-melting waxy materials, the test substance is considered harmless by the inhalation route of exposure under normal handling conditions. Classification: Acceptable; Toxicity Category IV (Ref. 8).

6. *Acute inhalation for propylene glycol monocaprylate (OPPTS Harmonized Guideline 870.1300; 152–12; MRID 45405507): Non-toxic.* Ten rats (five males and five females) were exposed for 4 hours to a droplet aerosol generated from propylene glycol monocaprylate at a target concentration of 5 mg/liter (L). Another group (five males and five females), exposed to clean dry air only, were controls. The mass median aerodynamic (MMAD) was 2.0 microns and was within the ideal range (1 micron to 4 microns) for an acute inhalation study. Approximately 88% of the particles were considered a respirable size (less than 7 microns in aerodynamic diameter). The lethal concentration $(LC)_{5O}$ (4–hour inhalation) for propylene glycol monocaprylate was >4.92 mg/L (4,920 ppm) in air. EPA's limit dose for this test is 2 mg/L. Classification: Acceptable; Toxicity Category IV (Ref. 9).

7. *Eye irritation for glycerol monolaurate (OPPTS Harmonized Guideline 870.2400, 152–13, MRID 45405508): Slight irritant.* Each of three rabbits was administered a single ocular dose of 0.1 milliliter (mL) (mean weight 60 mg) of glycerol monolaurate and observed for up to 7 days after instillation. The instillation in one animal elicited a corneal lesion and iritis (both Grade 1) 48 hours post-dose. All rabbits exhibited transient conjunctival inflammation (up to Grade 3). Resolution was complete in two instances within approximately 72 hours of dosing and, in one animal, 7 days after dosing. Glycerol monolaurate is considered a slight eye irritant. Classification: Acceptable; Toxicity Category III (Ref. 10).

8. *Eye irritation for propylene glycol monocaprylate (OPPTS Harmonized Guideline 870.2400, 152–13, MRID 45405509): Slight irritant.* Three rabbits were each administered a single ocular dose of 0.1 mL of propylene glycol monocaprylate and observed for up to 7 days after instillation. The test substance elicited a transient, slight to well-defined conjunctival irritation in two rabbits. Propylene glycol monocaprylate is not considered a major ocular irritant. Classification: Acceptable; Toxicity Category III (Ref. 11).

9. *Skin irritation for glycerol monolaurate (OPPTS Harmonized Guideline 870.2500, 152–14, MRID 45405510): Non-Irritant.* Each of three rabbits was administered a single dermal dose of 0.5 g of glycerol monolaurate under semi-occlusive conditions for 4 hours and observed for up to 7 days. The test material produced transient slight erythema in 2 animals that resolved by 72 hours; the third animal had well-defined erythema at 48 hours that resolved by day 7. Glycerol monolaurate is not considered a dermal irritant. Classification: Acceptable; Toxicity Category IV (Ref. 12).

10. *Skin irritation for propylene glycol monocaprylate (OPPTS Harmonized Guideline 870.2500, 152–14, MRID 45405511): Non-irritant.* Each of three rabbits was administered a single dermal dose of 0.5 mL of propylene glycol monocaprylate under semi-occlusive conditions for 4 hours and observed for up to 11 days. The test substance produced only slight erythema in all animals. Propylene glycol monocaprylate is not considered a dermal irritant. Classification: Acceptable; Toxicity Category IV (Ref. 13).

11. *Skin sensitization for glycerol monolaurate (OPPTS Harmonized Guideline 870.2600, 152–15, MRID 45428504): Non-sensitizer.* Guinea pigs (10 test and 5 control) were dosed by intradermal injection and topical

application. Based on the results of a preliminary study, and in compliance with regulatory guidelines, the following dose levels were selected:

Intradermal injection: 2.5% w/v (weight/volume) in sterile water.

Topical application: 10% w/v in sterile water.

Challenge applications: 0.5% and 1% w/v in sterile water.

Following the first challenge application, negative responses were observed in six test animals, inconclusive responses in three animals and a positive response was observed in the remaining test animal. A second challenge was conducted to clarify these reactions. Following the second challenge application, glycerol monolaurate did not produce dermal reactions in any test or control animal. Glycerol monolaurate is not thought to cause skin sensitization. The sensitivity of the guinea pig strain used by the laboratory is checked periodically with a weak/moderate sensitizer - hexyl cinnamic aldehyde (HCA). In this study, HCA produced evidence of skin sensitization (delayed contact hypersensitivity) in 9 of the 10 animals, thus confirming the sensitivity and reliability of the experimental technique. Classification: Acceptable. (Ref. 14)

12. *Skin sensitization for propylene glycol monocaprylate (OPPTS Harmonized Guideline 870.2600, 152–15, MRID 45448201): Potential sensitizer*. The guinea pigs (10 test and 5 control) were dosed by intradermal injection and topical application. Based on the results of a preliminary study and in compliance with the regulatory guidelines, the following dose levels were selected:

Intradermal injection: 0.5% v/v in sterile water.

Topical application: as supplied.

Challenge application: 25% and 50% v/v in sterile water.

In this study, propylene glycol monocaprylate produced evidence of skin sensitization (delayed contact hypersensitivity) in all of the test animals. Propylene glycol monocaprylate may cause skin sensitization in humans. Propylene glycol itself is known to cause allergic reactions in patients receiving medical treatments containing this substance. The sensitivity of the guinea pig strain used is checked periodically by the laboratory with a weak to moderate sensitizer-HCA. In this study, HCA produced evidence of skin sensitization (delayed contact hypersensitivity) in 9 of the 10 animals, thus confirming the sensitivity and reliability of the experimental technique. This risk, however, is mitigated as long as the products are used according to the precautionary statements on the label, which advise washing thoroughly with soap and water after handling and that prolonged or frequently repeated skin contact may cause allergic reactions in some individuals. Classification: Acceptable (Ref. 15).

13. *28–Day oral for propylene glycol monocaprylate (OPPTS Harmonized Guideline 870.3050, MRID 45441101): Non-toxic*. The effects of propylene glycol monocaprylate (T–7475.8) were assessed in rats (groups of five males and five females) by oral gavage administration once a day for 4 weeks, employing dose levels of 0, 500, 750, or 1,000 mg/kg/day. Doses up to 1,000 mg/kg/day were well tolerated with the only effects noted being higher protein and albumin values and a higher lung and liver weight, all in females. In the absence of histopathological examination, the toxicological importance of these findings is unclear. However, it was considered that 1,000 mg/kg/day was well tolerated and that it would be suitable for use as a high dose level in the subsequent 13–week toxicity study. Classification: Acceptable (Ref. 16).

14. *13–Week oral for propylene glycol monocaprylate (OPPTS Harmonized Guideline 870.3100 and 870.7800, MRID 45428505): Non-toxic*. The systemic toxicity of propylene glycol monocaprylate (T–7475.8) was assessed in groups of rats (20 males and 20 females per group) by oral gavage administration at 0, 100, 500, or 1,000 mg/kg/day dose levels for 13 weeks. There were no unscheduled deaths in any of the groups and clinical observation, neurotoxicity, metabolic parameters, and organ histopathology indicated no changes of toxicological significance. It was concluded that a dosage of 1,000 mg/kg/day was considered to be a no observable adverse effect level (NOAEL) for either sex. Classification: Acceptable (Ref. 17).

15. *Genotoxicity*. Fatty acid monoesters of glycerol and propylene glycol in vertebrate systems are immediately metabolized to polyols and free fatty acids. Upon ingestion these compounds become indistinguishable from those in living systems. Polyols and free fatty acids in living systems are not genotoxic. Hence, waivers were requested and granted for all genotoxicity testing requirements on the basis that conducting such tests would not be of value to EPA in its evaluation of risks. The fatty acid monoesters of glycerol and propylene glycol are already known not to be genotoxic from a metabolic standpoint.

16. *Reproductive and developmental toxicity*. On their metabolic basis, fatty acid monoesters of glycerol and propylene glycol and their natural breakdown products are known not to be reproductive or developmental toxicants. Waivers therefore were requested and granted for all such testing requirements on the basis that conducting such tests would not be of value to EPA in its evaluation of risks (for both the registration action and this tolerance exemption action).

17. *Scientific literature on toxicity and metabolism*. Basic toxicity testing on mono- and diacylglycerols and saturated fatty acids was conducted in the 1930–1960 period and included intermediate-term and long-term studies. Less work has been published on propylene glycol saturated fatty acid esters, but the available data are adequate to demonstrate equivalence between propylene glycol esters and acylglycerols. Comprehensive reviews of these chemicals prepared by a number of sources including the Food and Drug Administration (FDA) and the Food and Agricultural Organization of the United Nations (FAO) and the World Health Organization (WHO) are available through the Joint FAO/WHO Expert Committee on Food Additives (JECFA). The no observed adverse effect levels (NOAELs) for monoacylglycerols, regardless of the saturated fatty acid, are similar. Rats can be fed from 10–15% in the diet for a lifetime without ill effects, dose levels corresponding to 5 g/kg bwt/day. Rats fed propylene glycol monosuccinate and monostearate at levels up to 10% of the diet for 6 months showed no evidence of gross or histological pathology attributable to treatment. Dogs fed at the same levels for 6 months showed no signs of toxicity.

The fatty acid moiety in monoacylglycerols is of no consequence because vertebrate systems are capable of metabolizing each of the acids in the range of C8 to C18 with equal facility. In fact, oxidation of fatty acids is a primary source of energy in vertebrate systems. Fatty acids are supplied in the diet in the form of triacylglycerols (fats) which are hydrolyzed by pancreatic lipase enzymes to form free fatty acids, glycerol and monoacylglycerols. The glycerol monoester active ingredients are indistinguishable from the natural acylglycerols and fatty acids found in the intestine following ingestion of fats. Specificity of the pancreatic lipase enzyme is independent of the nature of the fatty acid. It is also not stereospecific in its action and glycerol esters and propylene glycol esters are hydrolyzed by it with equal facility.

Studies with 14C-labeled propylene glycol show that it is readily absorbed from the gastrointestinal tract and rapidly converted in the liver to 14C-glycogen or 14CO2. Similarly, when 14C-glycerol is administered to rats, radiolabel appears in expired CO2, blood glucose, liver glycogen, liver fat and liver phosphatides within 15 minutes. Within 6 hours, 40% of the label is contained in expired CO2 and the remainder is distributed through the test animal. Very small amounts are excreted.

FDA has looked at metabolism of propylene glycol mono- and distearates as model compounds to represent propylene glycol fatty acids. In studies on radiolabeled propylene glycol distearate the rate-limiting factor in the metabolism was found to be hydrolysis of the ester, which is complete in about 3 hours. In 5 hours, 94% of the propylene glycol is absorbed and 94% of the absorbed material is found in expired CO2 in 72 hours. The fatty acid portion of the ester is absorbed and metabolized more slowly than the propylene glycol. Only 51% of the stearic acid label was expired as CO2 in the same period.

In addition, there is a long history of consumption by humans of fatty acids and their monoesters in food and the Agency knows of no instance where these have been associated with any toxic effects related to the consumption of food. Due to this knowledge of fatty acid monoesters' presence and function in the human system (Ref. 2) and the recent acute testing, EPA believes the fatty acid monoesters are unlikely to be carcinogenic or have other long-term toxic effects.

The data from the toxicity studies (Ref. 1) and the additional information from the scientific literature submitted by the registrant (Ref. 2) are sufficient to support the current waiver requests, and to demonstrate that no substantial risks to human health are expected from the use of glycerol or propylene glycol fatty acid monoesters, when used in accordance with good agricultural practices and in accordance with all relevant labeling.

IV. Aggregate Exposures

In examining aggregate exposure, section 408 of the FFDCA directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures, including drinking water from ground water or surface water and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

A. Dietary Exposure

Aggregate dietary exposure estimates were generated using EPA's Dietary Exposure Potential Model (DEPM) customarily used by the agency. The model is designed to generate dietary exposure estimates by combining food consumption and residue data. In this case, food consumption data came from the 10th National Food Consumption Survey conducted during the 3–year period of 1994–1996 by the Agricultural Research Service of the U.S. Department of Agriculture. These data are also known as the Continuing Survey of Food Intake by Individuals, 1994–1996 (CSFII 1994–1996).

1. *Food*. Food residue estimates were generated for use in the DEPM analysis to simulate broad use of the fatty acid monoesters of glycerol and propylene glycol. Specifically, residue estimates were constructed for all food commodities corresponding to 18 raw agricultural commodities (RACs) for which residue data were generated for the following major food groups: Fruits; vegetables; beverages; and infant food. In keeping with the worst case nature of the analysis, residue data for a tested commodity was used also for similar commodities not tested (e.g., spinach values were used for other delicate greens; kale values were used for other heavy greens such as collard; peach values were used for apricots). It was also assumed residue levels are not changed by cooking and that fruit and vegetable mixtures contain 50% of one or more RAC, unless the composition of the mixture is specified. Total dietary exposure estimates were generated using the model for the U.S. population and 20 subpopulations, including non-nursing infants and children. The subpopulation groups were defined by age, gender, geographic location, ethnicity and income level. All calculations represented residue levels assuming treatment of 100% of every commodity consumed in the U.S. for which residue estimates could be generated, another severe worst-case assumption. The model produced data tables containing the consumption of each food, its assumed residue level and the calculated exposure from that consumption in µg/kg-bwt/day for each of the subpopulations. For all subpopulation groups, the commodity that contributed in the analysis the most to exposure was cooked green beans. This result reflects the fact that green beans absorbed an unexpectedly large amount of treatment solution in the experimental procedure used to generate RAC residue estimates. Based upon the worst-case data and assumptions described above, the model calculated the highest exposure of 0.5 mg/kg bwt/day for non-nursing infants. Dietary exposure for the total U.S. population was less than 0.2 mg/kg bwt/day. These levels are below the FDA approved dosage for addition to prepared foods, and the highest dose accepted as a chronic NOAEL for either sex was 5,000 times higher (Ref. 17).

2. *Drinking water exposure*. All anticipated or proposed uses of glycerol and propylene glycol fatty acid monoesters will be indoors and the compounds are not soluble in water. Hence, drinking water is not a feasible route of exposure.

B. Other Non-Occupational Exposure

Glycerol fatty acid monoesters are natural components of dietary fats and natural breakdown products from metabolism of fat (triacylglycerol) in all living systems. Additionally, fatty acid esters of both glycerol and propylene glycol occur as direct food additives.

1. *Dermal exposure*. Results of the acute dermal toxicity studies for glycerol monolaurate and propylene glycol monocaprylate indicated no toxicity (Toxicity Category IV) at the maximum dose tested (5,000 mg/kg) with no significant dermal irritation (Toxicity Category IV). Based on these results, the anticipated risks from dermal exposure are minimal. Dermal sensitization may occur with the propylene glycol monoesters as the caprylate is a potential sensitizer. This risk, however, is mitigated as long as the products are used according to the precautionary statements on the label, which advise washing thoroughly with soap and water after handling and that prolonged or frequently repeated skin contact may cause allergic reactions in some individuals.

2. *Inhalation exposure*. Because the inhalation toxicity study for propylene glycol monocaprylate showed no toxicity (Toxicity Category IV), and the glycerol fatty acid monoesters are waxy solids at room temperature (not present as respirable particles), the risks anticipated for this route of exposure are minimal.

V. Cumulative Effects

Section 408(b)(2)(D)(v) of FFDCA requires the Agency, when considering whether to establish, modify, or revoke a tolerance, to consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.'' These considerations include the possible cumulative effects of such residues on infants and children.

In assessing their cumulative effects, the fatty acid monoesters of glycerol and propylene glycol are members of a much larger class of compounds that are toxicologically and metabolically equivalent. All vertebrate systems deal with this class of compounds as food rather than toxicants. Glycerol fatty acid monoesters are natural components in dietary fats and natural breakdown products from metabolism of fat (triacylglycerol) in all living systems. Fatty acid esters of propylene glycol also occur as direct food additives in the human diet in substantial quantities. The use of fatty acid monoesters of glycerol and propylene glycol as pesticides will contribute a negligible amount (total U.S. population worst case estimate less than 0.2 mg/kg/day) to the existing cumulative exposure to the class of compounds when compared to natural levels of such compounds and their metabolites in tissue and foods (50–100 g/day in humans for glycerol esters), and to the levels permitted in food as direct additives (grams per day). Accordingly, exposure to these monoesters as a result of their label directed use as pesticides on raw agricultural food or feed commodities will result in a negligible increase in the cumulative exposure to this class of compounds over the present exposure, occurring as a result of daily consumption by the human population of this class of compounds from both naturally occurring sources and processed foods.

VI. Determination of Safety for U.S. Population, Infants and Children

1. *U.S. population*. It is doubtful harm will result from aggregate exposure to residues of the fatty acid monoesters of glycerol or propylene glycol in the U.S. population. This includes all anticipated dietary exposures and all other exposures for which there is reliable information. The Agency has arrived at this conclusion based on the very low levels of mammalian toxicity (no toxicity at the maximum doses tested, Toxicity Category IV) associated with the fatty acid monoesters of glycerol and propylene glycol and the long history of their consumption.

2. *Infants and children*. FFDCA section 408 provides that EPA shall apply an additional tenfold margin of exposure (safety) for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base unless EPA determines a different margin of exposure will be safe for infants and children. Margins of exposure (safety) are often referred to as uncertainty factors. The registrant used the NOAEL of 1,000 mg/kg bwt/day determined in the 90–day oral toxicity study in rats to calculate an estimated exposure of the active ingredients to the U.S. population of 0.13 mg/kg bwt/day and to non-nursing infants of 0.44 mg/kg bwt/day. The corresponding margins of exposure were calculated to be 7,690 for the U.S. population and 2,270 for non-nursing infants (Ref. 2).

In this instance, based on all the available information, the Agency concludes that the C8, C10, and C12 monoesters of glycerol and propylene glycol are virtually non-toxic to mammals, including infants and children. Further, the provisions of consumption patterns, special susceptibility, and cumulative effects do not apply. Since no toxic endpoints have been identified, any hazard is impossible to determine. As a result, EPA has not used a margin of exposure approach to assess the safety of the C8, C10, and C12 monoesters of glycerol and propylene glycol. Based on their abundance in nature and long history of use by humans without deleterious effects, there is reasonable certainty that no harm will result from aggregate exposure to the U.S. population, including infants and children, to residues of these glycerol and propylene glycol straight-chain fatty acid monoesters. This includes all anticipated dietary exposures and all other exposures for which there are reliable information. Thus, the Agency has determined that the additional margin of safety is not necessary to protect infants and children and that not adding any additional margin of safety will be safe for infants and children.

VII. Other Considerations

A. Endocrine Disruptors

EPA is required under the FFDCA, as amended by FQPA, to develop a screening program to determine whether certain substances (including all pesticide active and other ingredients) may have an effect in humans that is similar to an effect produced by a naturally-occurring estrogen, or other such endocrine effects as the Administrator may designate. Following the recommendations of its Endocrine Disruptor Screening and Testing Advisory Committee (EDSTAC), EPA determined that there was scientific basis for including, as part of the program, the androgen- and thyroid hormone systems, in addition to the estrogen hormone system. EPA also adopted EDSTAC's recommendation that the Program include evaluations of potential effects in wildlife. For pesticide chemicals, EPA will use FIFRA and, to the extent that effects in wildlife may help determine whether a substance may have an effect in humans, FFDCA authority to require the wildlife evaluations. As the science develops and resources allow, screening of additional hormone systems may be added to the Endocrine Disruptor Screening Program (EDSP).

Based on the weight of the evidence of available data, no endocrine system-related effects are identified for the C8, C10, or C12 fatty acid monoesters of glycerol or propylene glycol and none is expected since they are natural components of vertebrate systems. Thus, there is no impact via endocrine-related effects on the Agency's safety finding set forth in this Final Rule for C8, C10, or C12 fatty acid monoesters of glycerol or propylene glycol.

B. Analytical Method(s)

The Agency proposes to establish an exemption from the requirement of a tolerance for the C8, C10, and C12 straight-chain fatty acid monoesters of glycerol and propylene glycol without any numerical limitation, based on their lack of mammalian toxicity. Their use will create only minuscule exposures (<1 mg/kg bwt/day) when compared to the natural levels of such compounds in living tissue and in foods (50–100 grams (g)/day), and compared to the levels permitted in food as direct additives (g/day). Based on this, the Agency has concluded that an analytical method is not required for enforcement purposes for the fatty acid monoesters of glycerol or propylene glycol.

C. Codex Maximum Residue Level

There are no CODEX values for the C8, C10, and C12 straight-chain saturated fatty acid monoesters of glycerol or propylene glycol.

D. Conclusions

Based on the toxicology data submitted and other information available to the Agency, there is reasonable certainty no harm will result to the U.S. population, including infants and children, from aggregate exposure of residues of the C8, C10, and C12 straight-chain fatty acid monoesters of glycerol or propylene glycol when the product is used in accordance with good agricultural practices and in accordance with all relevant labeling. This includes all anticipated dietary exposures and all other exposures about which there is reliable information. As a result, EPA is establishing an exemption from tolerance requirements pursuant to FFDCA 408(c) and (d) for residues of the C8, C10, and C12 straight-chain fatty acid monoesters of glycerol and

propylene glycol in or on all food commodities.

VIII. Objections and Hearing Requests

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

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

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2003–0379 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before August 23, 2004.

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

Mail your written request to: Office of the Hearing Clerk (1900C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. You may also deliver your request to the Office of the Hearing Clerk in Rm. 104, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (703) 603–0061.

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

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

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

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VIII.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.1. Mail your copies, identified by docket ID number OPP–2004–0379, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.1. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov.* Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

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

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

IX. References

1. USEPA. Science Review in Support of the Registration of the Technical Grade Active Ingredient (TGAI) Product, VMX–42 Technology Propylene Glycol Monocaprylate, memo from Jones, Russell S., Ph.D., to Carol E. Frazer, Ph.D., April 4, 2003.

2. Dubeck, J.B., S.M. Price, and A.P. Jovanovich. Petition Proposing an Exemption from Tolerance for Pesticide Residues in or on Raw Agricultural Commodities and Processed Food. 3M, St. Paul, MN. April 13, 2001.

3. Jovanovich, A.P., Ph.D., MBA. Application for Pesticide Registration VWX–42 Technology. Request for Waivers. May 2, 2001.

4. Blanchard, Emma L., B.Sc. (Hons.). Acute oral toxicity study. MRID 45405505.

5. Coleman, David G., B.Sc. (Hons.). Acute oral toxicity study. MRID 45428501.

6. Coleman, David G., B.Sc. (Hons.). Acute dermal toxicity study. MRID 45428502.

7. Coleman, David G., B.Sc. (Hons.). Acute dermal toxicity study. MRID 45428503.

8. Paul, Graham R., B.Sc. (Hons.), M.Sc. Biol., M.I. Biol. Acute inhalation toxicity study. MRID 45405506.

9. Paul, Graham R., B.Sc. (Hons.), M.Sc. Biol., M.I. Biol. Acute inhalation toxicity study. MRID 45405507.

10. Blanchard, Emma L., B.Sc. (Hons.). Primary eye irritation study. MRID 45405508.

11. Blanchard, Emma L., B.Sc. (Hons.). Primary eye irritation study. MRID 45405509.

12. Blanchard, Emma L., B.Sc. (Hons.). Primary dermal irritation study. MRID 45405510.

13. Blanchard, Emma L., B.Sc. (Hons.). Primary dermal irritation study. MRID 45405511.

14. Coleman, David G., B.Sc. (Hons.). Dermal sensitization study. MRID 45428504.

15. Coleman, David G., B.Sc. (Hons.). Dermal Sensitization study. MRID 45448201.

16. Bottomley, Sarah M., B.Sc. (Hons.), M.Sc., C.Biol., M.I.Biol. 28–Day oral toxicity study in rats. MRID 45441101.

17. Bottomley, Sarah M., B.Sc. (Hons.), M.Sc., C.Biol., M.I.Biol. 90–Day oral toxicity study in rats. MRID 45428505.

X. Statutory and Executive Order Reviews

This final rule establishes an exemption from the tolerance requirement under section 408(d) of the FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of the FFDCA, such as the exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications '' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

XI. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: June 10, 2004.

James Jones,

Director, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

■ 2. Section 180.1250 is added to subpart D to read as follows:

§ 180.1250 C8, C10, and C12 fatty acid monoesters of glycerol and propylene glycol; exemption from the requirement of a tolerance.

The C8, C10, and C12 straight-chain fatty acid monoesters of glycerol (glycerol monocaprylate, glycerol monocaprate, and glycerol monolaurate) and propylene glycol (propylene glycol monocaprylate, propylene glycol monocaprate, and propylene glycol monolaurate) are exempt from the requirement of a tolerance in or on all food commodities when used in accordance with approved label rates and good agricultural practice.

[FR Doc. 04–14222 Filed 6–22–04; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2004–0040; FRL–7362–3]

Lactic acid, n-propyl ester, (S); Exemption from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of lactic acid, n-propyl ester, (S) on raw agricultural commodities when used as an inert ingredient in pesticide formulations applied to growing crops or to raw agricultural commodities after harvest, or animals. PURAC America, Inc. submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996, requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of lactic acid, n-propyl ester, (S).

DATES: This regulation is effective June 23, 2004. Objections and requests for hearings must be received on or before August 23, 2004.

ADDRESSES: To submit a written objection or hearing request follow the detailed instructions as provided in Unit VIII. of the **SUPPLEMENTARY INFORMATION.** EPA has established a docket for this action under Docket ID number OPP–2004–0040. All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket.* Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Princess Campbell, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8033; e-mail address: *campbell.princess@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111)
- Animal production (NAICS code 112)
- Food manufacturing (NAICS code 311)
- Pesticide manufacturing (NAICS code 32532)

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

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

In addition to using EDOCKET at *(http://www.epa.gov/edocket/)*, you may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*. A frequently updated electronic version of 40 CFR part 180 is available at E–CFR BetaSite Two at *http://www.gpoaccess.gov/ecfr/*.

II. Background and Statutory Findings

In the **Federal Register** of October 24, 2003 (68 FR 60987) (FRL–7330–6), EPA issued a notice pursuant to section 408(d)(3) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide tolerance petition (PP OF6180) by PURAC America, Inc., 111 Barclay Blvd., Lincolnshire Corporate Center, Lincolnshire, IL 60069. This notice included a summary of the petition prepared by the petitioner PURAC America, Inc.

The petition requested that 40 CFR 180.950 be amended by establishing an exemption from the requirement of a tolerance for residues of n-propyl lactate, also known as lactic acid, n-propyl ester, (S) (CAS Reg. No. 53651–69–7). There were no comments received in response to the notice of filing.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of the FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of the FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

III. Inert Ingredient Definition

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125 and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term ''inert'' is not intended to imply nontoxicity; the ingredient may or may not be chemically active. Generally, EPA has exempted inert ingredients from the requirement of a tolerance based on the low toxicity of the individual inert ingredients.

IV. Toxicological Profile

Consistent with section 408(b)(2)(D) of the FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by lactic acid, n-propyl ester, (S) are discussed in this unit.

A. Agency-Reviewed Studies

1. *Acute dermal toxicity in the rat.* Five males and five female adult outbred albino rats received 24–hour occluded dermal exposure to a dose of 2,000 milligram per kilogram (mg/kg) of n-propyl lactate (99.5%). There was no mortality. All five males and four of five females lost weight from day 0 to day 3, but five males and three females had slight weight gains during the period from day 0 to day 14. Two males and one female had slight dermal encrustation on day 1. No treatment related findings were observed on necropsy. The dermal lethal dose $(LD)_{50}$ was greater than 2,000 milligrams/liter (mg/L). This is Toxicity Category III.

2. *Acute dermal irritation study in the rabbit.* One half milliliter (mL) of n-propyl lactate (99.5%) was distributed over each of three patches measuring approximately 2.5 x 2.5 centimeter (cm). Three rabbits were used and each rabbit received one patch applied to a skin site with 4–hour occluded exposure. All scores were zero for erythema and for oedema at 7 and 14 days. There was slight scaliness at all three sites at day 7 but not at day 14. This is Toxicity Category IV.

3. *Acute eye irritation study in the rabbit.* One-tenth mL of n-propyl lactate (99.5%) was instilled into the right eye of a single young adult New Zealand White rabbit with no subsequent wash. The exposed eye scored positive for corneal opacity at 1, 24, 48, and 72 hours, and at 7, 14, 21, 25, 28, 35, and 42 days. At 35, and 42 days three quarters of the cornea was still showing opacity and there was a vascularization of the cornea. Iridial and conjunctival effects were also present. The iridial irritation cleared by day 14 and the eye was no longer positive for chemosis and conjunctival redness at 21 days. This is Toxicity Category I.

B. Structure-Activity-Relationship (SAR) Assessment

Lactic acid, n-propyl ester, (S), belongs to the same class of lactate esters as lactic acid, ethyl ester and lactic acid, n-butyl ester. Structurally these three chemicals which are all esters of lactic acid differ only in the presence of the ethyl, n-propyl, or n-butyl side chain. SAR assessments in which the chemical's structural similarity to other chemicals is used to determine toxicity have been performed for all three chemicals. The assessments did not identify any concerns for carcinogenicity or developmental toxicity for the lactate esters. In fact, all three chemicals were judged to be of low concern. For comparison purposes the physical/chemical properties are given in Table 1 below.

TABLE 1.—PHYSICIAL/CHEMICAL PROPERTIES

Parameter	Test Results (M) measured (E) estimated		
	Ethyl Lactate (taken from SAR Assessment, submitted information)	n-Propyl lactate	Butyl Lactate (taken from SAR Assessment, NIOSH pocket guide, submitted information)
Physical form	Liquid	Liquid	Liquid
Molecular weight	118	132.16	146
Solubility (water) @ 20 °C	Completely miscible	Miscible	Slight (NIOSH) 4.5 g in 100 g water
Vapor pressure (mmHg) @ 20 °C	1.7	1.3	0.4 (NIOSH) 0.2
Octanol/water partition coefficent log K_{ow}	0.06 0.31 (E) (SAR)	0.51	1.1 1.4 (E) (SAR)

Detailed discussions of the toxicity data for ethyl and butyl lactate esters were published in the Final Rule entitled ''Lactic Acid, n-Butyl Ester and Lactic Acid, Ethyl Ester''; Exemptions from the Requirement of a Tolerance, in the **Federal Register** of September 3, 2002 (67 FR 56225) (FRL–7196–6). Table 2 below compares the toxicity data discussed in that final rule and the available data for lactic acid, n-propyl ester, (S).

C. Comparison of Toxicity Data for Lactate Esters

TABLE 2.—COMPARISON OF TOXICITY DATA FOR LACTATE ESTERS

Toxicity Study	Ethyl Lactate	n-Propyl Lactate	Butyl Lactate
Acute oral	LD_{50} > 2,000 mg/kg	*LD_{50} > 2,000 mg/kg (Toxicity Category III)	LD_{50} > 2,000 mg/kg
Acute inhalation	----	*LC_{50} > 5,000 mg/m^3 (Toxicity Category IV)	LC_{50} > 5.14 mg/L
Acute dermal	*LD_{50} >5 g/kg	LD_{50} > 2,000 mg/kg (Toxicity Category III)	*LD_{50} > 5 g/kg

TABLE 2.—COMPARISON OF TOXICITY DATA FOR LACTATE ESTERS—Continued

Toxicity Study	Ethyl Lactate	n-Propyl Lactate	Butyl Lactate
Dermal irritation	Non-irritating	Non-irritating to skin (Toxicity Category IV)	Irritating
Eye irritation	Possible eye irritant	Severely irritating to eye (Toxicity Category I)	Possible eye irritant
Dermal developmental	NOAEL 3,619 mg/kg	----	----

*These values were obtained from an article entitled ''Safety Assessment of n-Propyl-L-Lactate,'' published by Clary et al., 1998, in the Journal of Regulatory Toxicology and Pharmacology. The Agency did not review these studies which were supplied as supporting information; however, the studies which provided these results were conducted according to OECD guidelines.

D. Metabolism of Lactate Esters

In mammals simple esters such as ethyl, butyl, and n-propyl lactate readily undergo hydrolysis, yielding the alcohol and acid from which the ester was formed. For example in the case of ethyl lactate, the breakdown products would be ethyl alcohol (ethanol) and lactic acid, and in the case of n-propyl-lactate, this would be n-propyl alcohol (1-propanol) and lactic acid. The metabolism of lactic acid is well understood; it is an intermediate in human metabolism of glucose. The World Health Organization (WHO) has examined the metabolism of 1-propanol, and has determined that it is rapidly absorbed and distributed throughout the body following ingestion.

V. Aggregate Exposures

In examining aggregate exposure, section 408 of the FFDCA directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures, including drinking water from ground water or surface water and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

As previously stated, lactic acid, n-propyl ester, (S) belongs to the same class of lactate esters as lactic acid, ethyl ester, and lactic acid, n-butyl ester. The SAR assessments for each of these three chemicals supports the conclusion that as a class, lactate esters, including lactic acid, n-propyl ester, (S) are of low toxicity.

Given their physical/chemical properties, lactate esters could have a variety of uses in and around the home. According to information on the Internet they are being considered as ''green'' replacements for many of the organic solvents traditionally used in the manufacturing industry. The Agency has estimated a generic dietary exposure estimate for an inert ingredient of 0.12 milligrams/kilogram/day (mg/kg/day). To assure that the exposure is not underestimated, it is assumed that the inert ingredients are used on all crops and 100% of all crops are ''treated'' with the inert ingredient. Given the low toxicity of the lactate esters as a class and the body's ability to metabolize lactic acid, n-propyl ester, (S) to n-propyl alcohol and lactic acid, which are well-absorbed and metabolized by the human body, a qualitative assessment for all pathways of human exposure (food, drinking water, and residential) is appropriate.

VI. Cumulative Effects

Section 408(b)(2)(D)(v) of the FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

Lactic acid, n-propyl ester, (S) is structurally related to lactic acid, ethyl ester and lactic acid, n-butyl ester. All are lower toxicity chemicals; therefore, the resultant risks separately and/or combined should also be low. These chemicals do not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that these chemical substances have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the policy statements released by EPA's Office of Pesticide Programs concerning common mechanism determinations and procedures for cumulating effects from substances found to have a common mechanism on EPA's website at *http://www.epa.gov/pesticides/cumulative/*.

VII. Safety Factor for Infants and Children

Section 408 of FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. Due to the expected low oral toxicity of lactic acid, n-propyl ester, (S), a safety factor analysis has not been used to assess its risk. For the same reasons, the additional tenfold safety factor for the protection of infants and children is unnecessary.

VIII. Determination of Safety for U.S. Population, Infants and Children

Lactic acid, n-propyl ester, (S) belongs to the same class of lactate esters as lactic acid, ethyl ester, and lactic acid, n-butyl ester. The hydrolysis products of lactic acid, n-propyl ester, (S) are n-propanol and lactic acid which are readily metabolized by the human body. The SAR assessment did not identify any concerns for carcinogenicity or developmental toxicity. EPA concludes that lactic acid, n-propyl ester, (S) does not pose a dietary risk under reasonably foreseeable circumstances, and that there is a reasonable certainty of no harm from aggregate exposure to residues of lactic acid, n-propyl ester, (S).

IX. Other Considerations

A. Endocrine Disruptors

FQPA requires EPA to develop a screening program to determine whether certain substances, including all pesticide chemicals (both inert and active ingredients), may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen, or such other endocrine effect. EPA has been working with interested stakeholders to develop a screening and testing program as well as a priority setting scheme. As the Agency proceeds with implementation of this program, further testing of products containing

lactic acid, n-propyl ester, (S) for endocrine effects may be required.

B. Analytical Method(s)

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation.

C. Existing Exemptions

There are no existing tolerances or tolerance exemptions for lactic acid, n-propyl ester, (S).

D. International Tolerances

The Agency is not aware of any country requiring a tolerance for lactic acid, n-propyl ester, (S) nor have any CODEX maximum residue levels been established for any food crops at this time.

E. List 4B Classification

It has been determined that lactic acid, n-propyl ester, (S) is to be classified as a List 4B inert ingredient. This classification is due to the Toxicity Category I determination for the acute eye irritation study. Tolerance exemptions for lactic acid, n-propyl ester, (S) will be established in 40 CFR 180.910 and 180.930 instead of 40 CFR 180.950 as requested by the petitioner PURAC.

X. Conclusions

Based on the Agency's review and evaluation of information on the toxicity of lactic acid, n-propyl ester, (S) as summarized in this preamble, and the previous evaluation of the structurally-related chemicals, lactic acid, ethyl ester and lactic acid, n-butyl ester (see the September 3, 2002 Final Rule), and considering the SAR assessments, and an understanding of the metabolism of lactate esters as a chemical class, EPA concludes that there is a reasonable certainty of no harm from aggregate exposure to residues of lactic acid, n-propyl ester, (S). Accordingly, EPA finds that exempting lactic acid, n-propyl ester, (CAS Reg. No. 53651–69–7) from the requirement of a tolerance will be safe.

XI. Objections and Hearing Requests

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

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

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2004–0040 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before August 23, 2004.

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

Mail your written request to: Office of the Hearing Clerk (1900L), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. You may also deliver your request to the Office of the Hearing Clerk in Suite 350, 1099 14th St., NW., Washington, DC 20005. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 564–6255.

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

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

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

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit XI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in **ADDRESSES**. Mail your copies, identified by docket ID number OPP–2004–0040, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in **ADDRESSES**. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

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

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility

that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

XII. Statutory and Executive Order Reviews

This final rule establishes an exemption from the tolerance requirement under section 408(d) of the FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of the FFDCA, such as the exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

XIII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: June 9, 2004.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

■ 2. In § 180.910, the table is amended by adding alphabetically the following inert ingredient to read as follows:

§ 180.910 Inert ingredients used pre- and post-harvest; exemptions from the requirement of a tolerance.

* * * * *

Inert Ingredients	Limits	Uses
* *	*	* *
Lactic acid, n-propyl ester, (S); (CAS Reg. No. 53651–69–7).	.....	Solvent
* *	*	* *

■ 3. In § 180.930, the table is amended by adding alphabetically the following inert ingredient to read as follows:

§ 180.930 Inert ingredients applied to animals; exemptions from the requirement of a tolerance.

* * * * *

Inert Ingredients	Limits	Uses
* *	*	* *
Lactic acid, n-propyl ester, (S); (CAS Reg. No. 53651–69–7).	.....	Solvent

Inert Ingredients	Limits	Uses
* *	*	* *

[FR Doc. 04–14221 Filed 6–22–04; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 25

[MM Docket No. 93–25; FCC 04–44]

RIN 3060–AF39

Implementation of the Cable Television Consumer Protection and Competition Act of 1992; Direct Broadcast Satellite Public Interest Obligations

AGENCY: Federal Communications Commission.

ACTION: Correcting amendments.

SUMMARY: The Commission is correcting a final rule that appeared in the **Federal Register** of April 28, 2004 (69 FR 23155). This document corrects typographical errors in the effective date and in the preamble. The corrected effective date appears below.

DATES: The rule published at 69 FR 23155 is effective May 28, 2004, except for §§ 25.701(d)(1)(i), 25.701(d)(1)(ii), 25.701(d)(2), 25.701(d)(3), 25.701(e)(3), 25.701 (f)(6)(i), and 25.701(f)(6)(ii) which contain information collection requirements that have not been approved by OMB. The Federal Communications Commission will publish a document in the **Federal Register** announcing the effective date.

FOR FURTHER INFORMATION CONTACT: Rosalee Chiara, Federal Communications Commission, Policy Division, Media Bureau, 445 12th St., Washington, DC 20554, (202) 418–0754.

SUPPLEMENTARY INFORMATION: In FR Doc. 04–9170 appearing on page 23155 in the issue of April 28, 2004, the effective date is corrected as set forth above, and in paragraph 18 of the preamble, the references to §§ 75.701(d)(2) and 75.701(d)(3) are corrected to read ''25.701(d)(2)'' and ''25.701(d)(3)''.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–14263 Filed 6–22–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

Miscellaneous Rules Relating to Common Carriers

CFR Correction

In Title 47 of the Code of Federal Regulations, parts 40 to 69, revised as of October 1, 2003, on page 329, § 64.2400 paragraph (b) is corrected by removing ''64.2001(a)(2), 64.2001(b), and 64.2001(c)'', and adding in its place ''64.2401(a)(2), 64.2401(b), and 64.2401(c)''.

[FR Doc. 04–55512 Filed 6–22–04; 8:45 am]

BILLING CODE 1505–01–D

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 73 and 76

[MM Docket No. 98–204; FCC 04–103]

RIN 3060–AH95

Review of the Commission's Broadcast and Cable Equal Employment Opportunity Rules and Policies

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission adopts new broadcast and multichannel video programming distributor (''MVPD'') equal employment opportunity (''EEO'') rules. The Commission revised Forms 395–A and 395–B but issued a notice of proposed rulemaking on issues regarding whether to keep annual employment reports confidential or partially confidential.

DATES: Sections 73.3612 and 76.1802 contain information collection requirements that have not been approved by the Office of Management and Budget (OMB). The Commission will publish a document in the **Federal Register** announcing the effective date of these rules. Written comments by the public on the modified information collection requirements are due August 23, 2004.

FOR FURTHER INFORMATION CONTACT: Lewis Pulley, Policy Division, Media Bureau, (202) 418–1450 or *lewis.pulley@fcc.gov.* For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, contact Leslie F. Smith at 202–418–0217, or via the Internet at *Leslie.Smith@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Media Bureau's *Third Report and Order* (''3*R&O*'') in MM Docket No. 98–204; FCC 04–103, adopted April 19, 2004, and released on June 4, 2004. The full text of this *3R&O* is available for inspection and copying during regular business hours in the FCC Reference Center, 445 Twelfth Street, SW., Room CY–A257, Portals II, Washington, DC, 20554, and may also be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., Room CY–B402, telephone (800) 378–3160, e-mail *http://www.BCPIWEB.com*. This document is available in alternative formats (computer diskette, large print, audio cassette and Braille). Persons who need documents in such formats may send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0531 (voice), 418–7365 (tty).

Synopsis of Third Report and Order

I. Background

1. The *Second Notice of Proposed Rulemaking* (''*2NPRM*''), 67 FR 1704, January 14, 2002, in this proceeding proposed and requested comment on new broadcast station and multichannel video programming distributor (''MVPD'') Equal Employment Opportunity (''EEO'') rules and new annual employment report forms to collect data on the race, ethnicity, and gender of the workforce of broadcast and MVPD employment units. In the *Second Report and Order* (''*2R&O*''), 68 FR 670, January 7, 2003, and *Third Notice of Proposed Rulemaking* (''*3NPRM*''), 67 FR 77374, December 17, 2002, in this proceeding, we adopted new broadcast and MVPD EEO rules, but deferred action on the issues relating to the Annual Employment Report forms. We now address those issues and adopt revised FCC Form 395–B, the broadcast station Annual Employment Report, and FCC Form 395–A, the multichannel video programming distributor Annual Employment Report. We also seek comment in the *Fourth Notice of Proposed Rulemaking* (''*4NPRM*'') on the Commission's policies regarding public access to data contained in FCC Forms 395–A and 395–B.

2. In previously deferring action with respect to FCC Forms 395–A and 395–B, we stated that a deferral would permit us to coordinate these forms with new standards for classifying data on race, ethnicity, and job categories adopted by the Office of Management

and Budget (OMB). OMB has responsibilities under the *Paperwork Reduction Act of 1995* for coordinating data collection forms adopted by the Federal government. This deferral was also intended to provide additional time to address issues concerning the collection and processing of the forms. The Commission indicated that the data collected in the employment reports would be used to compile industry employment trend reports and reports to Congress and would not be used to determine compliance with the substantive EEO rules adopted.

II. Discussion

3. The information provided by the annual employment reports is important in order to ascertain industry trends, report to Congress, and respond to inquiries from Congress. We note that Congress relied in part on media industry employment data in the 1992 Cable Act. The Commission has broad authority under the Communications Act to collect information and prepare reports. Collection of television broadcast and MVPD industry employment data is required by the Communications Act. Section 634(d)(3)(A) of the Communications Act requires the Commission to adopt rules requiring MVPDs with more than 5 full-time employees to ''file with the Commission an annual statistical report identifying by race, sex, and job title the number of employees' in each of specifically identified full-time and part-time job categories. Section 334(a) of the Communications Act requires the Commission to maintain EEO rules for television broadcast station licensees and provides that ''except as specifically provided in this section, the Commission shall not revise—* * * (2) the forms used by such licensees and permittees to report pertinent employment data to the Commission.'' Section 334(b) authorizes the Commission to make non-substantive technical or clerical changes. We are directed by statute to require the submission of such reports by broadcast television stations and MVPDs. We have authority to require employment reports for all broadcasters and MVPDs and would exercise that authority even if not required by statute to do so.

4. We will adopt the requirement that broadcast and MVPD employment units file Forms 395–B and 395–A, respectively. As explained, the forms are being readopted and will be submitted to OMB for clearance for use in the year 2004 filing substantially in the same form as those previously used and will be revised in the future, as necessary, in coordination with OMB. The data collected in the employment reports will be used to compile industry employment trend reports and reports to Congress and will not be used to determine compliance with our EEO rules.

5. Several commenters urge the Commission to collect ethnicity and gender information in order to analyze industry employment trends.

6. Other commenters assert that collection of Form 395–B is prohibited by the decisions of the U.S. Court of Appeals for the District of Columbia Circuit in *Lutheran Church—Missouri Synod* v. *FCC* (''*Lutheran Church*'') and *MD/DC/DE Broadcasters Association* v. *FCC* (''*Association*'').

7. We do not agree that the decision of the U.S. Court of Appeals for the DC Circuit in *Lutheran Church* invalidated the data collection process. The court focused in that decision on the Commission's previous ''processing guidelines disclosing the criteria it used to select stations for in-depth EEO review when their licenses came up for renewal.'' It then made clear that ''[i]f the regulations merely required stations to implement racially neutral recruiting and hiring programs, the equal protection guarantee would not be implicated.'' And it reiterated in response to the government's rehearing petition that it had not held that a regulation ''encouraging broad outreach to, as opposed to the actual hiring of, a particular race would necessarily trigger strict scrutiny.'' The court did not conclude that the Commission lacks authority to collect statistical employment data for the purpose of analyzing industry employment trends or preparing annual employment trend reports, or that collecting employment data for those purposes would unconstitutionally pressure broadcasters to adopt race or gender-based hiring policies.

6. In *Association*, the court upheld the requirement for filing the Form 395–B and rejected the argument that this requirement was an arbitrary and capricious regulatory burden. Nothing in the court's decision suggested that the collection of Form 395–B data on the employees of stations for the purpose of compiling trend reports and reports to Congress was by itself subject to strict scrutiny or unconstitutional.

7. We stated in the *2R&O* and *3NPRM* that we would need to revise our Forms 395–A and 395–B to comply with new OMB racial classification standards. We have attempted to parallel our classification reporting with those adopted by the Equal Employment Opportunity Commission, which is in turn addressing the OMB classification issues. Our forms and reports conform to the existing EEO–1 racial and employment categories. Although the EEOC has proposed an updated EEO–1 to conform to the new OMB standards, the form has yet to be finalized. Therefore, to avoid any unnecessary confusion that might result from the use of different classification standards, we will continue to use the racial and employment categories in the Forms 395–A and 395–B adopted in 2000, which conform to the current EEO–1, until the new EEO–1 is released. At that time, we will review the annual employment reports to see what changes are needed to comply with the new OMB standards, and whether we can conform our forms to those standards consistent with sections 334 and 634 of the Act. Other than deleting EEO program information, now requested in the FCC Form 396–C, the only change we have made at this time is to delete the request for system community information in section II of the previous 395–A and replace it with a request for the employment unit's physical system identification number(s). This modification will reduce the paperwork burden for MVPD units.

8. Under the annual employment report filing requirements that we adopt, broadcasters with five or more full-time employees will be required to file Form 395–B by September 30 of each year. MVPD units with six or more full-time employees will be required to file Form 395–A by September 30 of each year. We will allow, this year only, a one-time filing grace period until a date to be determined in the Commission's Order addressing the issues raised in the *4NPRM*. This grace period will give entities adequate time to collect the data needed to fulfill their filing requirements and will allow us to accommodate changes, if any, to the Forms 395–A and 395–B made necessary by the comments received in response to the *4NPRM*. Regardless of what grace period deadline we ultimately set for filing the forms, they will be required to reflect any pay period from July, August, or September 2004, as provided for in the instructions to Form 395–B and § 76.77(a) of the Commission's rules, 47 CFR 76.77(a), for Form 395–A.

III. Procedural Matters

9. *Final Regulatory Flexibility Analysis*. As required by the Regulatory Flexibility Act (RFA), *see* 5 U.S.C. 603, an Initial Regulatory Flexibility Analysis (''IRFA'') was incorporated in the *2NPRM*. The Commission sought written public comments on the possible significant economic impact of

the proposed policies and rules on small entities in the *2NPRM*, including comments on the IRFA. Pursuant to the RFA, *see* 5 U.S.C. 604, a Final Regulatory Flexibility Analysis (''FRFA'') is contained.

10. *Paperwork Reduction Act of 1995 Analysis*. This document contains modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public to comment on the information collection requirements contained in this Report and Order as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. Public and agency comments are due August 23, 2004.

11. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this *3R&O* including the Final Regulatory Flexibility Analysis and the Initial Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

IV. Final Regulatory Flexibility Analysis

12. As required by the RFA, an IRFA was incorporated into the *2NPRM* in this proceeding. The Commission sought written public comments on the possible significant economic impact of the proposed policies and rules on small entities in the *2NPRM*, including comments on the IRFA. This FRFA conforms to the RFA.

A. Need for, and Objectives of, the Proposed Rule Changes

13. This *3R&O* adopts new rules and forms for broadcasters and MVPDs that enable the Commission to collect data on the race, ethnicity and gender of the workforce of broadcast and MVPD employment units.

B. Summary of Significant Issues Raised by the Public Comments in Response to the IRFA

14. One comment on annual employment reports was filed specifically in response to the IRFA. The American Cable Association (''ACA'') proposes that the Commission generally ''streamline'' FCC Form 395–A. The ACA also filed these same comments in response to the *2NPRM.* The *3R&O* considers ACA's comments, and determines that the Commission's annual employment reports must follow the standards issued by the Office of Management and Budget for classifying data on race and ethnicity.

C. Recording, Recordkeeping, and Other Compliance Requirements

15. This rulemaking adopts FCC Form 395–B, the broadcast Annual Employment Report, and FCC Form 395–A, the MVPD annual employment report. Forms 395–B and 395–A collect data on the ethnicity and gender of a reporting entity's workforce. Broadcasters with five or more full-time employees will be required to file Form 395–B by September 30 of each year. MVPD units with six or more full-time employees must file Form 395–A by September 30 of each year. Broadcast entities are not required to place copies of their annual employment reports in their public file. Generally, no special skills will be necessary to comply with the requirements.

D. Description and Estimate of the Number of Small Entities to Which the Rules Would Apply

16. The new rules would apply to broadcast stations and MVPDs. The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the rules adopted herein. Under the RFA, small entities may include small organizations, small businesses, and small governmental jurisdictions. The RFA, 5 U.S.C. 601(3), generally defines the term ''small business'' as having the same meaning as the term ''small business concern'' under the Small Business Act, 15 U.S.C. 632. A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

17. A small organization is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' Nationwide, there are approximately 1.6 million small organizations. Finally, ''small governmental jurisdiction'' generally means ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000.'' As of 1992, there were approximately 85,006 such jurisdictions in the United States. This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000. The United States Bureau of the Census (Census Bureau) estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (91 percent) are small entities.

18. In this context, the application of the statutory definition to television stations is of concern. An element of the definition of ''small business'' is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimates that follow of small businesses to which rules may apply do not exclude any television station from the definition of a small business on this basis and are therefore over-inclusive to that extent. An additional element of the definition of ''small business'' is that the entity must be independently owned and operated. We note that it is difficult at times to assess these criteria in the context of media entities and our estimates of small businesses to which they apply may be over-inclusive to this extent.

19. The Small Business Administration defines a television broadcasting station that has no more than $12 million in annual receipts as a small business. Business concerns included in this industry are those ''primarily engaged in broadcasting images together with sound.'' According to Commission staff review of the BIA Publications, Inc. Master Access Television Analyzer Database as of May 16, 2003, about 814 of the 1,220 commercial television stations in the United States have revenues of $12 million or less. We note, that, in assessing whether a business concern qualifies as small, business (control) affiliations must be included. Our estimates, therefore, likely overstates the number of small entities that might be affected by any changes to the ownership rules, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies.

20. The SBA defines a radio broadcast entity that has $6 million or less in annual receipts as a small business. Business concerns included in this industry are those ''primarily engaged in broadcasting aural programs by radio to the public. According to Commission staff review of the BIA Publications, Inc., Master Access Radio Analyzer Database, as of May 16, 2003, about 10,427 of the 10,945 commercial radio stations in the United States have revenue of $6 million or less. We note, that many radio stations are affiliated with much larger corporations with much higher revenue, and that in assessing whether a business concern qualifies as small, such business (control) affiliations are included. Our estimate therefore likely overstates the

number of small businesses that might be affected by any changes to the ownership rules.

21. The *3R&O* also amends EEO rules applicable to MVPDs. SBA has developed a definition of a small entity for cable and other program distribution, which includes all such companies generating $12.5 million or less in annual receipts. This definition includes direct broadcast satellite services (DBS), multipoint distribution systems (MDS), and local multipoint distribution service (LMDS). According to Census Bureau data for 1997, there were 1,311 firms within the industry category Cable and Other Program Distribution, total, that operated for the entire year. Of this total, 1,180 firms had annual receipts of $9,999,999.00 or less, and an additional 52 firms had receipts of $10 million to $24,999,999.00.

22. *Cable Systems:* The Commission has developed, with SBA's approval, its own definition of small cable system operators. Under the Commission's rules, a ''small cable company'' is one serving fewer than 400,000 subscribers nationwide. Based on our most recent information, we estimate that there were 1,439 cable operators that qualified as small cable companies at the end of 1995. Since then, some of those companies may have grown to serve more than 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, we estimate that there are 1,439 or fewer small entity cable system operators that may be affected by the rules proposed herein.

23. The Communications Act also contains a definition of a small cable system operator, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1% of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenue in the aggregate exceeds $250,000,000.'' The Commission has determined that there are 67,700,000 subscribers in the United States. We found that an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed $250 million in the aggregate. Based on available data, we find that the number of cable operators serving 677,000 subscribers or less totals approximately 1,450. Since we do not request nor collect information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

24. *MDS:* MDS involves a variety of transmitters, which are used to relay programming to the home or office. The Commission has defined ''small entity'' for purposes of the 1996 auction of MDS as an entity that, together with its affiliates, has average gross annual revenues that are not more than $40 million for the preceding three calendar years. This definition of a small entity in the context of MDS auctions has been approved by the SBA. These stations were licensed prior to implementation of section 309(j) of the Communications Act of 1934, as amended. Licenses for new MDS facilities are now awarded to auction winners in Basic Trading Areas (BTAs) and BTA-like areas. The MDS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 BTAs. Of the 67 auction winners, 61 met the definition of a small business.

25. *LMDS:* The auction of the 1,030 LMDS licenses began on February 18, 1998, and closed on March 25, 1998. The Commission defined ''small entity'' for LMDS licenses as an entity that has average gross revenues of less than $40 million in the three previous calendar years. An additional classification for ''very small business'' was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. These regulations defining ''small entity'' in the context of LMDS auctions have been approved by the SBA. There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses. On March 27, 1999, the Commission reauctioned 161 licenses; there were 40 winning bidders. Based on this information, we conclude that the number of small LMDS licenses will include the 93 winning bidders in the first auction and the 40 winning bidders in the reauction, for a total of 133 small entity LMDS providers as defined by the SBA and the Commission's auction rules.

26. *DBS:* Because DBS provides subscription services, it falls within the SBA-recognized definition of ''Cable and Other Program Distribution.'' This definition provides that a small entity is one with $12.5 million or less in annual receipts. Currently, there are nine DBS authorizations, though there are only two DBS companies in operation at this time. We neither request nor collect annual revenue information for DBS services, and are unable to determine the number of DBS operators that would be considered a small business under the SBA definition.

27. An alternative way to classify small entities is by the number of employees. Based on available data, we estimate that in 1997 the total number of full-service broadcast stations with four or fewer employees was 5186, of which 340 were television stations. Similarly, we estimate that in 1997, 1900 cable employment units employed fewer than six full-time employees. Also, in 1997, 296 ''MVPD'' employment units employed fewer than six full-time employees. We also estimate that in 1997, the total number of full-service broadcast stations with five to ten employees was 2145, of which 200 were television stations. Similarly, we estimate that in 1997, 322 cable employment units employed six to ten full-time employees. Also, in 1997, approximately 65 MVPD employment units employed six to ten full-time employees.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

28. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

29. This *3R&O* sets forth the Commission's new annual employment reports, and considers the significant alternatives presented in the comments. We have determined that our finalized rules fulfill our public interest goals while maintaining minimal regulatory burdens and ease and clarity of administration.

30. The *3R&O* adopts relief for small entities. Broadcasters with fewer than five full-time employees will not be required to file Form 395–B. MVPD units with fewer than six full-time employees will not be required to file Form 395–A. The EEO Rule does not impose unreasonable burdens on small broadcasters or MVPDs. We provide this relief because entities with small staffs

have limited personnel and financial resources. The exceptions for small business provides them with some relief of any recordkeeping and reporting costs.

31. As noted, the ACA asks for a generally ''streamlined'' FCC Form 395–A. As explained in the *3R&O,* the Commission's annual employment reports must follow section 634 of the Act and the standards issued by the Office of Management and Budget for classifying data on race and ethnicity.

Report to Congress

32. The Commission will send a copy of the *3R&O,* including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A). In addition, the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of this *3R&O,* including this FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the 3R&O and FRFA (or summaries thereof) will also be published in the **Federal Register**. *See* 5 U.S.C. 604(b).

Ordering Clauses

33. Pursuant to the authority contained in sections 1, 4(i), 4(k), 303(r), 334, 403, and 634 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(k), 303(r), 334, 403, and 554, this *3R&O is adopted*, and part 73 and 76 of the Commission's rules *are amended.*

34. The new rules and amendments set forth, and the information collection requirements contained in these rules, will be submitted to OMB for approval and are not effective until approved by OMB. The Commission will publish a notice in the **Federal Register** announcing the effective date following OMB approval.

List of Subjects in 47 CFR Parts 73 and 76

Cable television, Equal employment opportunity.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rule Changes

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 73 and 76 as follows:

PART 73—RADIO BROADCAST SERVICES

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

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

■ 2. Section 73.3612 is revised to read as follows:

§ 73.3612 Annual employment report.

Each licensee or permittee of a commercially or noncommercially operated AM, FM, TV, Class A TV or International Broadcast station with five or more full-time employees shall file an annual employment report with the FCC on or before September 30 of each year on FCC Form 395–B.

Note to § 73.3612: Data concerning the gender, race and ethnicity of a broadcast station's workforce collected in the annual employment report will be used only for purposes of analyzing industry trends and making reports to Congress. Such data will not be used for the purpose of assessing any aspect of an individual broadcast licensee's compliance with the equal employment opportunity requirements of § 73.2080.

PART 76—MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

■ 3. The authority citation for part 76 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 153, 154, 301, 302a, 303, 303a, 307, 308, 309, 312, 317, 325, 338, 339, 503, 521, 522, 531, 532, 533, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, and 573.

■ 4. Section 76.1802 is revised to read as follows:

§ 76.1802 Annual employment report.

Each employment unit with six or more full-time employees shall file an annual employment report on FCC Form 395–A with the Commission on or before September 30 of each year.

Note to § 76.1802: Data concerning the gender, race and ethnicity of an employment unit's workforce collected in the annual employment report will be used only for purposes of analyzing industry trends and making reports to Congress. Such data will not be used for the purpose of assessing any aspect of an individual employment unit's compliance with our EEO rules for multi-channel video program distributors.

[FR Doc. 04–14120 Filed 6–22–04; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 573 and 577

[Docket No. NHTSA–2004–18341]

RIN 2127–AG27

Defect and Noncompliance Responsibility and Reports, Defect and Noncompliance Notification

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Final rule.

SUMMARY: The National Highway Traffic Safety Administration (NHTSA) is amending several provisions of its regulations pertaining to its enforcement of those sections of 49 U.S.C. chapter 301 that require manufacturers of motor vehicles and items of motor vehicle equipment to notify their dealers and distributors when they or NHTSA decide that vehicles or equipment items contain a defect related to motor vehicle safety or do not comply with a Federal motor vehicle safety standard. The amendment requires manufacturers to furnish dealers and distributors with notification of a safety-related defect or noncompliance in accordance with a schedule that is to be submitted to the agency with the manufacturer's defect or noncompliance information report required by 49 CFR 573.6. The notification to dealers must be provided within a reasonable time after the manufacturer decides that the defect or noncompliance exists. If the agency finds that the public interest requires dealers and distributors to be notified at an earlier date than that proposed by the manufacturer, the manufacturer must provide the required notification in accordance with the agency's directive. The amendment also sets forth the required content of the dealer notification and the manner in which such notification is to be accomplished.

DATES: *Effective date:* The amendments made by this final rule are effective on October 21, 2004.

Any petitions for reconsideration must be received by NHTSA no later than August 9, 2004.

ADDRESSES: ''Petitions for Reconsideration.'' Any petitions for reconsideration must refer to the docket notice numbers cited at the beginning of this notice and be submitted to Administrator, National Highway Traffic Safety Administration (NHTSA), 400 Seventh Street, SW., Washington, DC 20590. It is requested, but not

required, that two copies of the petition be provided.

FOR FURTHER INFORMATION CONTACT: Mr. George Person, Office of Defects Investigation, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Room 5319, Washington, DC 20590. Telephone: (202) 366–5210.

SUPPLEMENTARY INFORMATION:

Background

On September 27, 1993, NHTSA published a Notice of Proposed Rulemaking (NPRM) proposing several amendments to its regulations (49 CFR parts 573 and 577) implementing the provisions of 49 U.S.C. chapter 301 concerning manufacturers' obligations to provide notification and remedy without charge for motor vehicles and items of motor vehicle equipment found to contain a defect related to motor vehicle safety or a noncompliance with a Federal motor vehicle safety standard (58 FR 50314). On April 5, 1995, we issued a final rule addressing most aspects of that NPRM (60 FR 17254), and on January 4, 1996, we amended several provisions of that final rule after receiving petitions for reconsideration (61 FR 274). However, we decided to delay issuance of the final rule on the subject of dealer notification because we had not resolved all the issues raised by the comments on that subject that were submitted in response to the NPRM. On May 19, 1999, we issued a supplemental notice of proposed rulemaking (SNPRM) in order to seek additional public comment on several significant proposed revisions to the proposal that we had originally set out in the NPRM (64 FR 27227).

We had originally proposed to require manufacturers to notify their dealers and distributors [1] of safety defects and noncompliances that had been determined to exist in their products within five days after notifying the agency of the determination pursuant to 49 CFR part 573. In the SNPRM, however, rather than specify a particular time period, we proposed to require manufacturers to notify dealers in accordance with a schedule that is to be submitted to the agency with the manufacturer's defect or noncompliance information report required by 49 CFR 573.6 (this section was codified as § 573.5 prior to August 9, 2002). Under the SNPRM, if the agency were to find that the public interest requires dealers to be notified at an earlier date than that proposed by the manufacturer, the manufacturer would have to notify its dealers in accordance with the agency's directive. The SNPRM also proposed to require that the dealer notification contain certain information (including language about manufacturer and dealer obligations under 49 U.S.C. 30116 and 30120(i)) and described the manner in which such notification is to be accomplished. We received comments on the SNPRM from the Alliance of Automobile Manufacturers (AAM)/ Association of International Automobile Manufacturers (AIAM); Atwood Mobile Products (Atwood); Ford Motor Company (Ford); the Juvenile Products Manufacturers Association (JPMA); Meritor Automotive (Meritor); the Motor and Equipment Manufacturers Association (MEMA); the Motorcycle Industry Council (MIC); the National Automobile Dealers Association (NADA); the Recreational Vehicle Industry Association (RVIA); the Specialty Equipment Market Association (SEMA); and the Truck Manufacturer's Association (TMA).

We have fully considered the comments submitted in response to the SNPRM. In general, the commenters supported the revised approach taken in the SNPRM. We will discuss all relevant comments; however, to the extent that these comments repeated discussions of positions that we addressed in the SNPRM, we will not repeat our prior responses.

For the most part, the final rule adopted today follows the regulatory language proposed in the SNPRM and is based on the same rationale set forth in that Notice, which we incorporate here by reference. As described below, we have decided to make several revisions to the supplemental proposal on the basis of comments we received. We have also made a number of minor technical changes prompted by our own review, including changes to the ''Scope'' section of part 573. In addition, some of the section numbers have been changed to reflect other intervening amendments to parts 573 and 577.

Changes to the Supplemental Proposed Rule

Authority

The authority citations for part 573 and part 577 have been changed by adding a reference to 49 U.S.C. 30116 and by deleting the references to 49 U.S.C. 30112 and 30167.

Schedule for Dealer Notification in Part 573 Reports

Pursuant to 49 CFR part 573, manufacturers that have determined that a defect or noncompliance exists in their products must submit to NHTSA a report that contains certain specified information (part 573 report). Pursuant to § 573.6(c)(8)(ii), the part 573 report must include the estimated date on which the manufacturer will begin sending notifications to owners that a defect or noncompliance exists and that a remedy without charge will be available. Consistent with our revised approach to dealer notification, we are amending § 573.6(c)(8)(ii) to require manufacturers also to identify the date(s) on which they plan to notify their dealers and distributors of the defect or noncompliance. This will allow us to consider whether a manufacturer's proposed schedule for dealer notification is reasonable.

We are incorporating this requirement into paragraph (c)(8)(ii), rather than adding a new paragraph (c)(8)(iii) as we had proposed in the SNPRM, to avoid the need to add additional paragraphs addressing the duties of a manufacturer that files or plans to file a petition for an exemption from recall requirements on the basis that the defect or noncompliance is inconsequential to motor vehicle safety. Existing paragraphs (c)(8)(iii) and (iv) will apply to both owner and dealer notification.

As with other information required to be reported under part 573, if the manufacturer has not determined a schedule for dealer notification at the time that it submits its initial part 573 report, it must provide the information as soon as it is available. See § 573.6(b).

Lists of Notified Dealers and Distributors

In their comments on the SNPRM, AAM/AIAM, MIC, and JPMA recommended that we specify that manufacturers must maintain a list of the names and addresses of dealers and distributors to which a defect or noncompliance notification is sent for five years from the date the manufacturer submits a defect and noncompliance information report to the agency. In fact, § 573.8(c), which is applicable to equipment manufacturers, already contains such a five-year retention requirement. To apply the same responsibility to vehicle manufacturers, we are revising § 573.8(a), which currently requires vehicle manufacturers to maintain lists owner names and addresses. Of course,

[1] 49 U.S.C. 30118, 30119, and 30120 refer to notification to ''dealers,'' without referring to ''distributors.'' However, under 49 U.S.C. 30116, manufacturers of motor vehicles and motor vehicle equipment have certain responsibilities toward their distributors after it is determined that a product contains a safety-related defect or a noncompliance. Therefore, the notification requirements established by today's final rule will apply to both dealers and distributors. However, throughout the remainder of this preamble, we will refer to dealers and distributors as ''dealers,'' except where differentiation is required.

vehicle manufacturers already maintain lists of their dealers, so this will not impose any additional burden upon them.

Time and Manner of Notification

The time and manner of notification to dealers is addressed in a new paragraph (c) of § 577.7. As requested by AAM/AIAM, TMA, and Meritor, we revised proposed paragraph (c)(1) to require that the agency consider the views of the manufacturer when making a determination to require dealer notification on a specific date. The wording of this new requirement is comparable to that in subparagraph (a)(1) concerning notification of owners. Proposed subparagraph (c)(1) is also being modified to identify two additional factors that will be considered by the agency when deciding whether to require dealer notification on a specific date. These two factors are: (1) Availability of an interim remedial action by the owner and (2) the time frame in which the defect may manifest itself. AAM/AIAM recommended that these two factors, which were discussed in the preamble of the SNPRM, be included in the regulatory text.

We are revising proposed § 577.7(c)(2)(i) to identify examples of what will be considered to be verifiable electronic means of notification, such as receipts or logs from electronic mail or satellite distribution systems. AAM/AIAM and MIC recommended this change in order to clarify the meaning of verifiable electronic means. However, the examples referenced are not the only types of verifiable electronic means that would be permissible, since other technology that provides comparable information may become available.

Proposed § 577.7(c)(2)(ii) is being split into two subparagraphs, (c)(2)(ii) and (iii). The first sentence had proposed to require manufacturers of replacement equipment or tires to notify ''all retailers, dealers, and purchasers of such equipment for purposes of re-sale.'' SEMA and MEMA objected on the basis that this language indicated that manufacturers could be held responsible for assuring notification to each entity at every level of the distribution chain even though the manufacturer generally only has knowledge of the identity of its customers. These organizations also argued that such a requirement exceeded NHTSA's statutory authority. To address these concerns, new paragraph (c)(2)(ii) states that notification will only be required to dealers and distributors that are known to the manufacturer.

The second sentence of proposed paragraph (c)(2)(ii) (new paragraph (c)(2)(iii)) applies in those cases in which a manufacturer sold the recalled product to a central office of a retail network, such as an auto supply chain or a department store chain, which then distributed the product to its retail outlets. The new language, which will now apply to both vehicles and equipment, clarifies that the manufacturer will not have to notify each retail outlet individually, since notification to the central office will be deemed to be notice to all dealers and distributors within that group. It will be the responsibility of the purchaser (through its central purchasing office or otherwise) to assure that its retail outlets comply with all applicable statutory and regulatory requirements, such as the duty not to sell vehicles or items of equipment that are covered by a defect or noncompliance determination unless they have been remedied.

Several commenters objected to proposed § 577.7(c)(2)(iii), which addressed situations in which a manufacturer provides motor vehicles or motor vehicle equipment items to another entity, such as an independent distributor, which then provides them to independent dealers. The SNPRM proposed to allow the manufacturer to provide the required information to the distributors, ''if those distributors agree to transmit it to all applicable retail dealers within five additional working days.'' The proposed language expressly stated that the manufacturer would retain the legal responsibility for assuring that its dealers received the information in a timely manner.

AAM/AIAM, Atwood, JPMA, MEMA, and SEMA requested that the agency better define the extent to which the manufacturer is legally responsible for the actions of its dealers and distributors in this context. Several commenters were concerned that manufacturers might be held legally responsible for the actions of distributors at the third or fourth distribution stage that are independent entities over which the manufacturer has no effective control.

In recognition of these concerns, we are taking a somewhat different approach in this final rule. Under new § 577.7(c)(2)(iv), in cases in which a manufacturer sells or arranges for the delivery of vehicles or equipment to or through independent distributors that subsequently sell or arrange for the delivery of the vehicles or equipment items to independent retail outlets, the manufacturer will be required to provide the distributors with the required notification. However, in addition to the information included in standard notifications to dealers, the notification to such distributors must also instruct the distributors to provide copies of the notification to all entities further along the distribution chain within five working days of its receipt. (As a practical matter, this requirement would only affect equipment recalls, since vehicle manufacturers generally communicate directly with their dealers rather than through a distribution network.) We expect that the distributors will be able to verify that they transmitted the notifications to the appropriate entities with which they do business. However, manufacturers would not have the legal responsibility to assure that each lower tier, independent dealer is notified.

We recognize that under this approach it is possible that some lower tier, independent dealers may not receive notification of defects or noncompliances, particularly if there is more than one level of independent distributors. If we become aware of widespread inadequate notification to dealers by distributors, we may revisit this aspect of the regulation.

Content of Dealer Notification

Proposed § 577.11, as revised, will now be designated as § 577.13 because of intervening amendments to part 577. We are revising proposed subsections (a) and (d) to clarify that the section applies to notifications to distributors as well as to dealers. This will conform this section to other sections of this final rule.

Proposed § 577.11(b) would have required language reminding dealers that they are prohibited (by 49 U.S.C. 30120(i)) from selling or leasing new motor vehicles or new motor vehicle equipment items until the defect or noncompliance is remedied. TMA and MEMA recommended that this language be changed to permit the sale or lease of recalled vehicles and motor vehicle equipment items, but prohibit the delivery of the vehicle or equipment item to the owner or lessee until the recall work has been completed. The agency is adopting this recommendation in new § 577.13(b), which is consistent with the language of section 30120(i).

We are making one additional minor change to this subsection to reflect 49 U.S.C. 30120(j), which was enacted as part of the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act in November 2000, after issuance of the SNPRM. Section 30120(j), which largely parallels, and in part overlaps, section 30120(i), prohibits the sale or lease of all motor vehicle equipment (including a

tire) that has been determined to contain a defect or noncompliance under section 30118 unless the defect or noncompliance has been remedied before delivery under the sale or lease. See 49 CFR 577.12. Thus, the language required by § 577.13(b) will apply to all equipment (new and used), but only to new motor vehicles.

Proposed § 577.11(c) would have helped to implement 49 U.S.C. 30116 by requiring manufacturers to offer to repurchase defective or noncompliant motor vehicle equipment items that remained in a dealer's or a distributor's inventory under the terms specified in section 30116(a)(1). The proposal was not intended to prevent manufacturers from negotiating alternative repurchase terms with their dealers. In accordance with the recommendation of AAM/AIAM the agency is modifying this section by adding wording that would permit the negotiation of alternative, mutually agreeable repurchase terms, with the listed repurchase terms serving as a minimum requirement in the absence of negotiated alternative repurchase terms.

MEMA and SEMA argued that proposed subsection (c) was overly restrictive in that it required repurchase of recalled equipment items in dealer inventory and did not allow the items to be repaired or replaced. However, this language accurately tracks the language of 49 U.S.C. 30116(a)(1). Section 30116(a)(2) allows manufacturers of *vehicles* to provide parts needed to repair defective or noncompliant vehicles in dealer or distributor inventory, but this repair option is clearly limited to vehicles. (For the reasons discussed in more detail below, we have decided that there is no need to address section 30116(a)(2) or section 30116(b) in this final rule.)

We are aware that 49 U.S.C. 30120(a)(1)(B) authorizes equipment manufacturers to remedy defects or noncompliances ''by repairing the equipment or replacing the equipment with identical or reasonably equivalent equipment.'' However, the primary application of section 30120 is to the remedy of items in the hands of retail purchasers. Given the specific language of section 30116(a)(1), we do not agree with the commenters' contention that the remedies authorized by section 30120(a)(1)(B) apply to equipment that remains in dealer or distributor inventory.

Comments to the SNPRM That Will Not Be Incorporated Into the Final Rule

As described below, we are not adopting several recommendations made by some commenters.

TMA and Meritor recommended that subparagraph (c)(1) of § 577.7, *Time and manner of notification,* be changed to specify a procedure for presenting the manufacturer's views concerning dealer notification on a specific date to the agency. Meritor also recommended that an appeal mechanism be established to challenge an adverse ruling by NHTSA concerning dealer notification. We do not believe that such a revision is needed. Based on past experience, we anticipate that there will be extraordinarily few occasions on which we will have to direct a manufacturer to accelerate its proposed schedule for dealer notification. In almost all previous cases in which we have concluded that dealer notification was warranted at a date earlier than originally planned by the manufacturer, the manufacturer has promptly agreed to immediately provide such notification to its dealers. However, in those rare cases in which there is a disagreement, we need the ability to act quickly without being encumbered by formalized procedures that would lengthen the process. The views of the manufacturer, if presented to the agency in a timely manner, will be fully considered.

MIC recommended that § 577.7(c)(2)(i) be changed to allow manufacturers to send notifications to dealers via first class mail. The statute (49 U.S.C. 30119(d)(4)) specifies that dealers are to be notified ''by certified mail or quicker means if available.'' While we have authorized the use of various means of notification, we have required that the manufacturer be able to verify that the notifications were sent to and received by each dealer. Since there is no way to verify receipt of first class mail, we have rejected this suggestion.

NADA recommended that proposed § 577.11(b) be expanded to include language informing dealers of the statutory right to reimbursement specified in 49 U.S.C. 30116(b). That provision requires that motor vehicle manufacturers reimburse motor vehicle dealers and distributors that install parts or equipment to remedy a defect or a noncompliance in a motor vehicle in dealer or distributor inventory for the reasonable value of the installation plus other amounts associated with delays in correcting the problem. As discussed above, new § 577.13 requires manufacturers of *motor vehicle equipment* to include language in the notification to their dealers that refers to the reimbursement provisions of section 30116(a)(1), primarily to assure that those dealers that might not be aware of their rights under that section (such as those dealers for whom motor vehicle equipment represents only a small portion of their retail sales) will be assured that they will not suffer any financial hardship by complying with the duty not to sell noncompliant or defective items. Otherwise, they might have a financial incentive to ignore their statutory obligations. We explained in the SNPRM that similar concerns do not apply to *vehicle* dealers, who are much more likely to be aware of their rights under section 30116. Moreover, with respect to the particular issue raised by NADA, all vehicle dealers are well aware of their right to be reimbursed by manufacturers for recall repair work.

Meritor offered four general criticisms of the SNPRM. Because each of these comments has previously been addressed in earlier rulemaking notices, our discussion of these comments will be brief. Meritor's first comment is that there is no need to regulate dealer notification, since the current system functions effectively. Meritor's second comment is that manufacturers are in a better position than NHTSA to determine the appropriate dealer notification date. We agree that in most cases the current dealer notification process has been effective and that the manufacturer is generally in the best position to determine an appropriate dealer notification date. However, there have been some instances in recent years in which safety considerations warranted immediate dealer notification and the recalling manufacturer would not cooperate with the agency. In such cases, we need the explicit authority to compel manufacturers to notify dealers on a specific date.

Meritor's third comment is that manufacturers and their dealers could be subject to severe financial hardships if NHTSA misjudges the need for early dealer notification. As previously stated, we intend to utilize our authority to accelerate dealer notification only in rare cases, and only after consultation with the manufacturer, so such ''misjudgments'' are unlikely. Meritor's fourth comment is that dealers may create their own home-made recall remedies to correct recalled vehicles in dealer inventory in order to be able to deliver these vehicles to a purchaser or lessee. We believe that this is highly unlikely. In general, dealers are not able to design remedies or to fabricate the necessary parts. And, if a dealer were to follow this course of action, it would face the possibility of manufacturer sanctions, as well as potential tort liability if the ''remedy'' did not function properly.

Rulemaking Analyses and Notices

1. Executive Order 12866 (Federal Regulation) and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this rulemaking under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures, and determined that it is not a ''significant regulatory action'' within the meaning of Sec. 3 of E.O. 12866 and is not ''significant'' within the meaning of the Department of Transportation regulatory policies and procedures.

Manufacturers are currently required by statute to notify their dealers and distributors of safety defects and noncompliances. 49 U.S.C. 30116, 30118(b) and (c), and 30119(d)(4). Dealer notification must be within a ''reasonable time.'' 49 U.S.C. 30119(c)(2). This final rule restates that requirement, adding only that in the event that NHTSA disagrees with the manufacturer's assessment of what time period is reasonable, the agency's determination will control.

The agency anticipates, based on past experience, that there will be few disagreements on this issue. In any event, an agency directive requiring a manufacturer to accelerate its dealer notification will not impose any additional costs directly on the manufacturer, since the notification would eventually have to be made anyway.

NHTSA recognizes that an embargo on dealer deliveries of defective or noncompliant vehicles following the receipt of a notification from a manufacturer can impose costs, and that these costs could be relatively high if many vehicles are affected or if there is a significant delay in developing and implementing a remedy for the defect or noncompliance. (This would not apply in the context of recalled equipment, since that equipment must be repurchased pursuant to 49 U.S.C. 30116(a)(1).) However, these costs would ultimately be borne by the manufacturers, either through contractual provisions or pursuant to 49 U.S.C. 30116(b), which requires manufacturers to provide, among other things, ''reasonable reimbursement of at least one percent a month of the price paid prorated from the date of notice of noncompliance or defect to the date the motor vehicle [is remedied].''

To the extent that agency actions pursuant to this rule impose additional costs, those costs would be outweighed by the safety benefit of ensuring that dealers do not deliver new motor vehicles or items of replacement equipment containing safety-related defects or noncompliances before the defect or noncompliance has been remedied, as required by 49 U.S.C. 30120(i) and (j). Moreover, any impacts are likely to be minimal, because manufacturers will have an incentive to develop and provide a remedy as soon as possible.

2. Regulatory Flexibility Act

The agency has also considered the effects of this rulemaking action under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). I certify that this proposed rule will not have a significant economic impact on a substantial number of small entities.

The new regulatory requirements would apply directly only to manufacturers of motor vehicles and items of motor vehicle equipment that conduct safety recalls, which for the most part are not small businesses. Moreover, manufacturers are already required by statute to notify their dealers of defects and noncompliances in their products. In rare cases, manufacturers may be required to send notification to dealers earlier than the manufacturer had proposed. Since manufacturers will generally have all of the required information at the time the notification is required, such a requirement will not impose a significant burden on manufacturers.

As noted above, a notification could have an adverse effect on dealers, most of whom are small businesses, in that the dealers would be prohibited from delivering defective or noncompliant new vehicles or equipment items in their inventory until they have been remedied. However, for the reasons described above, the costs associated with such a delay would almost certainly be borne by the manufacturer. In any event, such costs are the result of requirements imposed by 49 U.S.C. 30120(i) and (j), not this rule. Moreover, any impacts are likely to be minimal, because manufacturers will have an incentive to develop and provide a remedy as soon as possible. Finally, any such impacts would be offset by the safety benefits associated with preventing the delivery of defective or noncompliant vehicles or equipment items.

3. National Environmental Policy Act

In accordance with the National Environmental Policy Act of 1969, the agency has analyzed the environmental impacts of this rulemaking action and determined that implementation of this action would not have a significant impact on the quality of the human environment. The new notification requirements will not introduce any new or harmful matter into the environment.

4. Paperwork Reduction Act

This rule contains provisions which are considered to be information collection requirements as that term is defined by the Office of Management and Budget (OMB) in 5 CFR part 1320.

Pursuant to the Paperwork Reduction Act of 1995 (PRA), and OMB's regulation at 5 CFR 1320.5(b)(2), NHTSA will seek approval from OMB for an amendment to a previously approved information collection requirement (OMB control number 2127–0004).

Pursuant to the OMB regulations, the agency had issued a notice seeking public comment on the PRA burdens of the requirements that had been proposed in the original NPRM. See 62 FR 63598 (December 1, 1997). Since many of the provisions of the final rule are significantly different from those in the original NPRM, we have prepared and sent to the **Federal Register** another notice seeking comments on PRA burdens associated with the revised provisions.

5. Executive Order 13132 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, and we have determined that the rulemaking does not have sufficient federalism implications under that order.

6. Unfunded Mandates Reform

This rule will not impose any unfunded mandates under the Unfunded Mandates Reform Act of 1995 or under Executive Order 12875. It does not result in costs of $100 million or more to either State, local or tribal governments, in the aggregate, or to the private sector; and is the least burdensome alternative that achieves the objective of the proposed rule.

7. Civil Justice Reform Act

The proposed rule will not have a retroactive or preemptive effect. Judicial review of the proposed rule may be obtainable under 5 U.S.C. 702. That section does not require that a petition for reconsideration be filed prior to seeking judicial review.

List of Subjects

49 CFR Part 573

Defect and Noncompliance Responsibility and Reports.

49 CFR Part 577

Defect and Noncompliance Notification.

■ In consideration of the foregoing, parts 573 and 577 of title 49 of the Code of Federal Regulations are amended to read as follows:

PART 573—DEFECT AND NONCOMPLIANCE RESPONSIBILITY AND REPORTS

■ 1. The authority citation for part 573 is revised to read as follows:

Authority: 49 U.S.C. 30102, 30103, 30116–30121, 30166; delegation of authority at 49 CFR 1.50.

■ 2. Section 573.1 is revised to read as follows:

§ 573.1 Scope.

This part:

(a) Sets forth the responsibilities under 49 U.S.C. 30116–30121 of manufacturers of motor vehicles and motor vehicle equipment with respect to safety-related defects and noncompliances with Federal motor vehicle safety standards in motor vehicles and items of motor vehicle equipment; and

(b) Specifies requirements for—

(1) Manufacturers to maintain lists of owners, purchasers, dealers, and distributors notified of defective and noncomplying motor vehicles and motor vehicle original and replacement equipment,

(2) Reporting to the National Highway Traffic Safety Administration (NHTSA) defects in motor vehicles and motor vehicle equipment and noncompliances with motor vehicle safety standards prescribed under part 571 of this chapter, and

(3) Providing quarterly reports on defect and noncompliance notification campaigns.

■ 3. Section 573.6 is amended by revising paragraph (c)(8)(ii) to read as follows:

§ 573.6 Defect and noncompliance information report.

* * * * *

(c) * * *

(8) * * *

(ii) The estimated date(s) on which it will begin sending notifications to owners, and to dealers and distributors, that there is a safety-related defect or noncompliance and that a remedy without charge will be available to owners, and the estimated date(s) on which it will complete such notifications (if different from the beginning date). If a manufacturer subsequently becomes aware that either the beginning or the completion dates reported to the agency for any of the notifications will be delayed by more than two weeks, it shall promptly advise the agency of the delay and the reasons therefore, and furnish a revised estimate.

* * * * *

■ 4. Section 573.8 is amended by revising the title of the section and by revising paragraph (a) to read as follows:

§ 573.8 Lists of purchasers, owners, dealers, distributors, lessors, and lessees.

(a) Each manufacturer of motor vehicles shall maintain, in a form suitable for inspection such as computer information storage devices or card files, a list of the names and addresses of registered owners, as determined through State motor vehicle registration records or other sources or the most recent purchasers where the registered owners are unknown, for all vehicles involved in a defect or noncompliance notification campaign initiated after the effective date of this part. The list shall include the vehicle identification number for each vehicle and the status of remedy with respect to each vehicle, updated as of the end of each quarterly reporting period specified in § 573.7. Each vehicle manufacturer shall also maintain such a list of the names and addresses of all dealers and distributors to which a defect or noncompliance notification was sent. Each list shall be retained for 5 years, beginning with the date on which the defect or noncompliance information report required by § 573.6 is initially submitted to NHTSA.

* * * * *

PART 577—DEFECT AND NONCOMPLIANCE NOTIFICATION

■ 5. The authority citation for part 577 is revised to read as follows:

Authority: 49 U.S.C. 30102, 30103, 30116–30121, 30166; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8.

■ 6. Section 577.1 is revised to read as follows:

§ 577.1 Scope.

This part sets forth requirements for manufacturer notification to owners, dealers, and distributors of motor vehicles and items of replacement equipment about a defect that relates to motor vehicle safety or a noncompliance with a Federal motor vehicle safety standard.

■ 7. Section 577.2 is amended by adding a new sentence at the end to read as follows:

§ 577.2 Purpose.

* * * It is also to ensure that dealers and distributors of motor vehicles and items of replacement equipment are made aware of the existence of defects and noncompliances and of their rights and responsibilities with regard thereto.

■ 8. Section 577.7 is amended by adding new paragraphs (c) and (d) to read as follows:

§ 577.7 Time and manner of notification.

* * * * *

(c) The notification required by §577.13 shall—

(1) Be furnished within a reasonable time after the manufacturer decides that a defect that relates to motor vehicle safety or a noncompliance exists. The notification shall be provided in accordance with the schedule submitted to the agency pursuant to 49 CFR 573.6(c)(8)(ii), unless that schedule is modified by the Administrator. The Administrator may direct a manufacturer to send the notification to dealers on a specific date if the Administrator finds, after consideration of available information and the views of the manufacturer, that such notification is in the public interest. The factors that the Administrator may consider include, but are not limited to, the severity of the safety risk; the likelihood of occurrence of the defect or noncompliance; the time frame in which the defect or noncompliance may manifest itself; availability of an interim remedial action by the owner; whether a dealer inspection would identify vehicles or items of equipment that contain the defect or noncompliance; and the time frame in which the manufacturer plans to provide the notification and the remedy to its dealers.

(2) Be accomplished—

(i) In the case of a notification required to be sent by a motor vehicle manufacturer, by certified mail, verifiable electronic means such as receipts or logs from electronic mail or satellite distribution system, or other more expeditious and verifiable means to all dealers and distributors of the vehicles that contain the defect or noncompliance.

(ii) In the case of a notification required to be sent by a manufacturer of replacement equipment or tires, by certified mail, verifiable electronic means such as receipts or logs from electronic mail or satellite distribution system, or other more expeditious and verifiable means to all dealers and distributors of the product that are known to the manufacturer.

(iii) In those cases where a manufacturer of motor vehicles or items

of motor vehicle equipment provided the recalled product(s) to a group of dealers or distributors through a central office, notification to that central office will be deemed to be notice to all dealers and distributors within that group.

(iv) In those cases in which a manufacturer of motor vehicles or items of motor vehicle equipment has provided the recalled product to independent dealers through independent distributors, the manufacturer may satisfy its notification responsibilities by providing the information required under this section to its distributors. In such cases, the manufacturer must also instruct those distributors to transmit a copy of the manufacturer's notification to known distributors and retail outlets along the distribution chain within five working days from its receipt.

(d) Notwithstanding paragraph (c)(1) of this section, where the recall is being conducted pursuant to an order issued by the Administrator under 49 U.S.C. 30118(b), notification required by §577.13 shall be given on or before the date prescribed in the Administrator's order.

■ 9. A new § 577.13 is added to read as follows:

§ 577.13 Notification to dealers and distributors.

(a) The notification to dealers and distributors of a safety-related defect or a noncompliance with a Federal motor vehicle safety standard shall contain a clear statement that identifies the notification as being a safety recall notice, an identification of the motor vehicles or items of motor vehicle equipment covered by the recall, a description of the defect or noncompliance, and a brief evaluation of the risk to motor vehicle safety related to the defect or noncompliance. The notification shall also include a complete description of the recall remedy, and the estimated date on which the remedy will be available. Information required by this paragraph that is not available at the time of the original notification shall be provided as it becomes available.

(b) The notification shall also include an advisory stating that it is a violation of Federal law for a dealer to deliver a new motor vehicle or any new or used item of motor vehicle equipment (including a tire) covered by the notification under a sale or lease until the defect or noncompliance is remedied.

(c) For notifications of defects or noncompliances in items of motor vehicle equipment (including tires), the notification shall contain the manufacturer's offer to repurchase the items that remain in dealer or distributor inventory at the price paid by the dealer or distributor, plus transportation charges and reasonable reimbursement of at least one per cent a month, prorated from the date of notification to the date of repurchase, or as otherwise agreed to between the manufacturer and the dealer or distributor.

(d) The manufacturer shall, upon request of the Administrator, demonstrate that it sent the required notification to each of its known dealers and distributors and the date of such notification.

Issued on: June 16, 2004.

Jeffrey W. Runge,

Administrator.

[FR Doc. 04–14072 Filed 6–22–04; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[I.D. 061604A]

Atlantic Highly Migratory Species; Bluefin Tuna Catch Limit Adjustments

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

ACTION: Adjustment of Angling and Charter/Headboat retention limits.

SUMMARY: NMFS adjusts the daily retention limit for the recreational fishery for Atlantic bluefin tuna (BFT) for the 2004 fishing year that began June 1, 2004, and ends May 31, 2005. Vessels permitted in the Atlantic Highly Migratory Species (HMS) Angling and the Atlantic HMS Charter/Headboat categories are eligible to land BFT under the BFT Angling category quota. The seasonal adjustments to the daily retention limit for BFT are specified in the **DATES** and **SUPPLEMENTARY INFORMATION** sections of this document. This action is being taken to enhance recreational BFT fishing opportunities for all geographic areas.

DATES: Effective June 21 through July 21, 2004, inclusive, the daily recreational retention limit, in all areas, for vessels permitted in the Atlantic HMS Angling category is two BFT per vessels per day/trip; for vessels permitted in the Atlantic HMS Charter/Headboat category the limit is three BFT per vessel per day/trip. These BFT must measure between 27 to less than 73 inches (69 to less than 185 cm) curved fork length (CFL).

Effective July 22, 2004 through May 31, 2005, inclusive, the daily recreational retention limit, in all areas, for all vessels fishing under the Angling category quota (i.e., both HMS Angling and Charter/Headboat vessels) is one BFT measuring 27 to less than 73 inches (69 to less than 185 cm) CFL per vessel per day/trip.

FOR FURTHER INFORMATION CONTACT: Brad McHale, (978) 281–9260.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Conservation and Management Act (16 U.S.C. 1801 *et seq.*) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635. Section 635.27 subdivides the U.S. BFT quota recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT) among various domestic fishing categories.

Implementing regulations for the Atlantic tuna fisheries at § 635.23 set the daily retention limits for BFT and allow for adjustments to those limits in order to provide for maximum utilization of the quota over the longest period of time. NMFS may increase or decrease the retention limit for any size class BFT or change a vessel trip limit to an angler limit or vice versa. Such adjustments to the retention limits may be applied separately for persons aboard specific vessel types, such as private vessels, headboats and charter boats.

Angling Category Retention Limit

A recommendation of ICCAT requires that NMFS limit the catch of school BFT to no more than 8 percent by weight of the total domestic landings quota over each four-consecutive-year period. NMFS is implementing this ICCAT recommendation through annual and inseason adjustments to the school BFT retention limits, as necessary, and through the establishment of a school BFT reserve (64 FR 29090, May 28, 1999; 64 FR 29806, June 3, 1999).

The ICCAT recommendation allows for interannual adjustments for overharvests and underharvests, provided that the 8 percent landings limit is not exceeded over the applicable four consecutive-year period. The 2004 fishing year is the second year in the current accounting period. This multi-year block quota approach provides NMFS with the flexibility to enhance

fishing opportunities and to collect information on a broad range of BFT size classes.

Regulations at 50 CFR 635.23(b) restrict vessels fishing under the BFT Angling category quota to one BFT per vessel per day/trip, which may be from the school, large school, or small medium category and, in addition, one large medium or giant BFT, 73 inches or greater (185 cm) CFL per vessel per year. Regulations at 50 CFR 635.23(b)(3) allow for the adjustment of these retention limits.

In 2003, NMFS increased the Angling category daily retention limit to one school, large school, or small medium BFT per person with a maximum of six BFT per vessel from June 15 through October 31, 2003, and then reduced it to one large school, or small medium BFT for November 1, 2003, through May 31, 2004 (68 FR 35822, June 17, 2003). During the development of the 2003 BFT quota specifications, it was initially determined that the Angling category had not harvested the available quota in 2002, thus the unharvested 2002 quota was carried over to the 2003 Angling category quota, and was the basis for liberalized retention limits. However, after publication of the final initial 2003 BFT quota specifications (68 FR 56783, October 2, 2004), revised estimates of 2002 fishing year Angling category landings indicated that the Angling category fishery actually overharvested its allocated quota in the 2002 fishing year. Therefore, NMFS closed the Angling category fishery in mid-November 2003 (68 FR 64990, November 18, 2003) for the remainder of the fishing year to avoid further overharvest in 2003.

As of June 1, 2004, additional quota is available to the United States, for the 2004 fishing year, pursuant to an ICCAT Recommendation. The 2002 and 2003 Angling category landings estimates are currently under review. However, based on preliminary landings information and information that recreational size class BFT are currently on the fishing grounds and that the current recreational retention limits are restricting any directed fishing trips for BFT, NMFS is making modest adjustments to the daily recreational retention limits at this time to provide recreational anglers a reasonable opportunity to pursue BFT.

Since June 1, 2004, the retention limit of one school, large school or small medium as specified at 50 CFR 635.23(b) has been in effect. Effective June 21 through July 21, 2004, inclusive, NMFS adjusts the daily retention limit for vessels permitted in the HMS Angling category, in all areas, to two BFT per vessel per day/trip, in any combination of the school, large school, or small medium size classes. Effective July 22, 2004, NMFS adjusts the daily retention limit for vessels permitted in the HMS Angling category, in all areas, to one BFT per vessel per day/trip, in any combination of the school, large school, or small medium size classes.

Charter/Headboat Category Retention Limit

NMFS has also received public comments that a recreational retention limit of less than three or four BFT per vessel per day/trip does not provide reasonable fishing opportunities for charter/headboats, which carry multiple fee-paying passengers. Charter/Headboat operators have requested a modified recreational retention limit that recognizes a fee-paying client's willingness to book charters based on potential retention limits. On December 18, 2002, NMFS published a final rule that clarified the procedures to set differential BFT retention limits to provide equitable fishing opportunities for all types of fishing vessels (67 FR 77434). NMFS has determined, for economic reasons, that it is appropriate to implement an alternative recreational retention limit for vessels possessing a Atlantic HMS Charter/Headboat category permit.

Pursuant to 50 CFR 635.23(c), persons aboard a vessel issued an HMS Charter/Headboat permit may retain and land BFT under the daily limits and quotas applicable to the Angling category or the General category. The size category of the first BFT retained will determine the fishing category applicable to the vessel that day.

Since June 1, 2004, the retention limit of one school, large school or small medium as specified at 50 CFR 635.23(b) has been in effect. Effective June 21 through July 21, 2004, inclusive, NMFS adjusts the daily retention limit for vessels permitted in the HMS Charter/Headboat category, in all areas, to three BFT per vessel per day/trip, in any combination of the school, large school, or small medium size classes. Effective July 22, 2004, NMFS adjusts the daily retention limit for vessels permitted in the HMS Charter/Headboat category, in all areas, to one BFT per vessel per day/trip, in any combination of the school, large school, or small medium size classes.

Monitoring and Reporting

NMFS selected the daily retention limits and the duration of the daily retention limit adjustments after examining past catch and effort rates. NMFS will continue to monitor the recreational BFT fishery closely through the Automated Landings Reporting System, the state harvest tagging programs in North Carolina and Maryland, and the Large Pelagics Survey. Depending on the level of fishing effort and catch rates of BFT, NMFS may determine that additional retention limit adjustments are necessary to enhance scientific data collection from, and fishing opportunities in, all geographic areas. Additionally, NMFS may determine that an allocation from the school BFT reserve is warranted to further fishery management objectives.

Subsequent adjustments to the daily retention limit, if any, will be published in the **Federal Register**. In addition, anglers may call the Atlantic Tunas Information Line at (888) 872–8862 or (978) 281–9305 for updates on quota monitoring and retention limit adjustments. All recreational BFT landed under the Angling category quota must be reported within 24 hours of landing to the NMFS Automated Landings Reporting System via toll-free phone at (888) 872–8862; or the Internet at *www.nmfspermits.com*; or, if landed in the states of North Carolina or Maryland, to a reporting station prior to offloading. Information about these state harvest tagging programs, including reporting station locations, can be obtained in North Carolina by calling (800) 338–7804, and in Maryland by calling (410) 213–1531.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), finds good cause that providing prior notice and public comment for this action, as required under 5 U.S.C. 553(b)(B), is impracticable and contrary to the public interest. This action is intended to enhance recreational BFT fishing opportunities for all geographic areas without risking overharvest of the Angling category quota. NMFS has recently received information that recreational BFT are currently available on the fishing grounds and that the current recreational retention limits are restricting any directed fishing trips for BFT. The fishery is currently underway with a limited default recreational BFT retention limit and further delay in taking this action may have negative social and economic impacts on the recreational and charter/headboat communities.

NMFS provides prior notification of any adjustments by publishing them in the **Federal Register**, by faxing notification to individuals on the HMS FAX Network and to known fishery representatives, by announcing the

notice on the Atlantic Tunas Information Line, and by posting the notice on the HMS Permitting website at *www.nmfspermits.com*.

For these reasons mentioned above and because this action relieves a restriction, the AA also finds good cause to waive the 30–day delay in effective date pursuant to 5 U.S.C. 553(d)(1) and (3). This action is required under 50 CFR 635.28(a)(1) and is exempt from review under Executive Order 12866.

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

Dated: June 18, 2004.

John H. Dunnigan

Director, Office of Sustainable Fisheries, National Marine Fisheries Service

[FR Doc. 04–14231 Filed 6–18–04; 3:50 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 69, No. 120
Wednesday, June 23, 2004

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1030

[Docket No. AO–361–A39; DA–04–03]

Milk in the Upper Midwest Marketing Area; Notice of Hearing on Proposed Amendments to Tentative Marketing Agreement and Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule; Notice of public hearing on proposed rulemaking.

SUMMARY: A public hearing is being held to consider proposals to amend the Upper Midwest Federal milk marketing order (Order 30). A proposal to limit the volume of distant milk pooled on Order 30 by changing the requirements for producer milk originating outside of the Upper Midwest will be heard. Another proposal would limit the pooling of producer milk normally associated with the market that was not pooled in a prior month(s) while also changing the pooling requirements for producer milk originating outside of the Upper Midwest. Other proposals would establish a *dairy farmer for other markets* provision and would amend the touch base requirements and the diversion limits for Order 30. Also, another proposal would change the maximum rate the market administrator may charge for the expense of administration of the order from 5 cents per hundredweight up to 8 cents.

DATES: The hearing will convene at 1 p.m. on Monday, July 19, 2004.

ADDRESSES: The hearing will be held at the Sofitel Minneapolis Hotel (I–494 and Highway 100), 5601 West 78th Street, Bloomington, Minnesota 55439; (952) 835–1900.

FOR FURTHER INFORMATION CONTACT: Jack Rower, Marketing Specialist, Order Formulation and Enforcement, USDA/AMS/Dairy Programs, Room 2971–Stop 0231, 1400 Independence Avenue, SW., Washington, DC 20250–0231, (202) 690–3465, e-mail address: *Jack.Rower@usda.gov.*

Persons requiring a sign language interpreter or other special accommodations should contact H. Paul Kyburz, Upper Midwest Market Administrator, at (952) 831–5292; e-mail *pkyburz@fmma30.com* before the hearing begins.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

Notice is hereby given of a public hearing to be held at the Sofitel Minneapolis Hotel (I–494 and Highway 100), 5601 West 78th Street, Bloomington, Minnesota 55439; (952) 835–1900, beginning at 1 p.m., on Monday, July 19, 2004, with respect to proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Upper Midwest milk marketing areas.

The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900).

The purpose of the hearing is to receive evidence with respect to the economic and marketing conditions that relate to the proposed amendments, hereinafter set forth, and any appropriate modifications thereof, to the tentative marketing agreement and to the order.

Evidence also will be taken to determine whether emergency marketing conditions exist that would warrant omission of a recommended decision under the rules of practice and procedure (7 CFR 900.12(d)) with respect to any proposed amendments.

Actions under the Federal milk order program are subject to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This Act seeks to ensure that, within the statutory authority of a program, the regulatory and informational requirements are tailored to the size and nature of small businesses. For the purpose of the Act, a dairy farm is a ''small business'' if it has an annual gross revenue of less than $750,000, and a dairy products manufacturer is a ''small business'' if it has fewer than 500 employees. Most parties subject to a milk order are considered as a small business. Accordingly, interested parties are invited to present evidence on the probable regulatory and informational impact of the hearing proposals on small businesses. Also, parties may suggest modifications of these proposals for the purpose of tailoring their applicability to small businesses.

The amendments to the rules proposed herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have a retroactive effect. If adopted, the proposed amendments would not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may request modification or exemption from such order by filing with the Department of Agriculture (Department) 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 the law. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Department 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 its principal place of business, has jurisdiction in equity to review the Department's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

This public hearing is being conducted to collect evidence for the record concerning the effect on the orderly marketing of fluid milk due to pooling of milk from producers so distant from the market that they cannot be considered viable suppliers and to consider inequities among producers caused by provisions that allow reserve milk, which is used in cheese or butter and nonfat dry milk production, to share in the benefits of pooling, but do not require such milk to pool when there is a cost (when the Class III price or Class IV price is above the blend price). At the hearing, evidence will also be collected to consider giving the

market administrator the discretion to increase the Administrative Assessment to a maximum of 8 cents per hundredweight.

Interested parties who wish to introduce exhibits should provide the Presiding Officer at the hearing with (4) copies of such exhibits for the Official Record. Also, it would be helpful if additional copies are available for the use of other participants at the hearing.

List of Subjects in 7 CFR Part 1030

Milk marketing orders.

The authority citation for 7 CFR Part 1030 continues to read as follows:

Authority: 7 U.S.C. 601–674.

The proposed amendments, as set forth below, have not received the approval of the Department.

Proposed by Associated Milk Producers, Inc. (AMPI), Bongards' Creameries, Ellsworth Cooperative Creamery, and First District Association (AMPI, et. al.):

Proposal No. 1

This proposal would limit the pooling of milk located long distances from the Upper Midwest marketing area.

1. Amend §§ 1030.7 and 1030.13 by adding a new paragraph § 1030.7(c)(1)(v), revising paragraph § 1030.7(c)(2), and revising § 1030.13(d) to read as follows:

§ 1030.7 Pool plant.

* * * * *

(c) * * *

(1) * * *

(v) Qualifying shipments by plants located outside the States of Illinois, Iowa, Minnesota, North Dakota, South Dakota, and Wisconsin and the Upper Peninsula of Michigan may be made only to plants described in paragraphs (c)(1)(i) of this section.

(2) The operator of a supply plant located within the States of Illinois, Iowa, Minnesota, North Dakota, South Dakota, and Wisconsin and the Upper Peninsula of Michigan may include as qualifying shipments under this paragraph milk delivered directly from producers' farms pursuant to § 1000.9(c) or § 1030.13(c) to plants described in paragraphs (a), (b) and (e) of this section. Handlers may not use shipments pursuant to § 1000.9(c) or § 1030.13(c) to qualify plants located outside the marketing area.

* * * * *

§ 1030.13 Producer milk.

* * * * *

(d) Diverted by the operator of a pool plant or a cooperative association described in § 1000.9(c) to a nonpool plant located in the States of Illinois, Iowa, Minnesota, North Dakota, South Dakota, and Wisconsin and the Upper Peninsula of Michigan or a distributing plant fully regulated under another Federal order, subject to the following conditions:

* * * * *

2. Amend § 1030.55 by revising paragraph (a)(2) to read as follows:

§ 1030.55 Transportation credits and assembly credits.

* * * * *

(a) * * *

(2) Multiply the hundredweight of milk eligible for the credit by .28 cents times the number of miles, not to exceed 400 miles, between the transferor plant and the transferee plant:

* * * * *

Proposed by Cass-Clay Creamery Inc., Dairy Farmers of America, Foremost Farms USA, Land O'Lakes, Mid-West Dairymen's Company, Milwaukee Cooperative Milk Producers, Manitowoc Milk Producers Cooperative, Swiss Valley Farms, and Woodstock Progressive Milk Producers (Mid-West, et. al.):

Proposal No. 2

This proposal would limit the pooling of producer milk normally associated with the market that was not pooled in a prior month(s), would change the pooling requirements for producer milk originating outside of the States where the Upper Midwest marketing area is located, and would limit the transportation and assembly credits not to exceed 400 miles.

1. Amend § 1030.13 by adding new paragraphs (f) through (f)(4) to read as follows:

§ 1030.13 Producer milk.

* * * * *

(f) Except in the month of August, the quantity of milk reported by a handler pursuant to § 1030.30(a)(1) and/or § 1030.30(c)(1) for September through February and for April through July may not exceed 125 percent, and March may not exceed 135 percent of the producer milk receipts pooled by the handler during the prior month. Milk diverted to nonpool plants reported in excess of this limit shall be removed from the pool. Milk received at pool plants, other than pool distributing plants, shall be classified pursuant to § 1000.44(a)(3)(v) and § 1000.44(b)(3)(v). The handler must designate, by producer pick-up, which milk is to be removed from the pool. If the handler fails to provide this information, the market administrator will make the determination. The following provisions apply:

(1) Milk shipped to and physically received at pool distributing plants shall not be subject to the 125 or 135 percent limitation;

(2) Producer milk qualified pursuant to § ____.13 of any other Federal Order and continuously pooled in any Federal Order for the previous six months shall not be included in the computation of the 125 or 135 percent limitation;

(3) The market administrator may waive the 125 or 135 percent limitation;

(i) For a new handler on the order, subject to the provisions of § 1030.13(f)(3), or

(ii) For an existing handler with significantly changed milk supply conditions due to unusual circumstances;

(4) A bloc of milk may be considered ineligible for pooling if the market administrator determines that handlers altered the reporting of such milk for the purpose of evading the provisions of this paragraph.

* * * * *

2. Amend §§ 1030.7 and 1030.13 by adding a new paragraph § 1030.7(c)(1)(v), revising paragraph § 1030.7(c)(2), and revising § 1030.13(d) to read as follows:

§ 1030.7 Pool plant.

* * * * *

(c) * * *

(1) * * *

(v) Qualifying shipments by plants located outside the States of Illinois, Iowa, Minnesota, North Dakota, South Dakota, and Wisconsin and the Upper Peninsula of Michigan may be made only to plants described in paragraphs (c)(1)(i) of this section.

(2) The operator of a supply plant located within the States of Illinois, Iowa, Minnesota, North Dakota, South Dakota, and Wisconsin and the Upper Peninsula of Michigan may include as qualifying shipments under this paragraph milk delivered directly from producers' farms pursuant to § 1000.9(c) or § 1030.13(c) to plants described in paragraphs (a), (b) and (e) of this section. The operator of a supply plant located outside the area described above cannot include such shipments as qualifying shipments. Cooperative associations may not use shipments pursuant to § 1000.9(c) to qualify plants located outside the marketing area.

* * * * *

§ 1030.13 Producer milk

* * * * *

(d) Diverted by the operator of a pool plant or a cooperative association described in § 1000.9(c) to a nonpool plant (except a distributing plant fully regulated under another Federal order),

located in the States of Illinois, Iowa, Minnesota, North Dakota, South Dakota, and Wisconsin and the Upper Peninsula of Michigan, subject to the following conditions:

* * * * *

3. Amend § 1030.55 by revising paragraph (a)(2) to read as follows:

§ 1030.55 Transportation credits and assembly credits.

* * * * *

(a) * * *

(2) Multiply the hundredweight of milk eligible for the credit by .28 cents times the number of miles, not to exceed 400 miles, between the transferor plant and the transferee plant:

* * * * *

Proposed by Dean Foods Company:

Proposal No. 3

This proposal to establish a *dairy farmer for other markets* provision would require a year round commitment in order for milk to be pooled.

1. Amend § 1030.12 by adding a new paragraph (b)(5) to read as follows:

§ 1030.12 Producer.

* * * * *

(b) * * *

(5) For any month, any dairy farmer whose milk is received at a pool plant or by a cooperative association handler described in § 1000.9(c) if the pool plant operator or the cooperative association caused milk from the same farm to be delivered to any plant as other than producer milk, as defined under the order in this part or any other Federal milk order, during the same month or any of the preceding 11 months, unless the equivalent of at least ten days' milk production has been physically received otherwise as producer milk at a pool plant during the month.

Proposed by Dean Foods Company:

Proposal No. 4

This proposal to establish a *dairy farmer for other markets* provision would require a 2 to 4 month commitment in order for milk to be pooled.

1. Amend § 1030.12 by adding new paragraphs (b)(5) and (b)(6) to read as follows:

§ 1030.12 Producer.

* * * * *

(b) * * *

(5) For any month of December through June, any dairy farmer whose milk is received at a pool plant or by a cooperative association handler described in § 1000.9(c) if the pool plant operator or the cooperative association caused milk from the same farm to be delivered to any plant as other than producer milk, as defined under the order in this part or any other Federal milk order, during the same month, any of the 3 preceding months, or during any of the preceding months of July through November, unless the equivalent of at least ten days' milk production has been physically received otherwise as producer milk at a pool plant during the month; and

(6) For any month of July through November, any dairy farmer whose milk is received at a pool plant or by a cooperative association handler described in § 1000.9(c) if the pool plant operator or the cooperative association caused milk from the same farm to be delivered to any plant as other than producer milk, as defined under the order in this part or any other Federal milk order, during the same or the preceding month, unless the equivalent of at least ten days' milk production has been physically received otherwise as producer milk at a pool plant during the month.

Proposed by Dean Foods Company:

Proposal No. 5

This proposal to establish a *dairy farmer for other markets* provision would require that only 115% of a prior month's milk could be pooled in a subsequent month and be considered pool milk.

1. Amend § 1030.13 by adding a new paragraph (f) to read as follows:

§ 1030.13 Producer Milk.

* * * * *

(f) The quantity of milk reported by a handler pursuant to § 1030.30(a)(1) and/or § 1030.30(c)(1) for July through November may not exceed 115 percent of the producer milk receipts pooled by the handler during the prior month. Milk diverted to nonpool plants reported in excess of this limit shall be removed from the pool by the market administrator. Milk received at pool plants, other than pool distributing plants, shall be classified pursuant to § 1000.44(a)(3)(v) and § 1000.44(b)(3)(v). The handler must designate, by producer pick-up, which milk is to be removed from the pool. If the handler fails to provide this information, the market administrator will make the determination. The following provisions apply:

(1) Milk shipped to and physically received at pool distributing plants shall not be subject to the 115 percent limitation;

(2) Producer milk qualified pursuant to § _____.13 of any other Federal Order and continuously pooled in any Federal Order for the previous six months shall not be included in the computation of the 115 percent limitation;

(3) The market administrator may waive the 115 percent limitation utilizing;

(i) For a new handler on the order, subject to the provisions of § 1030.13(f)(3), or

(ii) For an existing handler with significantly changed milk supply conditions due to unusual circumstances;

(4) The market administrator may increase or decrease the applicable limitation for a month consistent with the procedures in § 1030.7(g); and

(5) A bloc of milk may be considered ineligible for pooling if the market administrator determines that handlers altered the reporting of such milk for the purpose of evading the provisions of this paragraph.

Proposed by Dean Foods Company:

Proposal No. 6

This proposal would establish a two day touch base requirement during the shorter months and diversion limitations of 65 and 75 percent.

1. Amend § 1030.13 by adding new paragraphs (d)(1) through (4), and redesignating paragraph (d)(4) as paragraph (d)(5), to read as follows:

* * * * *

(d) * * *

(1) Milk of a dairy farmer shall not be eligible for diversion until milk of such dairy farmer has been physically received as producer milk at a pool plant and the dairy farmer has continuously retained producer status since that time. If a dairy farmer loses producer status under the order in this part (except as a result of a temporary loss of Grade A approval), the dairy farmer's milk shall not be eligible for diversion until milk of the dairy farmer has been physically received as producer milk at a pool plant;

(2) The equivalent of at least two days' milk production is caused by the handler to be physically received at a pool plant in each of the months of July through November;

(3) The equivalent of at least two days' milk production is caused by the handler to be physically received at a pool plant in each of the months of December through June if the requirement of paragraph (d)(2) of this section (§ 1030.13) in each of the prior months of July through November is not met, except in the case of dairy farmer who marketed no Grade A milk during each of the prior months of July through November.

(4) Of the total quantity of producer milk received during the month

(including diversions but excluding the quantity of producer milk received from a handler described in § 1000.9(c) of this chapter or which is diverted to another pool plant), the handler diverted to nonpool plants not more than 65 percent in each of the months of July through November and 75 percent in each of the months of December through June.

* * * * *

Proposed by the Upper Midwest Market Administrator:

Proposal No. 7

This proposal would increase the maximum administrative assessment rate for the Upper Midwest order from 5 cents to 8 cents per hundredweight.

1. Revise § 1030.85 to read as follows:

§ 1030.85 Assessment for order administration.

On or before the payment receipt date specified under § 1030.71, each handler shall pay to the market administrator its pro rata share of the expense of administration of the order at a rate specified by the market administrator that is no more than 8 cents per hundredweight with respect to:

(a) Receipts of producer milk (including the handler's own production) other than such receipts by a handler described in § 1000.9(c) that were delivered to pool plants of other handlers;

(b) Receipts from a handler described in § 1000.9(c);

(c) Receipts of concentrated fluid milk products from unregulated supply plants and receipts of nonfluid milk products assigned to Class I use pursuant to § 1000.43(d) and other source milk allocated to Class I pursuant to § 1000.44(a)(3) and (8) and the corresponding steps of § 1000.44(b), except other source milk that is excluded from the computations pursuant to § 1030.60(h) and (i); and

(d) Route disposition in the marketing area from a partially regulated distributing plant that exceeds the skim milk and butterfat subtracted pursuant to § 1000.76(a)(1)(i) and (ii).

Proposed by Dairy Programs, Agricultural Marketing Service:

Proposal No. 8

Make such changes as may be necessary to make the entire marketing agreement and the order conform with any amendments thereto that may result from this hearing.

Copies of this notice of hearing and the orders may be procured from the Market Administrator of the aforesaid marketing area, or from the Hearing Clerk, United States Department of Agriculture, Room 1083—STOP 9200, 1400 Independence Avenue, SW., Washington, DC 20250–9200, or may be inspected there.

Copies of the transcript of testimony taken at the hearing will not be available for distribution through the Hearing Clerk's Office. If you wish to purchase a copy, arrangements may be made with the reporter at the hearing.

From the time that a hearing notice is issued and until the issuance of a final decision in a proceeding, Department employees involved in the decision-making process are prohibited from discussing the merits of the hearing issues on an *ex parte* basis with any person having an interest in the proceeding. For this particular proceeding, the prohibition applies to employees in the following organizational units:

Office of the Secretary of Agriculture;
Office of the Administrator, Agricultural Marketing Service;
Office of the General Counsel;
Dairy Programs, Agricultural Marketing Service (Washington office) and the Offices of all Market Administrators.

Procedural matters are not subject to the above prohibition and may be discussed at any time.

Dated: June 16, 2004.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 04–14059 Filed 6–22–04; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–89–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 777–200 and –300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to certain Boeing Model 777–200 and –300 series airplanes. The proposed AD would have required a one-time inspection of the clevis end of the vertical tie rods that support the center stowage bins to measure the exposed thread, installation of placards that advise of weight limits for certain electrical racks, a one-time inspection and records check to determine the amount of weight currently installed in those electrical racks, corrective actions, and replacement of the vertical tie rods for the center stowage bins or electrical racks with new improved tie rods, as applicable. This new action revises the proposed rule by proposing to require, for certain airplanes, inspections of additional tie rod part numbers and additional locations. This new action also proposes to revise an inspection method. The actions specified by this new proposed AD are intended to prevent failure of the tie rods supporting certain electrical racks and the center stowage bins, which could cause the racks or stowage bins to fall onto passenger seats below during an emergency landing, impeding an emergency evacuation or injuring passengers. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by July 19, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–89–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. 2001–NM–89–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 Airplanes, 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: Robert Kaufman, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6433; 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 2001–NM–89–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. 2001–NM–89–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to certain Boeing Model 777–200 and –300 series airplanes, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on September 9, 2003 (68 FR 53055). That NPRM would have required, for all airplanes, installation of a placard that advises of weight limits for a certain electrical rack, accomplishment of a one-time inspection and records check to determine the amount of weight currently installed in that rack, and removal of equipment from that rack if necessary. For certain airplanes, that NPRM also would have required a one-time inspection of the clevis end of the vertical tie rods that support the center stowage bins to measure the exposed thread, installation of placards that advise of weight limits for certain other electrical racks, a one-time inspection and records check to determine the amount of weight currently installed in certain other electrical racks, corrective actions, and replacement of the vertical tie rods for the center stowage bins or electrical racks with new improved tie rods, as applicable. That NPRM was prompted by a report indicating that, under certain conditions on Boeing Model 777–200 and –300 series airplanes, the vertical tie rods that attach the center stowage bins and electrical racks to the airplane structure can break. That condition, if not corrected, could result in the racks or stowage bins falling onto passenger seats below during an emergency landing, impeding an emergency evacuation or injuring passengers.

Explanation of New Relevant Service Information

Since the issuance of that NPRM, the FAA has reviewed and approved Boeing Special Attention Service Bulletin 777–25–0144, Revision 2, dated January 15, 2004. (The NPRM referred to Boeing Service Bulletin 777–25–0144, Revision 1, dated January 10, 2002, as the appropriate source of service information for accomplishing the proposed actions.) Among other things, for certain airplanes, Revision 2 of the service bulletin includes additional affected tie rod part numbers and additional locations that are subject to the one-time inspection to measure the exposed thread of the clevis end of the vertical tie rods supporting the center stowage bins, and installation of a threaded sleeve if necessary. Revision 2 of the service bulletin also divides the Accomplishment Instructions into Parts 1, 2, and 3, with Parts 2 and 3 of the Accomplishment Instructions providing instructions for airplanes in certain groups that were modified per the original issue or Revision 1 of the service bulletins. (Parts 2 and 3 specify inspecting the clevis end of the vertical support tie rod for the center stowage bin in certain locations to determine whether a threaded sleeve was installed, and installing a threaded sleeve and re-torquing the jam nuts, as applicable.)

Also, while the instructions in Revision 1 of the service bulletin for replacing the vertical support tie rods for the center stowage bin specify inspecting through the witness hole to make sure tie rod threads are visible, Revision 2 of the service bulletin revises this instruction to specify inserting a pin in the witness hole to ensure that the witness hole is blocked by the clevis shank.

Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Additional Changes to Supplemental NPRM

We have revised paragraph (b) of this supplemental NPRM to specify corrective actions that may be necessary as a result of findings from the inspection in that paragraph. The corrective actions were not specifically identified in the original NPRM.

Paragraph (e) of the original NPRM specifies that, where the service bulletin specifies to contact Boeing for appropriate action, repair would be required per a method approved by the FAA, or per data approved by an authorized Boeing Company Designated Engineering Representative. The instruction to contact Boeing has been removed from Revision 2 of the service bulletin, so paragraph (e) of the original NPRM is not included in this supplemental NPRM.

Conclusion

Since certain changes described previously expand the scope of the originally proposed rule, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

Cost Impact

There are approximately 282 airplanes of the affected design in the worldwide fleet. The FAA estimates that 84 airplanes of U.S. registry would be affected by this proposed AD.

For all airplanes: The records check and inspection to determine the weight currently installed in electrical rack E7 would take approximately 1 work hour per airplane to accomplish, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of this proposed records check and inspection on U.S. operators is estimated to be $5,460, or $65 per airplane.

For all airplanes: It would take approximately 1 work hour to

accomplish the proposed installation of a placard specifying weight limits for electrical rack E7, at an average labor rate of $65 per work hour. Required parts would cost approximately $29. Based on these figures, the cost impact of this proposed placard installation on U.S. operators is estimated to be $7,896, or $94 per electrical rack.

For airplanes subject to the records check and inspection to determine the weight currently installed in electrical rack E9, E11, E13, or E15: It would take approximately 1 work hour per electrical rack (up to 4 racks per airplane) to accomplish, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of this proposed records check and inspection is estimated to be as much as $260 per airplane.

For airplanes subject to the installation of a placard specifying weight limits for electrical rack E9, E11, E13, or E15: It would take approximately 1 work hour per electrical rack to accomplish, at an average labor rate of $65 per work hour. Required parts would cost approximately $29 per electrical rack. Based on these figures, the cost impact of this proposed installation is estimated to be as much as $376 per airplane.

For airplanes subject to the inspection of the clevis end of the vertical support tie rod for the center stowage bin to measure the exposed thread: It would take as much as 3 work hours per airplane (0.25 work hour per tie rod, with up to 12 subject tie rods per airplane) at an average labor rate of $65 per work hour. Based on these figures, the cost impact of this proposed inspection is estimated to be as much as $195 per airplane.

For airplanes subject to the replacement of the vertical tie rods that support the center stowage bins: It would take as much as 6 work hours per airplane (0.5 work hour per tie rod, with up to 12 subject tie rods per airplane) at an average labor rate of $65 per work hour. Required parts would cost as much as $3,020 per airplane. Based on these figures, this proposed replacement is estimated to be as much as $3,410 per airplane.

For airplanes subject to the replacement of the vertical tie rods that support the electrical racks: It would take as much as 2 work hours per airplane (0.5 work hour per tie rod with up to 4 subject tie rods per airplane) at an average labor rate of $65 per work hour. Required parts would cost as much as $3,012 per airplane. Based on these figures, this proposed replacement is estimated to be as much as $3,142 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 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 2001–NM–89–AD.

Applicability: Model 777–200 and –300 series airplanes; line numbers 002 through 151 inclusive, 153 through 157 inclusive, 159 through 195 inclusive, 197 through 211 inclusive, 213 through 237 inclusive, 239 through 241 inclusive, and 243 through 282 inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the vertical tie rods that attach the center stowage bins and electrical racks to the airplane structure, which could cause the center stowage bins and electrical racks to fall onto passenger seats below, impeding an emergency evacuation or injuring passengers, accomplish the following:

Inspection To Determine Weight and Placard Installation

(a) For airplanes in the groups listed in the table under paragraph 3.B.1.b.(3) of the Accomplishment Instructions of Boeing Special Attention Service Bulletin 777–25–0144, Revision 2, dated January 15, 2004: Within 5 years after the effective date of this AD, do the applicable actions in paragraphs (a)(1) and (a)(2) of this AD.

(1) Install placards that show weight limits for electrical racks E7, E11, and E15; as applicable; per the Accomplishment Instructions of the service bulletin.

(2) For each electrical rack on which a placard was installed per paragraph (a)(1) of this AD: Before further flight after installing the placard, perform a one-time inspection and records check to determine the weight of equipment installed in that electrical rack. This records review and inspection must include determining what extra equipment, if any, has been installed in the subject rack of the airplane, performing a detailed inspection to determine whether this equipment is installed on the airplane, calculating the total weight of the installed equipment, and comparing that total to the weight limit specified on the placard installed per paragraph (a)(1) of this AD. If the weight is outside the limits specified in the placard to be installed per the service bulletin, before further flight, remove equipment from the rack to meet the weight limit specified in the placard.

Note 1: For the purposes of this AD, a detailed inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.''

Inspection To Measure Exposed Thread and Corrective Actions

(b) For airplanes in the groups listed in the table under paragraph 3.B.1.b.(1) of the

Accomplishment Instructions of Boeing Special Attention Service Bulletin 777–25–0144, Revision 2, dated January 15, 2004: Within 5 years after the effective date of this AD, perform a detailed inspection of the clevis end of the vertical support tie rod for the center stowage bin to measure the exposed thread, per the Accomplishment Instructions of the service bulletin. If the measurement of the exposed thread is outside the limits specified in Figure 2 of the service bulletin, before further flight, perform all corrective actions specified in steps 2 through 14 inclusive of Figure 2 of the service bulletin (including installing a threaded sleeve, torquing the jam nuts, inserting a pin in the witness hole to ensure that the witness hole is blocked by the clevis shank, and making any applicable adjustment of the clevis). Perform the corrective actions per the Accomplishment Instructions of the service bulletin, except as provided by paragraph (e) of this AD.

Replacement of Tie Rods for Center Stowage Bin

(c) For airplanes in Group 21, as listed in the Airplane Group column of the table under 3.B.1.b.(2) of the Accomplishment Instructions of Boeing Special Attention Service Bulletin 777–25–0144, Revision 2, dated January 15, 2004: Within 5 years after the effective date of this AD, replace the vertical support tie rods for the center stowage bin with new improved tie rods (including replacing the existing tie rod with a new improved tie rod, torquing the jam nuts, inserting a pin in the witness hole to ensure that the witness hole is blocked by the clevis shank, and making any applicable adjustment of the clevis) by doing all actions specified in steps 1 through 8 of Figure 3 of the service bulletin. Do these actions per the Accomplishment Instructions of the service bulletin. Any required adjustment of the clevis must be done before further flight.

Inspection To Determine Weight, Tie Rod Replacement, and Placard Installation

(d) For airplanes in the groups listed in the table under paragraph 3.B.1.b.(4) of the Accomplishment Instructions of Boeing Special Attention Service Bulletin 777–25–0144, Revision 2, dated January 15, 2004: Do the actions in paragraphs (d)(1), (d)(2), and (d)(3) of this AD.

(1) Within 5 years after the effective date of this AD, replace the vertical support tie rods for electrical racks E9, E11, and E13 (including replacing the existing tie rods with new improved tie rods, replacing an existing tie rod clamp with a new improved tie rod clamp, performing a free-play inspection of certain electrical racks, adjusting jam nuts as applicable, performing a general visual inspection through the witness hole to make sure tie rod threads are visible, and making any applicable adjustment to ensure tie rod threads are visible) by doing all actions specified in Figures 5, 6, 7, and 9 of the service bulletin; as applicable. Do these actions per the Accomplishment Instructions of the service bulletin. Any required adjustment must be done before further flight.

(2) Before further flight after accomplishing paragraph (d)(1) of this AD, install placards that show weight limits for electrical racks E9, E11, and E13; as applicable; per the Accomplishment Instructions of the service bulletin.

(3) For each electrical rack on which a placard was installed per paragraph (d)(2) of this AD: Before further flight after accomplishing paragraphs (d)(1) and (d)(2) of this AD, perform a one-time inspection and records check to determine the weight of equipment installed in that electrical rack. This records review and inspection must include determining what, if any, extra equipment has been installed in the subject racks of the airplane, performing a detailed inspection to determine that this equipment is installed on the airplane, calculating the total weight of the installed equipment, and comparing that total to the weight limit specified on the placard installed per paragraph (d)(2) of this AD. If the weight is outside the limits specified in the placard, before further flight, remove equipment from the rack to meet the weight limit specified in the placard.

Actions Accomplished Previously

(e) Actions accomplished before the effective date of this AD per the Accomplishment Instructions of Boeing Service Bulletin 777–25–0144, dated January 25, 2001; or Revision 1, dated January 10, 2002; are acceptable for compliance with the corresponding actions required by this AD, provided that the additional actions specified in Part 2 or 3 of the Accomplishment Instructions of Boeing Special Attention Service Bulletin 777–25–0144, Revision 2, dated January 15, 2004, are accomplished within the compliance time specified in this AD.

Alternative Methods of Compliance

(f) 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 June 16, 2004.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–14183 Filed 6–22–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–217–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–400 and –400D Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Boeing Model 747–400 and –400D series airplanes, that currently requires installation of strap assemblies on the ceiling panels and rails that support the video monitors. For certain airplanes, this action would require replacement of certain plate assemblies within the ceiling panel strap assemblies with new, improved plate assemblies. This action would also revise the applicability by adding airplanes. The actions specified by the proposed AD are intended to prevent ceiling panels from falling into the passenger cabin area in the event of failure of certain latch assemblies on the ceiling panels, which could result in consequent injury to the flightcrew and passengers. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by August 9, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–217–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–217–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 Airplanes, PO 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: Patrick Gillespie, Aerospace Engineer, Cabin Safety Branch, ANM–150S, FAA, Transport Airplane Directorate; telephone (425) 917–6429; 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–217–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–217–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On August 23, 1999, the FAA issued AD 99–18–07, amendment 39–11273 (64 FR 47372, August 31, 1999), applicable to certain Boeing Model 747–400 series airplanes, to require installation of strap assemblies on the ceiling panels and rails that support the video monitors. That action was prompted by reports of the video monitor ceiling panels falling into the passenger cabin area due to the failure of certain latch assemblies during turbulence. The requirements of that AD are intended to prevent ceiling panels from falling into the passenger cabin area in the event of failure of certain latch assemblies on the ceiling panels, which could result in consequent injury to the flightcrew and passengers.

Actions Since Issuance of Previous Rule

Since the issuance of that AD, testing by the manufacturer revealed that even after operators accomplished the actions described in the original release and Revision 1 of Boeing Alert Service Bulletin 747–25A3142 certain ceiling panels could still fall into the passenger cabin. Therefore, the manufacturer issued Revisions 2 and 3 of the service bulletin. These revisions also expand the effectivity of the service bulletin to include Boeing Model 747–400D series airplanes. Revision 3 of the service bulletin is the appropriate source of service information for accomplishment of the actions proposed in this AD.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 747–25A3142, Revision 3, dated August 14, 2003, which describes procedures for installing strap assemblies on the ceiling panels that support the video monitors. For certain airplanes, the service bulletin describes procedures for replacing plate assemblies having a certain part number with new, improved plate assemblies. The service bulletin also expands the effectivity to include airplanes that had certain plate assemblies installed in production.

The strap assembly installation procedures include removing the ceiling panels forward and aft of the ceiling panel to be modified, removing the video monitor, installing the strap assembly on the ceiling panel and adjacent support rail, reidentifying the modified ceiling panel with a new part number, and reinstalling the video monitor and ceiling panels. The procedures for replacing the plate assembly include removing the ceiling panels forward and aft of the ceiling panel with the strap assembly; removing the video monitor; removing the strap assembly from the ceiling panel and adjacent support rail; replacing the plate assembly; and reinstalling the strap assembly, video monitor, and ceiling panels.

Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed AD

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 supersede AD 99–18–07 to continue to require installation of strap assemblies on the ceiling panels and rails that support the video monitors and, for certain airplanes, to require replacement of certain plate assemblies within the ceiling strap assemblies with new, improved plate assemblies. The actions would be required to be accomplished in accordance with the service bulletin previously described, except as discussed below.

Differences Between Proposed Rule and Alert Service Bulletin

Operators should note that, although the alert service bulletin recommends installing the subject strap and plate assemblies at the first maintenance opportunity, the FAA has determined that an unspecified interval would not address the identified unsafe condition in a timely manner. In developing an appropriate compliance time for this AD, the FAA considered not only the manufacturer's recommendation, but the degree of urgency associated with addressing the subject unsafe condition, the average utilization of the affected fleet, and the time necessary to perform the installation. In light of all of these factors, the FAA finds a 24-month compliance time for completing the required actions to be warranted, in that it represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety.

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 346 airplanes of the affected design in the worldwide fleet. The FAA estimates that 43 airplanes of U.S. registry would be affected by this proposed AD.

The actions that are currently required by AD 99–18–07, and retained in this proposed AD, take approximately 9 work hours per ceiling panel, and between 18 and 126 work hours per airplane to accomplish, at an average labor rate of $65 per work hour. Required parts cost between $1,366 and $9,575 per airplane. Based on these figures, the cost impact of the currently required actions is estimated to be

between $2,536 and $17,765 per airplane.

The proposed installation of new plates in this AD action would take approximately 7 work hours per ceiling panel, and between 18 and 126 work hours per airplane, at an average labor rate of $65 per work hour. Required parts would cost between $1,700 and $12,200 per airplane. Based on these figures, the cost impact of this proposed requirement on U.S. operators is estimated to be between $2,870 and $20,390 per airplane.

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

Regulatory Impact

The regulations 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 removing amendment 39–11273 (64 FR 47372, August 31, 1999), and by adding a new airworthiness directive (AD), to read as follows:

Boeing: Docket 2003–NM–217–AD. Supersedes AD 99–18–07, Amendment 39–11273.

Applicability: Model 747–400 and –400D series airplanes, as listed in Boeing Alert Service Bulletin 747–25A3142, Revision 3, dated August 14, 2003, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent ceiling panels from falling into the passenger cabin area in the event of failure of certain latch assemblies on the ceiling panels, which could result in consequent injury to the flightcrew and passengers, accomplish the following:

Replacement of Plate Assemblies in the Ceiling Panel Strap Assemblies

(a) For airplanes on which ceiling panel strap assemblies were installed in accordance with Boeing Alert Service Bulletin 747–25A3142, dated October 16, 1997; or Revision 1, dated August 6, 1998; or had plate assembly 411U5513–123 installed in production as of the effective date of this AD: Within 24 months after the effective date of this AD, replace any plate assembly having part number (P/N) 411U5513–123, with a new, improved plate assembly having P/N 411U5513–131, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–25A3142, Revision 3, dated August 14, 2003.

Installation of Ceiling Panel Strap Assemblies

(b) For airplanes on which ceiling panel strap assemblies were not installed in accordance with Boeing Alert Service Bulletin 747–25A3142, dated October 16, 1997; or Revision 1, dated August 6, 1998: Within 24 months after the effective date of this AD, install strap assemblies on the ceiling panels and rails that support the video monitors in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–25A3142, Revision 3, dated August 14, 2003.

Actions Done per Previous Issue of Service Bulletin

(c) Accomplishment of the specified actions before the effective date of this AD per Boeing Alert Service Bulletin 747–25A3142, Revision 2, dated March 20, 2003, is considered acceptable for compliance with the applicable requirements of paragraphs (a) and (b) of this AD.

Alternative Methods of Compliance

(d)(1) In accordance with 14 CFR 39.19, the Manager, Seattle Aircraft Certification Office, FAA, is authorized to approve alternative methods of compliance (AMOCs) for this AD.

(2) Alternative methods of compliance, approved previously in accordance with AD 99–18–07, amendment 39–11273, are approved as alternative methods of compliance with the applicable actions of this AD.

Issued in Renton, Washington, on June 16, 2004.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–14182 Filed 6–22–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–286–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–200B, –200C, –200F, –300, –400, –400D, and –400F Series Airplanes; and Model 747SP 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 747–200B, –200C, –200F, –300, –400, –400D, and –400F series airplanes; and Model 747SP series airplanes. This proposal would require repetitive functional tests of the auxiliary power unit (APU) and engine fire shutoff switches and repetitive replacements of the APU and engine fire shutoff switches. This proposal would also provide an optional terminating action for the repetitive inspections and replacements. This action is necessary to prevent mineral build-up on the APU and engine fire shutoff switches, which could lead to failure of the switches to discharge fire suppressant in the affected area and could result in an uncontrolled fire that could spread to the strut, wing, or aft body of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by August 9, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation

Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–286–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. 2002–NM–286–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 Airplanes, 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:

Sulmo Mariano, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6501; 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 2002–NM–286–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. 2002–NM–286–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports indicating that, during a routine maintenance check, several squib circuits failed when the engine fire extinguishing system test was performed on certain Boeing Model 747 series airplanes. One of the reports indicated that the fire handle switches failed to provide current to several squibs because of internal continuity failures. An investigation revealed that Lucas humidifiers distribute air containing minerals from the potable water supply. The humidified air contaminates the auxiliary power unit (APU) and engine fire shutoff switches. This condition, if not corrected, could result in mineral build-up on the APU and engine fire shutoff switches, which could lead to failure of the switches to discharge fire suppressant in the affected area and could result in an uncontrolled fire that could spread to the strut, wing, or aft body of the airplane.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 747–26A2274, Revision 1, dated January 9, 2003, which describes the following procedures:

1. Performing repetitive functional tests of the APU and engine fire shutoff switches;
2. Performing repetitive replacements of the APU and engine fire shutoff switches with new or serviceable switches; and
3. Deactivation of the Lucas (also known as TRW Systemes Aeronautiques) flight deck humidifier, part numbers (P/N) M01AA0101, M01AB0101, M01AB0102, or M01AB0103, which would eliminate the need for the repetitive functional tests and replacements.

Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

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 described below.

Difference Between Service Bulletin and Proposed Rule

Operators should note that the service bulletin specifies one of the initial compliance times as ''after the airplane has 12 calendar months of service but within 18 calendar months since airplane delivery * * *.'' However, this proposed AD specifies the one initial compliance time as ''within 18 months since the date of issuance of the original Airworthiness Certificate or the original Export Certificate of Airworthiness.'' This decision is based on our determination that ''since airplane delivery'' may be interpreted differently by different operators. We find that our proposed terminology is generally understood within the industry and records will always exist that establish these dates with certainty. We also did not include reference to ''after the airplane has 12 calendar months of service'' because accomplishing the initial actions within 18 months of service would provide an acceptable level of safety. Thus our proposed compliance time would include any airplanes that may have been operating since delivery.

Although the service bulletin recommends accomplishing the initial replacement at ''18 calendar months from issue date of the service bulletin,'' this proposed AD requires accomplishing the replacement ''within 36 months after the effective date of this AD.'' We find that a compliance time of ''within 36 months after the effective date of this AD'' represents an appropriate interval of time to address the identified unsafe condition and allows affected airplanes to continue to operate during that interval without compromising safety.

Also, operators should note that the service bulletin states that ''Operators

who perform the 90 calendar day inspection and the 18 calendar month cleaning can avoid the required test interval shown in Figure 1, by deactivation of the Lucas Flight Deck Humidifier.'' However, this proposed AD specifies that if the optional deactivation of the humidifier is accomplished, operators are required to replace the switches with new or serviceable switches before further flight following the deactivation. If a flight deck humidifier is deactivated shortly before a required replacement or a required functional test, it may be possible that any one of the switches could have a latent type of failure. To address this unsafe condition, we have added the requirement to replace all switches before further flight following deactivation of the humidifier, as stated in paragraph (e) of this proposed AD. We have also added requirements as stated in paragraph (f) of this proposed AD to ensure functional tests and replacements of switches are accomplished for operators that reactivate the Lucas humidifier.

We have coordinated these changes with the manufacturer.

Cost Impact

There are approximately 316 airplanes of the affected design in the worldwide fleet. We estimate that 50 airplanes of U.S. registry would be affected by this proposed AD, and that the average labor rate is $65 per work hour. Table 1 provides the estimated costs for U.S. operators to comply with this proposed AD.

TABLE 1.—ESTIMATED COSTS

Action	Work hours	Cost per airplane	Total cost
Inspection and Functional Test (per test cycle)	10–14 (depending on airplane model)	$650–910	$32,500–45,500

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 2002–NM–286–AD.

Applicability: Model 747–200B, –200C, –200F, –300, –400, –400D, and –400F series airplanes; and Model 747SP series airplanes; as listed in Boeing Alert Service Bulletin 747–26A2274, Revision 1, dated January 9, 2003; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent mineral build-up on the auxiliary power unit (APU) and engine fire shutoff switches, which could lead to failure of the switches to discharge fire suppressant in the affected area and could result in an uncontrolled fire that could spread to the strut, wing, or aft body of the airplane, accomplish the following:

Service Bulletin References

(a) The term ''service bulletin,'' as used in this AD, means the Accomplishment Instructions of Boeing Alert Service Bulletin 747–26A2274, Revision 1, dated January 9, 2003.

Initial and Repetitive Functional Test

(b) At the later of the compliance times specified in paragraphs (b)(1) and (b)(2) of this AD, perform a functional test of the APU and engine fire shutoff switches, in accordance with the service bulletin. Repeat the functional test thereafter at intervals not to exceed 18 months.

(1) Within 18 months since the date of issuance of the original Airworthiness Certificate or the original Export Certificate of Airworthiness.

(2) Within 90 days after the effective date of this AD.

Fire Shutoff Switch Failure

(c) If any fire shutoff switch fails during any functional test required by paragraph (b) or (f) of this AD, before further flight, replace the switch with a new or serviceable switch, in accordance with the service bulletin. Repeat the switch replacement thereafter at intervals not to exceed 36 months.

Replacement

(d) Within 36 months after the effective date of this AD, replace all APU and engine fire shutoff switches that have not been previously replaced per paragraph (c) of this AD with new or serviceable switches, in accordance with the service bulletin. Repeat the switch replacement thereafter at intervals not to exceed 36 months.

Deactivation of Lucas Humidifier

(e) Operators may terminate the repetitive requirements of paragraphs (b), (c), and (d) of this AD by accomplishing the actions in paragraphs (e)(1) and (e)(2) of this AD, except as provided by paragraph (f) of this AD.

(1) Deactivate the Lucas humidifier, part number (P/N) M01AA0101, M01AB0101, M01AB0102, or M01AB0103, in accordance with the service bulletin.

(2) Before further flight following the deactivation specified in paragraph (e)(1) of this AD, replace all APU and engine fire shutoff switches with new or serviceable switches in accordance with the service bulletin.

Reactivation of Lucas Humidifier

(f) For any airplanes on which Lucas humidifier, P/N M01AA0101, M01AB0101, M01AB0102, or M01AB0103 is reactivated after the effective date of this AD: Do the requirements of paragraphs (f)(1) and (f)(2) of this AD at the times specified in those paragraphs.

(1) Within 18 months after reactivating the humidifier, and thereafter at intervals not to exceed 18 months, do the functional test required by paragraph (b) of this AD.

(2) Within 36 months after reactivating the humidifier, and thereafter at intervals not to exceed 36 months, replace all APU and engine fire shutoff switches that have not been previously replaced per paragraph (c) of this AD. Do the replacements per paragraph (d) of this AD.

Actions Accomplished per Previous Issue of Service Bulletin

(g) Actions accomplished before the effective date of this AD per Boeing Alert Service Bulletin 747–26A2274, dated August 29, 2002, are considered acceptable for compliance with the corresponding action specified in this AD.

Alternative Methods of Compliance

(h) 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 June 16, 2004.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–14181 Filed 6–22–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–238–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 727–100 and –100C 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 727–100 and –100C series airplanes. This proposal would require repetitive inspections of the frame inner chord, outer chord, and web of the forward and aft edge frames of the lower lobe forward cargo door (FCD) cutout, and corrective action, if necessary. This action is necessary to detect and correct fatigue cracking of the forward and aft edge frames of the lower lobe FCD cutout, which could result in the loss of the FCD and rapid decompression of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by August 9, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–238–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–238–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 Airplanes, 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: Daniel F. Kutz, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6456; 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–238–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–238–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports indicating that fatigue cracks were found at the inner chord, outer chord, and web of the forward and aft edge frames of the lower lobe forward cargo door (FCD) cutout on Boeing Model 727–100 and –100C series airplanes. The airplanes on which the fatigue cracks were found had accumulated between 37,500 and 68,700 total flight cycles. The fatigue cracks were discovered during routine inspections and during inspections conducted as part of the Boeing 727 Supplemental Structural Inspection Document (SSID) program required by AD 98–11–03 R1, amendment 39–10983 (64 FR 989, January 7, 1999). The SSID program initially inspects Model 727–100 series airplanes at 55,000 flight cycles and Model 727–100C series airplanes at 46,000 flight cycles and, therefore, will

not detect possible cracking at earlier flight cycles. Fatigue cracks, if not detected and corrected, could result in the loss of the FCD and rapid decompression of the airplane.

Explanation of Relevant Service Information

The FAA has previously reviewed and approved pages F.11.2, F.11.12, and F.11.22 of Boeing Document No. D6–48040–1, Volumes 1 and 2, ''Supplemental Structural Inspection Document'' (SSID), Revision H, dated June 1994, which specify procedures to perform a general visual inspection, a detailed inspection, and a high frequency eddy current inspection for cracks in areas A and B of Structural Significant Item (SSI) F–11B (the area affected by this unsafe condition). Accomplishment of the actions specified in pages F.11.2, F.11.12, and F.11.22 of SSID, Revision H, is intended to adequately address the identified unsafe condition.

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 described previously for pages F.11.2, F.11.12, and F.11.22 of SSID, Revision H.

Cost Impact

There are approximately 180 airplanes of the affected design in the worldwide fleet. The FAA estimates that 124 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 3 work hours per airplane to accomplish the proposed inspections, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $24,180, or $195 per airplane, per inspection cycle.

The cost impact figure discussed above is 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–238–AD.

Applicability: Boeing Model 727–100 and –100C series airplanes, line numbers 1 through 695 inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct fatigue cracking of the forward and aft edge frames of the lower lobe forward cargo door (FCD) cutout, which could result in the loss of the FCD and rapid decompression of the airplane, accomplish the following:

Note 1: This AD is related to AD 98–11–03 R1, amendment 39–10983 (64 FR 989, January 7, 1999) and affects Structural Significant Item (SSI) F–11B of the Boeing 727 Supplemental Structural Inspection Document (SSID) program.

Initial and Repetitive Inspections

(a) For airplanes on which the forward and aft edge frames of the lower lobe FCD cutout have not been inspected per AD 98–11–03 R1 as of the effective date of this AD: Prior to the accumulation of 24,000 total flight cycles, or within 3,000 flight cycles after the effective date of this AD, whichever occurs later, do the inspections specified in paragraph (c) of this AD.

(b) For airplanes on which the forward and aft edge frames of the lower lobe FCD cutout have been inspected per AD 98–11–03 R1 as of the effective date of this AD: Within the next scheduled inspection required by AD 98–11–03 R1, or within 3,000 flight cycles after the effective date of this AD, whichever occurs first, do the inspections specified in paragraph (c) of this AD.

(c) Perform the inspections in paragraphs (c)(1), (c)(2), and (c)(3) of this AD at the forward and aft edge frames (between stringers S–18 and S–26) of the lower lobe FCD cutout per SSI F–11B (*i.e.*, pages F.11.2, F.11.12, and F.11.22), of Boeing Document No. D6–48040–1, Volumes 1 and 2, ''SSID'', Revision H, dated June 1994. Repeat the inspections thereafter at intervals not to exceed 3,000 flight cycles.

(1) Perform a general visual inspection of the frame inner chord, outer chord, and web in area ''A'' for cracks.

Note 2: For the purposes of this AD, a general visual inspection is defined as: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

(2) Perform a detailed inspection of the frame inner chord, outer chord, and web in area ''B'' for cracks.

Note 3: For the purposes of this AD, a detailed inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.''

(3) Perform a high frequency eddy current inspection of the frame inner and outer chords in area ''B'' where the frame web is not visible for cracks.

Corrective Action

(d) If any crack is found during any inspection required by paragraph (c) of this AD, before further flight, repair per a method

approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved, the approval must specifically reference this AD.

Certain Actions Constitute Compliance With AD 98–11–03 R1

(e) Accomplishment of the inspections specified in paragraph (c) of this AD is terminating action for the inspections required by AD 98–11–03 R1 that pertain to SSI F–11B of the Boeing 727 SSID program for the areas specified in paragraph (c) of this AD only. Accomplishment of the actions required by paragraph (c) of this AD does not terminate the inspections required by AD 98–11–03 R1 for the remaining areas of SSI F–11B and does not terminate the remaining requirements of AD 98–11–03 R1.

Alternative Methods of Compliance

(f) In accordance with 14 CFR 39.19, the Manager, Seattle ACO, FAA, is authorized to approve alternative methods of compliance for this AD.

Issued in Renton, Washington, on June 16, 2004.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–14180 Filed 6–22–04; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R01–OAR–2004–CT–0003; A–1–FRL–7777–4]

Approval and Promulgation of Air Quality Implementation Plans; Connecticut; Carbon Monoxide Maintenance Plan Updates; Limited Maintenance Plans

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve a draft State Implementation Plan (SIP) revision submitted by the State of Connecticut. This draft revision will establish limited maintenance plans for the Hartford-New Britain-Middletown, the New Haven-Meriden-Waterbury, and the Connecticut Portion of the New York-Northern New Jersey-Long Island carbon monoxide attainment areas, and provide the ten-year update to these three carbon monoxide maintenance plans. EPA is parallel processing this draft SIP revision, for which the State of Connecticut scheduled a public hearing on June 17, 2004. This action is being taken under the Clean Air Act.

DATES: Written comments must be received on or before July 23, 2004.

ADDRESSES: Submit your comments, identified by Regional Material in EDocket (RME) ID Number R01–OAR–2004–CT–0003 by one of the following methods:

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

2. Agency Web site: *http://docket.epa.gov/rmepub/* Regional Material in EDocket (RME), EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Once in the system, select ''quick search,'' then key in the appropriate RME Docket identification number. Follow the on-line instructions for submitting comments.

3. E-mail: *conroy.dave@epa.gov*.

4. Fax: (617) 918–0661.

5. Mail: ''RME ID Number R01–OAR–2004–CT–0003'', David B. Conroy, Acting Chief, Air Programs Branch, U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, One Congress Street, Suite 1100 (mail code CAQ), Boston, MA 02114–2023.

6. Hand Delivery or Courier: Deliver your comments to: David B. Conroy, Acting Chief, Air Programs Branch, U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, One Congress Street, 11th floor, (CAQ), Boston, MA 02114–2023. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding Federal holidays.

Instructions: Direct your comments to Regional Material in EDocket (RME) ID Number R01–OAR–2004–CT–0003. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://docket.epa.gov/rmepub/*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through Regional Material in EDocket (RME), regulations.gov, or e-mail. The EPA RME website and the federal regulations.gov website are ''anonymous access'' systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through RME or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the Regional Material in EDocket (RME) index at *http://docket.epa.gov/rmepub/*. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in RME or in hard copy at Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Donald O. Cooke, Air Quality Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, One Congress Street, Suite 1100 (CAQ), Boston, MA 02114–2023, telephone number (617) 918–1668, fax number (617) 918–0668, e-mail *cooke.donald@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

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

In addition to the publicly available docket materials available for inspection electronically in Regional Material in EDocket, and the hard copy available at the Regional Office, which are identified

in the **ADDRESSES** section above, copies of the State submittal and EPA's technical support document are also available for public inspection during normal business hours, by appointment at the State Air Agency. The Bureau of Air Management, Connecticut Department of Environmental Protection, State Office Building, 79 Elm Street, Hartford, CT 06106–1630.

B. 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 regional file/rulemaking identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

II. Rulemaking Information

The following outline is provided to aid in locating information in this preamble.

A. Background and Purpose
B. Criteria for Limited Maintenance Plan Designation
1. EPA Guidance
2. Emission Inventory
3. Demonstration of Maintenance
4. Monitoring Network and Verification of Continued Attainment
C. Contingency
D. State Commitments
E. Conformity
F. Parallel Processing

A. Background and Purpose

On May 11, 2004, the Connecticut Department of Environmental Protection (CT DEP) submitted a draft revision to its State Implementation Plan (SIP) for ''Limited Maintenance Plans for the Hartford, the New Haven, and the Connecticut Portion of the New York/New Jersey/Connecticut Carbon Monoxide Maintenance Areas.'' The revision consists of a second follow-on ten-year carbon monoxide maintenance plan for the Hartford-New Britain-Middletown Carbon Monoxide Attainment Area (period 2006 to 2015) and a request for a limited CO maintenance plan designation. The State of Connecticut also requested Limited Maintenance Plan approval and early approval of the second follow-on ten-year maintenance plans for both the New Haven-Meriden-Waterbury carbon monoxide attainment area (period 2009 to 2018), and the Connecticut Portion of the New York-Northern New Jersey-Long Island (period 2011 to 2020) carbon monoxide attainment area.

In the early 1990's EPA designated three 8-hour carbon monoxide nonattainment areas in Connecticut. These three areas are as follows:

(1) Hartford-New Britain-Middletown (Hartford) Nonattainment Area

Hartford County (part) * * * Bristol City, Burlington Town, Avon Town, Bloomfield Town, Canton Town, E. Granby Town, E. Hartford Town, E. Windsor Town, Enfield Town, Farmington Town, Glastonbury Town, Granby Town, Hartford City, Manchester Town, Marlborough Town, Newington Town, Rocky Hill Town, Simsbury Town, South Windsor Town, Suffield Town, West Hartford Town, Wethersfield Town, Windsor Town, Windsor Locks Town, Berlin Town, New Britain city, Plainville Town, and Southington Town.

Litchfield County (part) * * * Plymouth Town. Middlesex County (part) * * * Cromwell Town, Durham Town, E. Hampton Town, Haddam Town, Middlefield Town, Middletown City, Portland Town, E. Haddam Town.

Tolland County (part) * * * Andover Town, Bolton Town, Ellington Town, Hebron Town, Somers Town, Tolland Town, and Vernon Town.

(2) New Haven-Meriden-Waterbury (New Haven) Attainment Area

Fairfield County (part) * * * Shelton City.

Litchfield County (part) * * * Bethlehem Town, Thomaston Town, Watertown, Woodbury Town.

New Haven County (entire county).

(3) Connecticut Portion of the New York-Northern New Jersey-Long Island (Southwest Connecticut) Nonattainment Area

Fairfield County (part) * * * All cities and townships except Shelton City.

Litchfield County (part) * * * Bridgewater Town and New Milford Town.

The State of Connecticut developed state implementation plans to control carbon monoxide emissions through a number of federally mandated control programs as well as State-initiated control programs. These control measures resulted in the attainment of the National Ambient Air Quality Standard (NAAQS) for carbon monoxide. Section 107(d)(3)(E) of the 1990 Clean Air Act Amendments provides five specific requirements that an area must meet in order to be redesignated from nonattainment to attainment: (1) The area must have attained the applicable NAAQS; (2) The area must have a fully approved SIP under section 110(k) of CAA; (3) The air quality improvement must be permanent and enforceable; (4) The area must have a fully approved maintenance plan pursuant to section 175A of the CAA; (5) The area must meet all applicable requirements under section 110 and Part D of the CAA. Each of the three Connecticut carbon monoxide nonattainment areas individually satisfied the redesignation criteria and were redesignated to attainment. Please see Table 1 below:

TABLE 1.—CONNECTICUT CO SIP REVISIONS

SIP Revision	EPA Effective Date	Federal Register citation	Initial Ten-Year Maintenance Period
Hartford Area Redesignation and Maintenance Plan	January 2, 1996	May 14, 1996, 61 FR 24239; Correction, November 15, 1996, 61 FR 58487.	1995–2005.
New Haven Area Redesignation and Maintenance Plan	December 4, 1998	October 5, 1998, 63 FR 53282	1998–2008.
Southwest Connecticut Redesignation and Maintenance Plan.	May 10, 1999	March 10, 1999, 64 FR 12005	2000–2010.

Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. The plan must demonstrate continued attainment of the applicable NAAQS for at least ten years after the Administrator approves a redesignation to attainment. Eight years after the redesignation, the state must submit a revised maintenance plan which demonstrates attainment for the ten years following the initial ten-year period.

B. Criteria for Limited Maintenance Plan Designation

1. EPA Guidance

For the Hartford, New Haven and Southwest Connecticut areas, CT DEP is proposing to utilize EPA's limited maintenance plan approach, as detailed in the EPA guidance memorandum, ''Limited Maintenance Plan Option for Nonclassifiable CO Nonattainment Areas'' from Joseph Paisie, Group Leader, Integrated Policy and Strategies Group, Office of Air Quality and Planning Standards (OAQPS), dated October 6, 1995, (the Paisie Memorandum). Pursuant to this approach, EPA will consider the maintenance demonstration satisfied for ''not classified'' areas if the monitoring data show the design value is at or below 7.65 parts per million (ppm), or 85 percent of the level of the 8-hour carbon monoxide CO NAAQS. The design value must be based on eight consecutive quarters of data. For such areas, there is no requirement to project emissions of air quality over the maintenance period. EPA believes if the area begins the maintenance period at, or below, 85 percent of the CO 8 hour NAAQS, the applicability of PSD requirements, the control measures already in the SIP, and Federal measures, should provide adequate assurance of maintenance over the initial 10-year maintenance period. In addition, the design value for the area must continue to be at or below 7.65 ppm until the time of final EPA action on the redesignation.

Current 2003 8-hour CO design values for each of Connecticut's CO maintenance areas are summarized in Table 2 below. Also listed are 2003 design values for the New York and New Jersey portions of the metropolitan New York City CO maintenance area. In all cases, current design values are significantly less than the 7.65 ppm threshold specified in EPA guidance, thus making each area potentially eligible for the limited maintenance plan option.

TABLE 2.—CURRENT DESIGN VALUES FOR CONNECTICUT'S CO MAINTENANCE AREAS

CO maintenance area	2003 8-hour CO design value (ppm)
Metropolitan New York City Maintenance Area:	
Southwest CT Portion	3.2
New York Portion	3.4
New Jersey Portion	4.4
Hartford Maintenance Area	5.2
New Haven Maintenance Area	2.3

2. Emission Inventory

The maintenance plan must contain an attainment year emissions inventory to identify a level of emissions in the area which is sufficient to attain the CO NAAQS. This inventory is to be consistent with EPA's most recent guidance on emissions inventories for nonattainment areas available at the time and should represent emissions during the time period associated with the monitoring data showing attainment.

A Connecticut statewide carbon monoxide emission inventory was prepared for a typical winter weekday in the year 2002, a year in which attainment was monitored in all three Connecticut carbon monoxide attainment areas, and the 8-hour carbon monoxide design value was below the carbon monoxide limited maintenance plan criteria of 7.65 parts per million. This statewide inventory was composed of 20.8 tons per day from point sources, 817.9 tons per day from area sources, 422.2 tons per day from non-road sources, and 1,871.3 tons per day from highway sources for a total statewide winter day carbon monoxide emissions of 3,132 tons.

3. Demonstration of Maintenance

As described in the Paisie Memorandum, the maintenance demonstration requirement is considered to be satisfied for ''not classified'' CO areas if the design value for the area is equal to, or less than 7.65 ppm. As presented in Table 2 the CO design values are for all of these areas are well below 7.65 ppm.

As assurance of maintenance, the CT DEP has provided statewide projections of CO emissions in tons per day (tpd) from onroad mobile sources for the years 2015 and 2025 during the peak annual CO season to demonstrate that carbon monoxide levels continue to decline in the remainder of the first ten-year maintenance plan as well as in the sequential second ten-year maintenance plan.

CT DEP developed statewide winter-day CO emission estimates for 2002, 2015, and 2020, accounting for emissions from the various point, area, and non-road and highway categories. Point and area source emissions were estimated by applying population growth factors to 1999 emission estimates contained in Connecticut's 1999 periodic inventory. Estimates for the non-road and highway categories were developed using EPA's most recent versions of the draft NONROAD model (version 2002a dated June 2003) and MOBILE6.2 model (dated September 24, 2003), respectively. Connecticut-specific inputs for each model, including highway vehicle miles traveled (VMT) growth, are documented in Appendix B and Appendix C of the State submittal, respectively. Note that MOBILE6.2 inputs for 2015 and 2020 do not include reformulated gasoline (*i.e.*, oxygenate effects are not modeled), vehicle emission testing, or the proposed adoption of California low emission vehicle program. Similarly, NONROAD model estimates for 2015 and 2020 do not include the oxygenate effects of reformulated gasoline or EPA's proposed new emission and fuel standards for non-road sources. As a result, 2015 and 2020 emission estimates are conservatively high for the purpose of clearly demonstrating that CO emissions will not likely increase for the duration of the maintenance periods.

TABLE 3.—ESTIMATED STATEWIDE WINTER-DAY CO EMISSION LEVELS IN 2002, 2015, AND 2020

Source category	2002 (tons/day)	2015 [1] (tons/day)	2020 [1] (tons/day)
Point	20.8	21.9	22.4
Area	817.9	861.3	881.3
Non-road	422.2	596.8	640.2
Highway	1,871.3	1,263.4	1,196.1
Total	3,132	2,743	2,740

[1] Highway emission projections for 2015 and 2020 do not include emission reductions from reformulated gasoline, vehicle emission testing, or the proposed adoption of California low emission vehicle standards. Non-road emission projections for 2015 and 2020 do not include the benefits of EPA's proposed non-road emission standards.

4. Monitoring Network and Verification of Continued Attainment

In the limited maintenance plan request, CT DEP committed to maintain a continuous CO monitoring network, meeting the requirements of 40 CFR part 58, that provides adequate coverage to verify continued compliance with the CO NAAQS in each CO maintenance area.

CT DEP will use data from the monitoring network to determine whether design values exceed the eligibility requirement of 7.65 ppm for each limited maintenance plan area. If design values in any maintenance area exceed 7.65 ppm, CT DEP will coordinate with EPA to: (1) Verify the validity of the data; (2) evaluate whether the data should be excluded based on an ''exceptional event''; and, if warranted based on the data review; (3) develop a full maintenance plan for the affected maintenance area(s).

C. Contingency Plan

Section 175A(d) of the Act requires that a maintenance plan include contingency provisions, as necessary, to correct promptly any violation of the NAAQS that occurs after redesignation of the area. Under section 175A(d), contingency measures do not have to be fully adopted at the time of redesignation. However, the contingency plan is considered to be an enforceable part of the SIP and should ensure that the contingency measures are adopted expeditiously once they are triggered by a specified event.

CT DEP has developed a two-phase contingency plan to address any measured CO concentration, in any of the three maintenance areas, above the level of the NAAQS that meets quality assurance criteria and does not qualify for exclusion under EPA's ''exceptional events'' policy. Implementation of the contingency plan after the first verified CO exceedance is intended to provide an opportunity for corrective action before any NAAQS violations (*i.e.*, a second CO exceedance in the same calendar year) can occur.

Subsequent to the verification of any measured exceedance of the CO NAAQS, the CT DEP will promptly analyze available air quality, meteorological, traffic, and other relevant data near the affected monitor to determine the likely cause of the exceedance. The CT DEP will confer with the appropriate officials at the CT DOT, regional planning agencies, and municipalities to determine if a local remedy (*e.g.*, traffic signal changes, revised parking ordinances) is appropriate to avoid future exceedances of the standard. If such local actions are feasible and determined to be effective, CT DEP will work with the affected agencies to pursue implementation as soon as possible. If local actions are determined to be infeasible or ineffective, CT DEP will pursue the second-phase of the contingency plan.

The second phase of the contingency plan will be triggered if implementation of local corrective action is judged infeasible or ineffective (*i.e.*, if another verified exceedance is recorded after the first phase actions are fully implemented). As part of the second-phase of the plan, CT DEP will evaluate whether any current or recently adopted (at the time of the exceedance) future control programs will provide adequate additional emission reductions to prevent future CO exceedances at the affected monitor. CT DEP will use EPA-approved modeling techniques available at the time of the exceedance (*e.g.*, currently MOBILE6.2 for emission estimates) to estimate expected future emission reductions and determine the resulting effect at the monitor of concern.

D. State Commitments

EPA's guidance for limited maintenance plans also requires States to include several commitments as part of the SIP revision. To fulfill those requirements, CT DEP provides the following commitments, which will be in effect through the end of each area's second 10-year maintenance period, as described in Table 4.

TABLE 4.—CONNECTICUT CO MAINTENANCE PLAN TIME PERIODS

SIP revision	EPA effective date	Initial ten-year maintenance period	Second ten-year maintenance period
Hartford Area Redesignation and Maintenance Plan	January 2, 1996	1995–2005	2006–2015
New Haven Area Redesignation and Maintenance Plan	December 4, 1998	1998–2008	2009–2018
Southwest Connecticut Redesignation and Maintenance Plan	May 10, 1999	2000–2010	2011–2020

CT DEP will maintain a continuous CO monitoring network, meeting the requirements of 40 CFR Part 58, that provides adequate coverage to verify continued compliance with the CO NAAQS in each CO maintenance area.

CT DEP will use data from the monitoring network to determine whether design values exceed the eligibility requirement of 7.65 ppm for each limited maintenance plan area. If design values in any maintenance area exceed 7.65 ppm, CT DEP will coordinate with EPA to: (1) verify the validity of the data; (2) evaluate whether the data should be excluded based on an ''exceptional event'; and, if warranted based on the data review, (3) develop a full maintenance plan for the affected maintenance areas.

CT DEP will continue to ensure that project-level CO evaluations of transportation projects (*i.e.*, project-level conformity, as described in 40 CFR 93.116) in each area are carried out as part of environmental reviews or Connecticut's indirect source permitting program. CT DEP is currently considering modifications to the indirect source program, but anticipates any changes will require similar project-level CO reviews.

F. Conformity

Section 176(c) of the Act defines transportation conformity as conformity to the SIP's purpose of eliminating or reducing the severity and number of violations of the NAAQS and achieving expeditious attainment of such standards. The Act further defines transportation conformity to mean that no Federal transportation activity will: (1) cause or contribute to any new violation of any standard in any area; (2) increase the frequency or severity of any existing violation of any standard in any area; or (3) delay timely attainment of any standard or any required interim emission reductions or other milestones in any area. The Federal Transportation Conformity Rule, 40 CFR part 93 subpart A, sets forth the criteria and procedures for demonstrating and assuring conformity of transportation plans, programs and projects which are developed, funded or approved by the U.S. Department of Transportation, and by metropolitan planning organizations or other recipients of funds under title 23 U.S.C. or the Federal Transit Laws (49 U.S.C. chapter 53). The transportation conformity rule applies within all nonattainment and maintenance areas. As prescribed by the transportation conformity rule, once an area has an applicable State implementation plan with motor vehicle emissions budgets, the expected emissions from planned transportation activities must be consistent with (''conform to'') such established budgets for that area.

In the case of the Hartford, New Haven and Southwest Connecticut CO limited maintenance plan areas, however, the emissions budgets may be treated as essentially not constraining for the length of the initial maintenance period and second maintenance period as long as the area continues to meet the limited maintenance criteria, because there is no reason to expect that these areas will experience so much growth in that period that a violation of the CO NAAQS would result. In other words, emissions from on-road transportation sources need not be capped for the maintenance period because it is unreasonable to believe that emissions from such sources would increase to a level that would threaten the air quality in this area for the duration of this maintenance period. Therefore, for the limited maintenance plan CO maintenance area, all Federal actions that require conformity determinations under the transportation conformity rule are considered to satisfy the regional emissions analysis and ''budget test'' requirements in 40 CFR 93.118 of the rule.

Since limited maintenance plan areas are still maintenance areas, however, transportation conformity determinations are still required for transportation plans, programs and projects. Specifically, for such determinations, transportation plans, transportation improvement programs, and projects must still demonstrate that they are fiscally constrained (40 CFR part 108) and must meet the criteria for consultation and Transportation Control Measure (TCM) implementation in the conformity rule (40 CFR 93.112 and 40 CFR 93.113, respectively). In addition, projects in limited maintenance areas will still be required to meet the criteria for CO hot spot analyses to satisfy ''project level'' conformity determinations (40 CFR 93.116 and 40 CFR 93.123) which must incorporate the latest planning assumptions and models that are available. All aspects of transportation conformity (with the exception of satisfying the emission budget test) will still be required.

If one of the carbon monoxide attainment areas monitors carbon monoxide concentrations at or above the limited maintenance eligibility criteria or 7.65 parts per million then that maintenance area would no longer qualify for a limited maintenance plan and would revert to a full maintenance plan. In this event, the limited maintenance plan would remain applicable for conformity purposes only until the full maintenance plan is submitted and EPA has found its motor vehicle emissions budgets adequate for conformity purposes or EPA approves the full maintenance plan SIP revision. At that time regional emissions analyses would resume as a transportation conformity criteria.

E. Parallel Processing

The CT DEP has requested that EPA parallel process this proposed SIP revision. Under this procedure, EPA-New England Regional Office works closely with the CT DEP, the state air agency, while the state is developing new or revised regulations. The state submits a copy of its proposed regulation or other revisions to EPA before conducting its public hearing. EPA reviews this proposed State action, and prepares a notice of proposed rulemaking. EPA's notice of proposed rulemaking is published in the **Federal Register** during the same time frame that the State is holding its public hearing. The State and EPA then provide for concurrent public comment periods on both the State action and Federal action. After the State submits the formal SIP revision request (including a response to all public comments raised during the State's public participation process), EPA will prepare a final rulemaking notice. If the State of Connecticut's formal SIP submittal contains changes which occur after EPA's notice of proposed rulemaking, such changes must be described in EPA's final rulemaking action. If the State's changes are significant, then EPA must decide whether it is appropriate to re-propose the State's action.

III. Proposed Action

EPA is proposing to approve a draft State Implementation Plan (SIP) revision submitted by the State of Connecticut. This SIP revision will establish limited maintenance plans for the Hartford-New Britain-Middletown, the New Haven-Meriden-Waterbury, and the Connecticut portion of the New York-Northern New Jersey-Long Island carbon monoxide attainment areas, and provide the ten-year update to these three carbon monoxide maintenance plans. EPA is parallel processing this SIP revision.

EPA is soliciting public comments on the issues discussed in this proposal or on other relevant matters. These comments will be considered before EPA takes final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA New England Regional Office listed in the **ADDRESSES** section of this action, or by submitting comments electronically, by mail, or through hand delivery/courier following the directions in the **SUPPLEMENTARY INFORMATION,** I. General Information section of this action.

Interested parties are also encouraged to participate in the concurrent State process by presenting oral or written testimony at the State of Connecticut's June 17, 2004 public hearing at 2 p.m. at the Connecticut Department of Environmental Protection, 5th Floor Holcombe Room. Written comments may also be submitted on or before 4:30 p.m. on June 17, 2004, to Connecticut Department of Environmental Protection, Bureau of Air Management, Planning and Standards Division, 5th

Floor, 79 Elm Street, Hartford, Connecticut 06106–5127 during the State's comment period. For additional information on Connecticut's public participation process please contact Ms. Patricia Downes, Connecticut Department of Environmental Protection, Bureau of Air Management Planning and Standards Division, 5th Floor, 79 Elm Street, Hartford, Connecticut 06106–5127 at (860) 424–3027.

IV. Statutory and Executive Order Reviews

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

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

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations.

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

Dated: June 15, 2004.

Robert W. Varney,

Regional Administrator, EPA New England.

[FR Doc. 04–14219 Filed 6–22–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 55

[FRL–7778–1]

Outer Continental Shelf Air Regulations; Consistency Update for California

AGENCY: Environmental Protection Agency (''EPA'').

ACTION: Proposed rule—Consistency Update.

SUMMARY: EPA is proposing to update a portion of the Outer Continental Shelf (''OCS'') Air Regulations. Requirements applying to OCS sources located within 25 miles of States' seaward boundaries must be updated periodically to remain consistent with the requirements of the corresponding onshore area (''COA''), as mandated by section 328(a)(1) of the Clean Air Act, as amended in 1990 (''the Act''). The portion of the OCS air regulations that is being updated pertains to the requirements for OCS sources for which the South Coast Air Quality Management District (South Coast AQMD) and Ventura County Air Pollution Control District (Ventura County APCD) are the designated COAs. The intended effect of approving the OCS requirements for the above Districts is to regulate emissions from OCS sources in accordance with the requirements onshore. The change to the existing requirements discussed below is proposed to be incorporated by reference into the Code of Federal Regulations and is listed in the appendix to the OCS air regulations.

DATES: Comments on the proposed update must be received on or before July 23, 2004.

ADDRESSES: Comments must be mailed (in duplicate if possible) to Andy Steckel, Rulemaking Office Chief (Air–4), Attn: Docket No. A–93–16 section XXX, Environmental Protection Agency, Air Division, Region 9, 75 Hawthorne St., San Francisco, CA 94105–3901 or e-mail to *steckel.andrew@epa.gov*.

Docket: Supporting information used in developing the rules and copies of the document EPA is proposing to incorporate by reference are contained in Docket No. A–93–16 section XXX. This docket is available for public inspection and copying Monday–Friday during regular business hours at the following locations:

EPA Air Docket (Air–4), Attn: Docket No. A–93–16 section XXX, Environmental Protection Agency, Air Division, Region 9, 75 Hawthorne St., San Francisco, CA 94105.

EPA Air Docket (LE–131), Attn: Air Docket No. A–93–16 section XXX, Environmental Protection Agency, Air Docket (6102), Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington DC 20460.

A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Christine Vineyard, Air Division (Air–4), U.S. EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105, (415) 947–4125, *vineyard.christine@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background information

A. Why Is EPA Taking This Action?

On September 4, 1992, EPA promulgated 40 CFR part 55,[1] which established requirements to control air pollution from OCS sources in order to

[1] The reader may refer to the Notice of Proposed Rulemaking, December 5, 1991 (56 FR 63774), and the preamble to the final rule promulgated September 4, 1992 (57 FR 40792) for further background and information on the OCS regulations.

attain and maintain Federal and State ambient air quality standards and to comply with the provisions of part C of title I of the Act. Part 55 applies to all OCS sources offshore of the States except those located in the Gulf of Mexico west of 87.5 degrees longitude. Section 328 of the Act requires that for such sources located within 25 miles of a State's seaward boundary, the requirements shall be the same as would be applicable if the sources were located in the COA. Because the OCS requirements are based on onshore requirements, and onshore requirements may change, section 328(a)(1) requires that EPA update the OCS requirements as necessary to maintain consistency with onshore requirements.

Pursuant to § 55.12 of the OCS rule, consistency reviews will occur (1) at least annually; (2) upon receipt of a Notice of Intent under § 55.4; or (3) when a State or local agency submits a rule to EPA to be considered for incorporation by reference in part 55. This proposed action is being taken in response to the submittal of rules by two local air pollution control agencies. Public comments received in writing within 30 days of publication of this document will be considered by EPA before publishing a final rule.

Section 328(a) of the Act requires that EPA establish requirements to control air pollution from OCS sources located within 25 miles of States' seaward boundaries that are the same as onshore requirements. To comply with this statutory mandate, EPA must incorporate applicable onshore rules into part 55 as they exist onshore. This limits EPA's flexibility in deciding which requirements will be incorporated into part 55 and prevents EPA from making substantive changes to the requirements it incorporates. As a result, EPA may be incorporating rules into part 55 that do not conform to all of EPA's State implementation plan (SIP) guidance or certain requirements of the Act. Consistency updates may result in the inclusion of State or local rules or regulations into part 55, even though the same rules may ultimately be disapproved for inclusion as part of the SIP. Inclusion in the OCS rule does not imply that a rule meets the requirements of the Act for SIP approval, nor does it imply that the rule will be approved by EPA for inclusion in the SIP.

II. EPA's Evaluation

A. What Criteria Were Used To Evaluate Rules Submitted To Update 40 CFR Part 55?

In updating 40 CFR part 55, EPA reviewed the rules submitted for inclusion in part 55 to ensure that they are rationally related to the attainment or maintenance of Federal or State ambient air quality standards or part C of title I of the Act, that they are not designed expressly to prevent exploration and development of the OCS and that they are applicable to OCS sources. 40 CFR 55.1. EPA has also evaluated the rules to ensure they are not arbitrary or capricious. 40 CFR 55.12 (e). In addition, EPA has excluded administrative or procedural rules,[2] and requirements that regulate toxics which are not related to the attainment and maintenance of Federal and State ambient air quality standards.

B. What Rule Revisions Were Submitted To Update 40 CFR Part 55?

1. After review of the rules submitted by South Coast AQMD against the criteria set forth above and in 40 CFR part 55, EPA is proposing to making the following rules applicable to OCS sources for which the South Coast AQMD is designated as the COA:

Rule No.	Rule name	Adoption date
1162	Polyester Resin Operations	7/11/03
1168	Adhesive Sealant Applications	10/3/03
1105.1	Reduction of PM_{10} and Ammonia Emissions from Fluid Catalytic Cracking Units	11/7/03
1171	Solvent Cleaning Operations	11/7/03
1113	Architectural Coatings	12/5/03

2. After review of the rules submitted by Ventura County APCD against the criteria set forth above and in 40 CFR part 55, EPA is proposing to make the following rules applicable to OCS sources for which the Ventura County APCD is designated as the COA:

Rule No.	Rule name	Adoption date
23	Exemptions from Permit	11/11/03
56	Open Burning	11/11/03
74.20	Adhesives and Sealants	09/09/03
74.6	Surface Cleaning and Degreasing (Now includes Cold Cleaning Operations previously Rule 74.6.1).	[1] 11/11/03
74.6.1	Batch Loaded Vapor Degreasers—previously 74.6.2 repealed and renamed 74.6.1; (74.6.1 previously named Cold Cleaning Operations is now included in Rule 74.6).	[1] 11/11/03
74.12	Surface Coating of Metal Parts and Products	11/11/03
74.24	Marine Coating Operations	11/11/03
74.30	Wood Products Coatings	11/11/03

[1] Effective 7/1/04.

[2] Each COA which has been delegated the authority to implement and enforce part 55, will use its administrative and procedural rules as onshore. However, in those instances where EPA has not delegated authority to implement and enforce part 55, EPA will use its own administrative and procedural requirements to implement the substantive requirements. 40 CFR 55.14 (c)(4).

EPA is repealing the following rules applicable to OCS sources for which the Ventura County APCD is designated as the COA:

Rule No.	Rule name	Date repealed
60	New Non-Mobile Equipment-Sulfur Dioxide, Nitrogen Oxides, and Particulate Matter	4/13/04
100	Analytical Methods	4/13/04

III. Administrative Requirements

A. Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled ''Regulatory Planning and Review.''

B. Paperwork Reduction Act

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA,* 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

D. Unfunded Mandates Reform Act

Under sections 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action proposed does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action proposes to approve pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

E. Executive Order 13132, Federalism

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, 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 EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

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, as specified in Executive Order 13132, because it merely approves a State rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

F. Executive Order 13175, Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This proposed rule does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. Thus, Executive Order 13175 does not apply to this rule.

EPA specifically solicits additional comment on this proposed rule from tribal officials.

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

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be ''economically

significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

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

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

List of Subjects in 40 CFR Part 55

Administrative practice and procedures, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Nitrogen oxides, Outer Continental Shelf, Ozone, Particulate matter, Permits, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: June 8, 2004.

Laura Yoshii,

Acting Regional Administrator, Region IX.

Title 40 Chapter I of the Code of Federal Regulations, is proposed to be amended as follows:

PART 55—[AMENDED]

1. The authority citation for part 55 continues to read as follows:

Authority: Section 328 of the Clean Air Act (42 U.S.C. 7401 *et seq.*) as amended by Public Law 101–549.

2. Section 55.14 is amended by revising paragraph (e) (3)(ii) (H) to read as follows:

§ 55.14 Requirements that apply to OCS sources located within 25 miles of States' seaward boundaries, by State.

* * * * *

(e) * * *

(3) * * *

(ii) * * *

(H) *Ventura County Air Pollution Control District Requirements Applicable to OCS Sources.*

* * * * *

Appendix to Part 55—[Amended]

3. Appendix A to CFR part 55 is amended by revising paragraphs (b)(7) and (b)(8) under the heading ''California'' to read as follows:

Appendix A to 40 CFR Part 55—Listing of State and Local Requirements Incorporated by Reference Into Part 55, by State

* * * * *

California

* * * * *

(b) * * *

* * * * *

(7) *The following requirements are contained in South Coast Air Quality Management District Requirements Applicable to OCS Sources* (Part I, II and III):

Rule 102 Definition of Terms (Adopted 10/19/01)
Rule 103 Definition of Geographical Areas (Adopted 1/9/76)
Rule 104 Reporting of Source Test Data and Analyses (Adopted 1/9/76)
Rule 108 Alternative Emission Control Plans (Adopted 4/6/90)
Rule 109 Recordkeeping for Volatile Organic Compound Emissions (Adopted 8/18/00)
Rule 112 Definition of Minor Violation and Guidelines for Issuance of Notice to Comply (Adopted 11/13/98)
Rule 118 Emergencies (Adopted 12/7/95)
Rule 201 Permit to Construct (Adopted 1/5/90)
Rule 201.1 Permit Conditions in Federally Issued Permits to Construct (Adopted 1/5/90)
Rule 202 Temporary Permit to Operate (Adopted 5/7/76)
Rule 203 Permit to Operate (Adopted 1/5/90)
Rule 204 Permit Conditions (Adopted 3/6/92)
Rule 205 Expiration of Permits to Construct (Adopted 1/5/90)
Rule 206 Posting of Permit to Operate (Adopted 1/5/90)
Rule 207 Altering or Falsifying of Permit (Adopted 1/9/76)
Rule 208 Permit and Burn Authorization for Open Burning (12/21/01)
Rule 209 Transfer and Voiding of Permits (Adopted 1/5/90)
Rule 210 Applications and Regulation II—List and Criteria Identifying Information required of Applicants Seeking a Permit to Construct from the SCAQMD (Adopted 4/10/98)
Rule 212 Standards for Approving Permits (Adopted 12/7/95) except (c)(3) and (e)
Rule 214 Denial of Permits (Adopted 1/5/90)
Rule 217 Provisions for Sampling and Testing Facilities (Adopted 1/5/90)
Rule 218 Continuous Emission Monitoring (Adopted 5/14/99)
Rule 218.1 Continuous Emission Monitoring Performance Specifications (Adopted 5/14/99)
Rule 218.1 Attachment A—Supplemental and Alternative CEMS Performance Requirements (Adopted 5/14/99)
Rule 219 Equipment Not Requiring a Written Permit Pursuant to Regulation II (Adopted 11/17/00)
Rule 220 Exemption—Net Increase in Emissions (Adopted 8/7/81)
Rule 221 Plans (Adopted 1/4/85)
Rule 301 Permit Fees (Adopted 5/11/01) except (e)(7) and Table IV
Rule 304 Equipment, Materials, and Ambient Air Analyses (Adopted 5/11/01)
Rule 304.1 Analyses Fees (Adopted 5/11/01)
Rule 305 Fees for Acid Deposition (Adopted 10/4/91)
Rule 306 Plan Fees (Adopted 5/11/01)
Rule 309 Fees for Regulation XVI Plans (Adopted 5/11/01)
Rule 401 Visible Emissions (Adopted 11/9/01)
Rule 403 Fugitive Dust (Adopted 12/11/98)
Rule 404 Particulate Matter—Concentration (Adopted 2/7/86)
Rule 405 Solid Particulate Matter—Weight (Adopted 2/7/86)
Rule 407 Liquid and Gaseous Air Contaminants (Adopted 4/2/82)
Rule 408 Circumvention (Adopted 5/7/76)
Rule 409 Combustion Contaminants (Adopted 8/7/81)
Rule 429 Start-Up and Shutdown Provisions for Oxides of Nitrogen (Adopted 12/21/90)
Rule 430 Breakdown Provisions, (a) and (e) only (Adopted 7/12/96)
Rule 431.1 Sulfur Content of Gaseous Fuels (Adopted 6/12/98)
Rule 431.2 Sulfur Content of Liquid Fuels (Adopted 9/15/00)
Rule 431.3 Sulfur Content of Fossil Fuels (Adopted 5/7/76)
Rule 441 Research Operations (Adopted 5/7/76)
Rule 442 Usage of Solvents (Adopted 12/15/00)
Rule 444 Open Burning (Adopted 12/21/01)
Rule 463 Organic Liquid Storage (Adopted 3/11/94)
Rule 465 Vacuum Producing Devices or Systems (Adopted 8/13/99)
Rule 468 Sulfur Recovery Units (Adopted 10/8/76)

Rule 473 Disposal of Solid and Liquid Wastes (Adopted 5/7/76)
Rule 474 Fuel Burning Equipment-Oxides of Nitrogen (Adopted 12/4/81)
Rule 475 Electric Power Generating Equipment (Adopted 8/7/78)
Rule 476 Steam Generating Equipment (Adopted 10/8/76)
Rule 480 Natural Gas Fired Control Devices (Adopted 10/7/77) Addendum to Regulation IV (Effective 1977)
Rule 518 Variance Procedures for Title V Facilities (Adopted 8/11/95)
Rule 518.1 Permit Appeal Procedures for Title V Facilities (Adopted 8/11/95)
Rule 518.2 Federal Alternative Operating Conditions (Adopted 12/21/01)
Rule 701 Air Pollution Emergency Contingency Actions (Adopted 6/13/97)
Rule 702 Definitions (Adopted 7/11/80)
Rule 708 Plans (Rescinded 9/8/95)
Regulation IX New Source Performance Standards (Adopted 5/11/01)
Reg. X National Emission Standards for Hazardous Air Pollutants (NESHAPS) (Adopted 5/11/01)
Rule 1105.1 Reduction of PM_{10} and Ammonia Emissions From Fluid Catalytic Crackling Units (Adopted 11/7/03)
Rule 1106 Marine Coatings Operations (Adopted 1/13/95)
Rule 1107 Coating of Metal Parts and Products (Adopted 11/9/01)
Rule 1109 Emissions of Oxides of Nitrogen for Boilers and Process Heaters in Petroleum Refineries (Adopted 8/5/88)
Rule 1110 Emissions from Stationary Internal Combustion Engines (Demonstration) (Adopted 11/14/97)
Rule 1110.1 Emissions from Stationary Internal Combustion Engines (Adopted 10/4/85)
Rule 1110.2 Emissions from Gaseous- and Liquid Fueled Internal Combustion Engines (Adopted 11/14/97)
Rule 1113 Architectural Coatings (Amended 12/05/03)
Rule 1116.1 Lightering Vessel Operations-Sulfur Content of Bunker Fuel (Adopted 10/20/78)
Rule 1121 Control of Nitrogen Oxides from Residential-Type Natural Gas-Fired Water Heaters (Adopted 12/10/99)
Rule 1122 Solvent Degreasers (Adopted 12/06/02)
Rule 1123 Refinery Process Turnarounds (Adopted 12/7/90)
Rule 1125 Metal Containers, Closure, and Coil Coating Operations (Adopted 1/13/95)
Rule 1132 Further Control of VOC Emissions from High-Emitting Spray Booth Facilities (Adopted 1/19/01)
Rule 1134 Emissions of Oxides of Nitrogen from Stationary Gas Turbines (Adopted 8/8/97)
Rule 1136 Wood Products Coatings (Adopted 6/14/96)
Rule 1137 PM_{10} Emission Reductions from Woodworking Operations (Adopted 2/01/02)
Rule 1140 Abrasive Blasting (Adopted 8/2/85)
Rule 1142 Marine Tank Vessel Operations (Adopted 7/19/91)
Rule 1146 Emissions of Oxides of Nitrogen from Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters (Adopted 11/17/00)
Rule 1146.1 Emission of Oxides of Nitrogen from Small Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters (Adopted 5/13/94)
Rule 1146.2 Emissions of Oxides of Nitrogen from Large Water Heaters and Small Boilers (Adopted 1/9/98)
Rule 1148 Thermally Enhanced Oil Recovery Wells (Adopted 11/5/82)
Rule 1149 Storage Tank Degassing (Adopted 7/14/95)
Rule 1162 Polyester Resin Operations (Amended 07/11/03)
Rule 1168 Adhesive and Sealant Applications (Amended 10/3/03)
Rule 1171 Solvent Cleaning Operations (Amended 11/7/03)
Rule 1173 Fugitive Emissions of Volatile Organic Compounds (Adopted 12/06/02)
Rule 1176 VOC Emissions from Wastewater Systems (Adopted 9/13/96)
Rule 1178 Further Reductions of VOC Emissions from Storage Tanks at Petroleum Facilities (Adopted 12/21/01)
Rule 1301 General (Adopted 12/7/95)
Rule 1302 Definitions (Adopted 12/06/02)
Rule 1303 Requirements (Adopted 12/06/02)
Rule 1304 Exemptions (Adopted 6/14/96)
Rule 1306 Emission Calculations (Adopted 12/06/02)
Rule 1313 Permits to Operate (Adopted 12/7/95)
Rule 1403 Asbestos Emissions from Demolition/Renovation Activities (Adopted 4/8/94)
Rule 1605 Credits for the Voluntary Repair of On-Road Vehicles Identified Through Remote Sensing Devices (Adopted 10/11/96)
Rule 1610 Old-Vehicle Scrapping (Adopted 2/12/99)
Rule 1612 Credits for Clean On-Road Vehicles (Adopted 7/10/98)
Rule 1612.1 Mobile Source Credit Generation Pilot Program (Adopted 3/16/01)
Rule 1620 Credits for Clean Off-Road Mobile Equipment (Adopted 7/10/98)
Rule 1701 General (Adopted 8/13/99)
Rule 1702 Definitions (Adopted 8/13/99)
Rule 1703 PSD Analysis (Adopted 10/7/88)
Rule 1704 Exemptions (Adopted 8/13/99)
Rule 1706 Emission Calculations (Adopted 8/13/99)
Rule 1713 Source Obligation (Adopted 10/7/88)
Regulation XVII Appendix (effective 1977)
Rule 1901 General Conformity (Adopted 9/9/94)
Rule 2000 General (Adopted 5/11/01)
Rule 2001 Applicability (Adopted 2/14/97)
Rule 2002 Allocations for Oxides of Nitrogen (NO_X) and Oxides of Sulfur (SO_x) Emissions (Adopted 5/11/01)
Rule 2004 Requirements (Adopted 5/11/01) except (l)
Rule 2005 New Source Review for RECLAIM (Adopted 4/20/01) except (i)
Rule 2006 Permits (Adopted 5/11/01)
Rule 2007 Trading Requirements (Adopted 5/11/01)
Rule 2008 Mobile Source Credits (Adopted 10/15/93)
Rule 2010 Administrative Remedies and Sanctions (Adopted 5/11/01)
Rule 2011 Requirements for Monitoring, Reporting, and Recordkeeping for Oxides of Sulfur (SO_x) Emissions (Adopted 5/11/01)
Appendix A Volume IV—(Protocol for oxides of sulfur) (Adopted 3/10/95)
Rule 2012 Requirements for Monitoring, Reporting, and Recordkeeping for Oxides of Nitrogen (NO_X) Emissions (Adopted 5/11/01)
Appendix A Volume V—(Protocol for oxides of nitrogen) (Adopted 3/10/95)
Rule 2015 Backstop Provisions (Adopted 5/11/11) except (b)(1)(G) and (b)(3)(B)
Rule 2020 RECLAIM Reserve (Adopted 5/11/01)
Rule 2100 Registration of Portable Equipment (Adopted 7/11/97)
Rule 2506 Area Source Credits for NO_X and SO_x (Adopted 12/10/99)
XXX Title V Permits
Rule 3000 General (Adopted 11/14/97)
Rule 3001 Applicability (Adopted 11/14/97)
Rule 3002 Requirements (Adopted 11/14/97)
Rule 3003 Applications (Adopted 3/16/01)
Rule 3004 Permit Types and Content (Adopted 12/12/97)
Rule 3005 Permit Revisions (Adopted 3/16/01)
Rule 3006 Public Participation (Adopted 11/14/97)
Rule 3007 Effect of Permit (Adopted 10/8/93)
Rule 3008 Potential To Emit Limitations (3/16/01)
XXXI Acid Rain Permit Program (Adopted 2/10/95)

* * * * *

(8) The following requirements are contained in *Ventura County Air Pollution Control District Requirements Applicable to OCS Sources:*

Rule 2 Definitions (Adopted 4/13/04)
Rule 5 Effective Date (Adopted 4/13/04)
Rule 6 Severability (Adopted 11/21/78)
Rule 7 Zone Boundaries (Adopted 6/14/77)
Rule 10 Permits Required (Adopted 4/13/04)
Rule 11 Definition for Regulation II (Adopted 6/13/95)
Rule 12 Application for Permits (Adopted 6/13/95)
Rule 13 Action on Applications for an Authority to Construct (Adopted 6/13/95)
Rule 14 Action on Applications for a Permit to Operate (Adopted 6/13/95)
Rule 15.1 Sampling and Testing Facilities (Adopted 10/12/93)
Rule 16 BACT Certification (Adopted 6/13/95)
Rule 19 Posting of Permits (Adopted 5/23/72)
Rule 20 Transfer of Permit (Adopted 5/23/72)
Rule 23 Exemptions from Permits (Revised 4/13/04)
Rule 24 Source Recordkeeping, Reporting, and Emission Statements (Adopted 9/15/92)

Rule 26 New Source Review (Adopted 10/22/91)
Rule 26.1 New Source Review—Definitions (Adopted 5/14/02)
Rule 26.2 New Source Review—Requirements (Adopted 5/14/02)
Rule 26.3 New Source Review—Exemptions (Adopted 5/14/02)
Rule 26.6 New Source Review—Calculations (Adopted 5/14/02)
Rule 26.8 New Source Review—Permit To Operate (Adopted 10/22/91)
Rule 26.10 New Source Review—PSD (Adopted 1/13/98)
Rule 26.11 New Source Review—ERC Evaluation at Time of Use (Adopted 5/14/02)
Rule 28 Revocation of Permits (Adopted 7/18/72)
Rule 29 Conditions on Permits (Adopted 10/22/91)
Rule 30 Permit Renewal (Adopted 4/13/04)
Rule 32 Breakdown Conditions: Emergency Variances, A., B.1., and D. only (Adopted 2/20/79)
Rule 33 Part 70 Permits—General (Adopted 10/12/93)
Rule 33.1 Part 70 Permits—Definitions (Adopted 4/10/01)
Rule 33.2 Part 70 Permits—Application Contents (Adopted 4/10/01)
Rule 33.3 Part 70 Permits—Permit Content (Adopted 4/10/01)
Rule 33.4 Part 70 Permits—Operational Flexibility (Adopted 4/10/01)
Rule 33.5 Part 70 Permits—Time Frames for Applications, Review and Issuance (Adopted 10/12/93)
Rule 33.6 Part 70 Permits—Permit Term and Permit Reissuance (Adopted 10/12/93)
Rule 33.7 Part 70 Permits—Notification (Adopted 4/10/01)
Rule 33.8 Part 70 Permits—Reopening of Permits (Adopted 10/12/93)
Rule 33.9 Part 70 Permits—Compliance Provisions (Adopted 4/10/01)
Rule 33.10 Part 70 Permits—General Part 70 Permits (Adopted 10/12/93)
Rule 34 Acid Deposition Control (Adopted 3/14/95)
Rule 35 Elective Emission Limits (Adopted 11/12/96)
Rule 36 New Source Review—Hazardous Air Pollutants (Adopted 10/6/98)
Rule 42 Permit Fees (Adopted 4/13/04)
Rule 44 Exemption Evaluation Fee (Adopted 9/10/96)
Rule 45 Plan Fees (Adopted 6/19/90)
Rule 47 Source Test, Emission Monitor, and Call-Back Fees (Adopted 6/22/99)
Rule 45.2 Asbestos Removal Fees (Adopted 8/4/92)
Rule 50 Opacity (Adopted 4/13/04)
Rule 52 Particulate Matter—Concentration (Adopted 4/13/04)
Rule 53 Particulate Matter—Process Weight (Adopted 4/13/04)
Rule 54 Sulfur Compounds (Adopted 6/14/94)
Rule 56 Open Burning (Revised 11/11/03)
Rule 57 Combustion Contaminants—Specific (Adopted 6/14/77)
Rule 62.7 Asbestos—Demolition and Renovation (Adopted 6/16/92)
Rule 63 Separation and Combination of Emissions (Adopted 11/21/78)
Rule 64 Sulfur Content of Fuels (Adopted 4/13/99)
Rule 67 Vacuum Producing Devices (Adopted 7/5/83)
Rule 68 Carbon Monoxide (Adopted 4/13/04)
Rule 71 Crude Oil and Reactive Organic Compound Liquids (Adopted 12/13/94)
Rule 71.1 Crude Oil Production and Separation (Adopted 6/16/92)
Rule 71.2 Storage of Reactive Organic Compound Liquids (Adopted 9/26/89)
Rule 71.3 Transfer of Reactive Organic Compound Liquids (Adopted 6/16/92)
Rule 71.4 Petroleum Sumps, Pits, Ponds, and Well Cellars (Adopted 6/8/93)
Rule 71.5 Glycol Dehydrators (Adopted 12/13/94)
Rule 72 New Source Performance Standards (NSPS) (Adopted 4/10/01)
Rule 73 National Emission Standards for Hazardous Air Pollutants (NESHAPS(Adopted 04/10/01)
Rule 74 Specific Source Standards (Adopted 7/6/76)
Rule 74.1 Abrasive Blasting (Adopted 11/12/91)
Rule 74.2 Architectural Coatings (Adopted 11/13/01)
Rule 74.6 Surface Cleaning and Degreasing (Revised 11/11/03—effective 7/1/04)
Rule 74.6.1 Batch Loaded Vapor Degreasers (Adopted 11/11/03—effective 7/1/04)
Rule 74.7 Fugitive Emissions of Reactive Organic Compounds at Petroleum Refineries and Chemical Plants (Adopted 10/10/95)
Rule 74.8 Refinery Vacuum Producing Systems, Waste-water Separators and Process Turnarounds (Adopted 7/5/83)
Rule 74.9 Stationary Internal Combustion Engines (Adopted 11/14/00)
Rule 74.10 Components at Crude Oil Production Facilities and Natural Gas Production and Processing Facilities (Adopted 3/10/98)
Rule 74.11 Natural Gas-Fired Residential Water Heaters—Control of NO_X (Adopted 4/9/85)
Rule 74.11.1 Large Water Heaters and Small Boilers (Adopted 9/14/99)
Rule 74.12 Surface Coating of Metal Parts and Products (Adopted 11/11/03)
Rule 74.15 Boilers, Steam Generators and Process Heaters (Adopted 11/8/94)
Rule 74.15.1 Boilers, Steam Generators and Process Heaters (Adopted 6/13/00)
Rule 74.16 Oil Field Drilling Operations (Adopted 1/8/91)
Rule 74.20 Adhesives and Sealants (Adopted 9/9/03)
Rule 74.23 Stationary Gas Turbines (Adopted 1/08/02)
Rule 74.24 Marine Coating Operations (Revised 11/11/03)
Rule 74.24.1 Pleasure Craft Coating and Commercial Boatyard Operations (Adopted 1/08/02)
Rule 74.26 Crude Oil Storage Tank Degassing Operations (Adopted 11/8/94)
Rule 74.27 Gasoline and ROC Liquid Storage Tank Degassing Operations (Adopted 11/8/94)
Rule 74.28 Asphalt Roofing Operations (Adopted 5/10/94)
Rule 74.30 Wood Products Coatings (Revised 11/11/03)
Rule 75 Circumvention (Adopted 11/27/78)
Rule 101 Sampling and Testing Facilities (Adopted 5/23/72)
Rule 102 Source Tests (Adopted 4/13/04)
Rule 103 Continuous Monitoring Systems (Adopted 2/9/99)
Rule 154 Stage 1 Episode Actions (Adopted 9/17/91)
Rule 155 Stage 2 Episode Actions (Adopted 9/17/91)
Rule 156 Stage 3 Episode Actions (Adopted 9/17/91)
Rule 158 Source Abatement Plans (Adopted 9/17/91)
Rule 159 Traffic Abatement Procedures (Adopted 9/17/91)
Rule 220 General Conformity (Adopted 5/9/95)
Rule 230 Notice to Comply (Adopted 11/9/99)

* * * * *

[FR Doc. 04–14220 Filed 6–22–04; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 73 and 76

[MM Docket No. 98–204; FCC 04–103]

RIN 3060–AH95

Review of the Commission's Broadcast and Cable Equal Employment Opportunity Rules and Policies

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission solicits comment on its multichannel video programming distributor (''MVPD'') equal employment opportunity (''EEO'') rules for forms 395–A and 395–B. The Commission seeks comment on whether the use of the Confidential Information Protection and Statistical Efficiency Act of 2002 (''CIPSEA'') keep broadcaster's information confidential and whether the Act is constant.

DATES: Comments are due July 14, 2004; Reply comments are due July 26, 2004.

FOR FURTHER INFORMATION CONTACT: Lewis Pulley, Policy Division, Media Bureau, (202) 418–1450 or *Lewis.Pulley@FCC.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Media Bureau's *Fourth Notice of Proposed Rulemaking* (''*4NPRM*'') in MM Docket No. 98–204; FCC 04–103, adopted April 19, 2004, and released on June 4, 2004. The full text of this *4NPRM* is available for inspection and copying during regular business hours in the FCC Reference Center, 445 Twelfth Street, SW., Room CY–A257, Portals II, Washington, DC,

20554, and may also be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., Room CY–B402, telephone (800) 378–3160, e-mail *http://www.BCPIWEB.com.* To request materials in accessible formats for people with disabilities (electronic files, large print, audio format and Braille), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0531 (voice), 418–7365 (tty).

Synopsis of Fourth Notice of Proposed Rulemaking

1. Broadcasters have filed FCC Form 395–B, the Broadcast station Annual Employment Report, with the Commission for more than thirty years. Throughout the form's long history, the Commission has made it available to the public for inspection, primarily to accommodate Freedom of Information Act requirements. MVPDs have for years filed an Annual Employment Report on FCC Form 395–A, which unlike its broadcast equivalent, is required by statute to be made available for public inspection at the MVPD's central office and at every office where five or more full time employees are regularly assigned to work. The recently enacted CIPSEA allows agencies to collect information for statistical purposes under a pledge of confidentiality. If an agency adopts this procedure, the information collected pursuant to CIPSEA is exempt from release under the Freedom of Information Act and may not be disclosed in an identifiable form for any non-statistical purpose without the informed consent of a respondent.

2. We seek comment on whether a broadcaster's Form 395–B is the type of material to which CIPSEA could pertain. As noted, the data collected in the employment reports will be used to compile industry employment trend reports and reports to Congress, and will not be used to determine compliance with our EEO rules. This purpose appears to fall within the statutory definition of ''statistical purpose.'' We seek comment on what public policy goals might be advanced by making this information publicly available even if CIPSEA allows the Commission to keep it confidential. We seek comment on whether altering our approach would be consistent with Section 334 of the Communications Act. We also seek comment on whether altering our approach would be appropriate given the efforts of the Advisory Committee on Diversity for Communications in the Digital Age.

3. We seek comment as to whether Congress's clear directive that MVPD operators must make Form 395–A available for public inspection at their own facilities should be read to suggest an intent that the Commission, itself, also make Form 395–A publicly available. In light of the directive in Section 554(d)(3)(B) of the Communications Act for filers to make 395–A publicly available, we seek comment on whether CIPSEA even allows the Commission to keep MVPDs' Form 395–A confidential. In addition, does the Congressional directive that MVPDs make Form 395–A publicly available have any bearing on whether the Form 395–B should be made available to the public, as the Commission has done for more than thirty years?

4. Were the Commission to collect such information under a pledge of confidentiality, and CIPSEA were to apply, we seek comment on whether CIPSEA allows us to keep the identity of the Form 395–B filer (*i.e.*, name, address and station) confidential while making the station's employment data public. Finally, we seek comment on the ''tear off'' option proposed by NAB and NASBA under which only the station's identifying information would be withheld from public inspection, and what such information would be identifying. We seek comment as to what policy objectives such an approach would further. We also seek comment as to whether use of this option would be consistent with CIPSEA or would violate the Federal Records Act.

Procedural Matters

3. *Ex Parte Rules.* With respect to the *4NPRM,* this is a permit-but-disclose notice and comment proceeding. Ex parte presentations are permitted except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's Rules. *See* generally 47 CFR 1.1202, 1.1203, and 1.1206(a).

4. *Comments and Reply Comments.* Pursuant to § 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415 and 1.419. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).*

5. Comments filed through ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html.* Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov,* and should include the following words in the body of the message, ''get form <your e-mail address>.'' A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. All filings must be sent to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 Twelfth Street, SW., TW–A325, Washington, DC 20554.

6. Parties who choose to file by paper should also submit their comments on diskette. These diskettes should be submitted to: Wanda Hardy, 445 Twelfth Street, SW., Room 3–A669, Washington DC 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using Word 97 or compatible software. The diskette should be accompanied by a cover letter and should be submitted in ''read only'' mode. The diskette should be clearly labeled with the commenter's name, proceeding (including the docket number in this case, MM Docket No. 98–204), type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase, ''Disk Copy—Not an Original.'' Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, Best Company and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554.

7. Comments and reply comments will be available for public inspection during regular hours in the FCC Reference Center, Federal Communications Commission, 445 Twelfth Street, SW., CY–A257, Washington, DC 20554, or at *http://www.fcc.gov/searchtools.html.* Persons with disabilities who need assistance in the FCC Reference Center may contact Bill Cline at (202) 418–2555 TTY, or *bill.cline@fcc.gov.*

8. *Initial Regulatory Flexibility Certification.* The Regulatory Flexibility Act of 1980, as amended (''RFA''), requires that an initial regulatory flexibility analysis be prepared for notice-and-comment rule making proceedings, unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A ''small business concern'' is one which (1) is independently owned and operated; (2) is not dominant in the field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

9. *Initial Paperwork Reduction Act of 1995 Analysis.* This document seeks comments on the Commission's policies regarding public access to data contained in FCC Forms 395–A and 395–B. The policy changes proposed relate exclusively to the issue of whether the Commission should make the data in these forms available for public inspection. Any changes made as a result of the comments received in response to this notice will not have a significant economic impact on a substantial number of small entities. Therefore, we certify that the proposals in this Notice, if adopted, will not have a significant economic impact on a substantial number of small entities.

10. **Authority.** This *4NPRM* is issued pursuant to authority contained in Sections 1, 4(i), 4(k), 257, 301, 303(r), 307, 308(b), 309, 334, 403 and 634 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(k), 257, 301, 303(r), 307, 308(b), 309, 334, 403 and 554.

Ordering Clauses

11. Pursuant to the authority contained in Sections 1, 4(i), 4(k), 303(r), 334, 403, and 634 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(k), 303(r), 334, 403, and 554, this *4NPRM is adopted* and part 73 and part 76 of the Commission's Rules *are amended* as set forth.

12. Comments are due July 14, 2004; Reply comments are due July 26, 2004.

13. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this *4NPRM* including the Final Regulatory Flexibility Analysis and the Initial Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Parts 73 and 76

Cable television, Equal employment opportunity.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–14121 Filed 6–22–04; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[I.D. 061704A]

RIN 0648–AQ92

Fisheries Off West Coast States and in the Western Pacific; Western Pacific Pelagic Fisheries; American Samoa Pelagic Longline Fishery; Amendment 11

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

ACTION: Notice of availability of an amendment to a fishery management plan; request for comments.

SUMMARY: Amendment 11 to the Fishery Management Plan for Pelagic Fisheries of the Western Pacific Region (FMP Amendment 11) would establish a limited access permit program for the domestic pelagic longline fishery based in American Samoa. The amendment is intended to: reduce the potential for fishing gear conflict in waters of the U.S. exclusive economic zone (EEZ) around American Samoa, prevent local depletion of Pacific pelagic management unit species, minimize fish bycatch and waste, sustain community participation in the fishery, minimize adverse economic impacts to local communities, and ensure opportunities for future participation by indigenous fishers in the domestic longline fishery.

DATES: Comments on FMP Amendment 11 must be received on or before August 23, 2004.

ADDRESSES: Written comments on FMP Amendment 11 should be mailed to William L. Robinson, Administrator, NMFS, Pacific Islands Regional Office (PIRO), 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814, or faxed to 808–973–2941. Written comments will be accepted if submitted by e-mail to *PelAmd11AQ92@noaa.gov*. Comments sent via e-mail, including all attachments, must not exceed a 10 megabyte file size. Comments may also be submitted electronically through the Federal e-Rulemaking portal: *http://www.regulations.gov*.

Copies of FMP Amendment 11, which includes an environmental assessment/regulatory impact review and an analysis of the impacts on small businesses are available from Kitty Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop St., Suite 1400, Honolulu, HI 96813. The document is also available at the following website: *http://wpcouncil.org*.

FOR FURTHER INFORMATION CONTACT: Eric Kingma, Council staff, at 808–522–8220.

SUPPLEMENTARY INFORMATION: FMP Amendment 11, developed by the Western Pacific Fishery Management Council (Council), has been submitted to NMFS for review under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq*. This notice announces that the amendment is available for public review and comment for 60 days. NMFS will consider public comments received during the public comment period described above in determining whether to approve, disapprove, or partially disapprove FMP Amendment 11.

In 1995, local fishermen in American Samoa developed a small-scale domestic longline fishery targeting primarily albacore tuna. The fishery at that time consisted of small, twin-hulled catamarans, or ''alias,'' less than 12.2 m in length. In 1997, the fishermen began to be concerned over the potential influx into the fishery by large longline fishing vessels (vessels greater than 15.2 m in length) from Hawaii and the U.S. mainland West Coast. They saw the potential for excessive concentration of fishing effort in the EEZ around American Samoa leading to gear conflict, reduction in local catch rates of albacore tuna below economically viable levels, and possible ''boom and bust'' cycles in the fishery that could disrupt the local community's dependence on the small-scale pelagic longline fishery. They were also concerned about the potential loss of opportunity by indigenous American Samoans for future participation in the large-vessel longline fishery. As it turned out, between 1997 and 2002, the American Samoa-based longline fleet increased from approximately 21 vessels, mostly small alias, to 75 vessels of a variety of sizes and fishing

capacities. Of the 75 active longline vessels operating in the EEZ around American Samoa in 2002, 40 vessels were alias (≤12.2 m), 5 vessels were 12.2 m to 15.1 m in length, 15 vessels were 15.2 m to 21.2 m in length, and 15 vessels were greater than 21.3 m in length.

In 1998, the Council recommended that the EEZ waters within 50 nm from shore around American Samoa (approximately 130,000 km^2) be closed to fishing vessels longer than 15.2 m in length (large vessels) targeting Pacific pelagic management unit species. This closure was intended to help address gear conflict and catch competition issues in the fishery. NMFS approved the Council's recommendation and subsequently promulgated regulations that established a large fishing vessel area closure in waters within approximately 50 nm of the islands of American Samoa. The closed area was established on March 1, 2002 (67 FR 4367, January 30, 2002). Consequently, fishing effort by large longline vessels in the EEZ around American Samoa became concentrated in those areas seaward of the closed areas. Both the Council and NMFS recognized that the area closure alone would not entirely prevent gear conflict, therefore, the Council began to develop a limited entry permit program for the fishery. As a prelude to development of such a program, on March 21, 2002, the Council established that date as a ''new'' control date for the fishery. The purpose of the new control date was serve notice to the public that any person who entered the American Samoa longline fishery after March 21, 2002, may not be guaranteed future participation in the fishery, if the Council prepares and NMFS approves a program to limit entry or effort in the fishery. NMFS published an announcement of the new control date in the **Federal Register** on June 3, 2002 (67 FR 38245).

In 2002, the Council developed FMP Amendment 11 to limit pelagic longline fishing effort in the EEZ around American Samoa. The amendment would establish a limited access program intended to: prevent gear conflict by large longline vessels, prevent potential for local depletion of fishery resources, maintain community participation within the fishery, ensure future opportunities for indigenous American Samoans, and minimize bycatch and waste incidental to fishing operations. NMFS seeks public comment on FMP Amendment 11, which must be received by August 23, 2004, to be considered by NMFS when it decides whether to approve, disapprove, or partially approve the amendment. NMFS will review FMP Amendment 11 to determine whether it complies with the Magnuson-Stevens Act, the National Standards of that Act, and other applicable law. In the near future NMFS intends to publish in the **Federal Register** a proposed rule to implement FMP Amendment 11.

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

Dated: June 17, 2004.

Allen D. Risenhoover,

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

[FR Doc. 04–14241 Filed 6–22–04; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 69, No. 120
Wednesday, June 23, 2004

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of Civil Rights

Notice of Intent To Seek Approval To Collect Information

AGENCY: Office of Civil Rights, USDA:

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13) and the Office of Management and Budget (OMB) regulations at 5 CFR part 1320, this notice announces the Office of Civil Rights' (CR) intention to request approval for a new information collection aimed at standardizing race, ethnicity, sex, national origin, disability status, and age data across the Department. The establishment of such a collection will assist the United States Department of Agriculture (USDA) agencies in improving program services and benefits. USDA continues to seek ways to improve delivery of program services and benefits, fulfill various civil rights responsibilities, and increase participation for those who are eligible to receive benefits and assistance.

DATES: Comments on this notice must be received by August 23, 2004.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or comments regarding this notice should be directed to Mr. Joe McNeil, Office of Civil Rights, U.S. Department of Agriculture, 1400 Independence Ave., SW., Room 331–W, Washington, DC 20250; e-mail; *Joe.mcneill@Usda.go,* telephone: (202) 720–0438.

SUPPLEMENTARY INFORMATION:

Title: Customer Information.

OMB Number: 0503–NEW.

Expiration Date: Three years from date of issuance.

Type of Request: New Collection.

Abstract: The purpose of the collection is to standardize the collection of race, ethnicity, sex, national origin, disability status, and age data for all USDA agencies, and to further ensure that this information is collected only once for each customer. When established, this information will assist the Office of Civil Rights and USDA agencies in monitoring programs and will be the basis for several different reports required by statute.

Background: The civil rights policy of the USDA requires each agency to analyze the civil rights impact(s) of policies, actions, or decisions that will affect federally conducted the federally assisted programs and activities and the USDA workforce. In order to assesses the civil rights impact, data on programs, activities, and employment must be analyzed in a consistent manner with respect to the race, ethnicity, sex, national origin, disability status, and age of customers, applicants, and participants. Currently, no uniform method of reporting and tabulating race and ethnicity data exits in USDA. There are 17 program agencies each with a potential array of program applicants and participants. The collection of data is necessary to provide each agency, and the USDA as a whole, with the composition of its customers, particularly from a race and ethnicity standpoint. Further, data is necessary to give USDA a baseline on its applicants and participants and assist it in planning and assisting its customers. The goal of a comprehensive USDA collection of race, ethnicity, sex, national origin, disability status, and age data is to reduce the burden on citizens to provide this type of information by creating a single voluntary survey transaction where the data is collected, one time in a standard format. For subsequent transactions where this information is needed to provide services or improve program participation, the Department will reuse the data previously collected.

This Information Collection Request is intended, over a three-year period, to consolidate a number of agency collections of race, ethnicity, sex, national origin, disability status, and age data and to minimize the number of separate forms and transactions required to obtain USDA services, thereby reducing the burden in collecting this information from the public. When collected manually, a paper form will be used in conjunction with the appropriate program application form as a tear-off where the application for services will be transmitted to the appropriate agency for action, and the paper form will be transmitted to a Departmental repository to be used in subsequent customer transactions and for applicable Civil Rights analysis and reporting. Data from the paper form will be entered electronically into the Departmental repository. When collected electronically, the data will reside in an enterprise customer repository that will collect and track customer information. While the demographic data would be available for management reporting purposes and a flag would graphically indicate to USDA employees that the information had been previously collected, no direct employee access to the data would be provided. As required by the Privacy Act, existing customer data Systems of Record will be modified or created if applicable.

Estimate of Burden: For the initial collection of race, ethnicity, sex, national origin, disability status, and age information, the estimated burden is 3 minutes per response. The burden is the same whether collected manually through a Departmental form or collected electronically as a customer enters the USDA.gov web portal. Estimated Total Annual Burden on Respondents: The Department estimates there are 36,655,000 customers subject to the collection of race, ethnicity, sex, national origin, disability status, and age data. Based on an estimated 3 minutes response time, the estimated annual burden is 1,832,750 hours. The breakdown by customer group is provided below.

Customer type	Estimated number [1]
Producers	2,200,000
Agribusiness and Cooperatives	100,000
Low-Income Families and Individuals	20,000,000
Children and Caregivers	55,000
Rural Communities and Businesses	2,000,000
Researchers and Academic Community	1,300,000
Landowners and Conservationists	10,000,000
Total	36,655,000

[1] Data obtained from the *Audience Analysis* document prepared in support of the eGovernment Web Presence initiative.

Comments: Comments are invited on (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility as described; (b) the accuracy of the Agency's estimate of burden of the proposed collection of information, including the validity of methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate, automated, electronic, mechanical or other technology. Comments should be addressed to the address in the preamble. All responses to this notice will be summarized and included in the request for Office of Management and Budget (OMB) approval. All comments will also become a matter of public record.

Vernon B. Parker,

Assistant Secretary for Civil Rights.

[FR Doc. 04–14193 Filed 6–22–04; 8:45 am]

BILLING CODE 3410–98–M

DEPARTMENT OF AGRICULTURE

Forest Service

Glenn/Colusa County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Glenn/Colusa County Resource Advisory Committee (RAC) will meet in Willows, California. Agenda items to be covered include: (1) Introductions, (2) Approval of Minutes, (3) Public Comment, (4) Small Diameter Wood CD, (5) Report from Monitoring Sub-Committee, (6) Re-Applications for RAC Membership, (7) Website Proposal/ Possible Action, (8) Meeting Time Change?, (9) General Discussion, (9) Next Agenda.

DATES: The meeting will be held on June 28, 2004, from 1:30 p.m. and end at approximately 4:30 p.m.

ADDRESSES: The meeting will be held at the Mendocino National Forest Supervisor's Office, 825 N. Humboldt Ave., Willows, CA 95988. Individuals wishing to speak or propose agenda items must send their names and proposals to Jim Giachino, DFO, 825 N. Humboldt Ave., Willows, CA 95988.

FOR FURTHER INFORMATION CONTACT: Bobbin Gaddini, Committee Coordinator, USDA, Mendocino National Forest, Grindstone Ranger District, PO Box 164, Elk, Creek, CA 95939. (530) 968–5329; e-mail *ggaddini@fs.fed.us*.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, persons who wish to bring 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 who made written requests by June 25, 2004, will have the opportunity to address the committee at those sessions.

Dated: June 17, 2004.

James F. Giachino,

Designated Federal Official.

[FR Doc. 04–14161 Filed 6–22–04; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995, Public Law 104–13.

Bureau: International Trade Administration.

Title: Non-Tariff Barriers Survey.

Agency Form Number: ITA 4150P.

OMB Number: 0625–0241.

Type of Request: Regular Submission.

Burden: 33 Hours.

Number of Respondents: 200.

Average Hours Per Response: 10 Minutes.

Needs and Uses: The International Trade Administration's Office of Environmental Technologies Industries (ETI) office is the principal resource and key contact point within the U.S. Department of Commerce for American environmental technology companies. ETI's goal is to facilitate and increase exports of environmental technologies, goods and services by providing support and guidance to U.S. exporters. One aspect of increasing exports is to reduce trade barriers and non-tariff measures. ETI works closely with the Office of the U.S. Trade Representative on trade negotiations and trade liberalization initiatives. The information collected by this survey will be used to support these projects and enable ETI to maintain a current, up-to-date list of non-tariff measures that create trade barriers for U.S. exports of environmental goods and services.

Affected Public: Businesses and other environmental industry organizations.

Frequency: On Occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker, (202) 395–7340.

Copies of the above information collection proposal can be obtained by writing Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th & Constitution, NW., Washington, DC 20230; E-mail: *dHynek@doc.gov.*

Written comments and recommendations for the proposed information collection should be sent to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503 within 30 days of the publication of this notice in the **Federal Register**.

Dated: June 18, 2004.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 04–14224 Filed 6–22–04; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: 2004 Panel of the Survey of Income & Program Participation, Wave 3 Topical Modules.

Form Number(s): SIPP 24305(L) Director's Letter; SIPP/CAPI Automated Instrument; SIPP 24003 Reminder Card.

Agency Approval Number: 0607–0905.

Type of Request: Revision of a currently approved collection.

Burden: 148,028 hours.

Number of Respondents: 97,650.

Avg Hours Per Response: 30 minutes.

Needs and Uses: The U.S. Census Bureau requests authorization from the Office of Management and Budget (OMB) to conduct the Wave 3 topical module interview for the 2004 Panel of the Survey of Income and Program Participation (SIPP). We are also requesting approval for a few replacement questions in the reinterview instrument. The core SIPP and reinterview instruments were cleared under Authorization No. 0607–0905.

The SIPP is designed as a continuing series of national panels of interviewed households that are introduced every few years, with each panel having

durations of 3 to 4 years. The 2004 Panel is scheduled for four years and will include twelve waves of interviewing. All household members 15 years old or over are interviewed a total of twelve times (twelve waves), at 4-month intervals, making the SIPP a longitudinal survey.

The survey is molded around a central ''core'' of labor force and income questions that remain fixed throughout the life of a panel. The core is supplemented with questions designed to answer specific needs. These supplemental questions are included with the core and are referred to as ''topical modules.'' The topical modules for the 2004 Panel Wave 3 are Medical Expenses and Utilization of Health Care (Adults and Children), Work-Related Expenses and Child Support Paid, Assets, Liabilities, Eligibility, and Child Well-Being. These topical modules were previously conducted in the SIPP 2001 Panel Wave 9 instrument with the exception of Child Well-Being which was previously conducted in the SIPP 2001 Wave 7 instrument. Wave 3 interviews will be conducted from October 2004 through January 2005.

Data provided by the SIPP are being used by economic policymakers, the Congress, state and local governments, and Federal agencies that administer social welfare or transfer payment programs, such as the Department of Health and Human Services and the Department of Agriculture. The SIPP represents a source of information for a wide variety of topics and allows information for separate topics to be integrated to form a single and unified database so that the interaction between tax, transfer, and other government and private policies can be examined. Government domestic policy formulators depend heavily upon the SIPP information concerning the distribution of income received directly as money or indirectly as in-kind benefits and the effect of tax and transfer programs on this distribution. They also need improved and expanded data on the income and general economic and financial situation of the U.S. population. The SIPP has provided these kinds of data on a continuing basis since 1983, permitting levels of economic well-being and changes in these levels to be measured over time. Monetary incentives to encourage non-respondents to participate is planned for all waves of the 2004 SIPP Panel.

Affected Public: Individuals or households.

Frequency: Every 4 months.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C., Section 182.

OMB Desk Officer: Susan Schechter, (202) 395–5103.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dhynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer either by fax (202–395–7245) or e-mail (*susan_schechter@omb.eop.gov*).

Dated: June 18, 2004.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 04–14225 Filed 6–22–04; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Census Bureau

Generic Clearance for Customer Satisfaction Research

ACTION: Proposed collection; comment request.

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

DATES: Written comments must be submitted on or before August 23, 2004.

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

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Joanne Dickinson, U.S. Census Bureau, 3021–3, Washington, DC 20233–0800, (301) 763–4094.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau is requesting an extension of the generic clearance to conduct customer satisfaction research which may be in the form of mailed or electronic questionnaires and/or focus groups, or telephone or personal interviews.

The Census Bureau has ranked a customer focused environment as one of its most important strategic planning objectives. The Census Bureau routinely needs to collect and analyze customer feedback about its products and services to better align them to its customers needs and preferences. Several programs, products, and distribution channels have been designed/redesigned based on feedback from its various customer satisfaction research efforts.

Each research design is reviewed for content, utility, and user-friendliness by a variety of appropriate staff (including research design and subject-matter specialists). The concept and design are tested by internal staff and a select sample of respondents to confirm its appropriateness, user-friendliness, and to estimate burden (including hours and cost) of the proposed collection of information. Collection techniques are discussed and included in the research concept design discussions to define the most time-, cost-efficient and accurate collection media.

The clearance operates in the following manner: a block of hours is reserved at the beginning of each year, and the particular activities that will be conducted under the clearance are not specified in advance. The Census Bureau provides information to OMB about the specific activities on a flow basis throughout the year. OMB is notified of each activity in a letter that gives specific details about the activity, rather than by means of individual clearance packages. At the end of each year, a report is submitted to OMB that summarizes the number of hours used as well as the nature and results of the activities completed under the clearance.

Some modifications of the clearance from previous years are planned. The number of hours will remain the same at 4,000 hours. In addition, incentives as a survey procedure may also be the subject of research under the clearance.

II. Method of Collection

This research may be in the form of mailed or electronic questionnaires and/or focus groups, or telephone or personal interviews.

III. Data

OMB Number: 0607–0760.

Form Number: Various.

Type of Review: Regular.

Affected Public: Individuals or households, State or local governments, farms, businesses or other for-profit organizations, Federal agencies or employees, non-profit institutions, small businesses or organizations.

Estimated Number of Respondents: 8,000.

Estimated Time per Response: 30 minutes.

Estimated Total Annual Burden Hours: 4,000.

Estimated Total Annual Cost: There is no cost to respondents, except for their time to answer the questions posted.

Respondent's Obligation: Voluntary.

Legal Authority: Executive Order 12862.

IV. Request for Comments

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

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

Dated: June 18, 2004.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 04–14226 Filed 6–22–04; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 26–2004]

Foreign-Trade Zone 104—Savannah, GA, Application for Subzone, Tumi, Inc., (Distribution of Luggage), Vidalia, GA

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Savannah Airport Commission, grantee of FTZ 104, requesting special-purpose subzone status for the warehousing and distribution facility of Tumi, Inc. (Tumi), located in Vidalia, Georgia. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on June 16, 2004.

The Tumi facility (48 acres, 160 employees) is located at 2501 Matthews Industrial Circle, Vidalia, Toombs County. The facility is used for the storage and distribution of imported luggage, accessories and gifts (including handbags, wallets, bottle openers, ear muffs, handles/straps, belts, luggage tags, umbrellas, planners, mugs, key chains, pocket knives, flashlights, clock radios, watch bands, golf club covers and yoga mats).

Zone procedures would exempt Tumi from Customs duty payments on products that are re-exported. Some 10–15 percent of the products are re-exported. On its domestic sales, the company would be able to defer duty payments until merchandise is shipped from the plant and entered for consumption. FTZ designation would further allow Tumi to utilize certain Customs procedures resulting in increased efficiencies for its logistics and distribution operations. The request indicates that the savings from FTZ procedures would help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ staff has been appointed examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following addresses:

1. Submissions via Express/Package Delivery Services: Foreign-Trade-Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099 14th St., NW., Washington, DC 20005; or

2. Submissions via the U.S. Postal Service: Foreign-Trade-Zones Board, U.S. Department of Commerce, FCB—Suite 4100W, 1401 Constitution Ave., NW., Washington, DC 20230.

The closing period for their receipt is August 23, 2004. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to September 7, 2004).

A copy of the application and accompanying exhibits will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at the first address listed above, and at the U.S. Department of Commerce Export Assistance Center, 6001 Chatham Center Drive, Suite 100, Savannah, GA 31405.

Dated: June 16, 2004.

Pierre V. Duy,

Acting Executive Secretary.

[FR Doc. 04–14264 Filed 6–22–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No. 040609175–4175–01]

Establishment of a Laboratory Accreditation Program for Voting Systems Under the National Voluntary Laboratory Accreditation Program

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice.

SUMMARY: In accordance with the Help America Vote Act (HAVA) and the National Voluntary Laboratory Accreditation Program (NVLAP) Procedures, the National Institute of Standards and Technology (NIST) announces that it is establishing an accreditation program for laboratories that perform testing of voting systems, including hardware and software components. This program will provide for the accreditation of laboratories that test voting systems using standards determined by the Election Assistance Commission (EAC).

Laboratories interested in seeking accreditation that will allow them to be considered for EAC recognition should contact NVLAP immediately.

ADDRESSES: National Voluntary Laboratory Accreditation Program, 100 Bureau Drive/MS 2140, Gaithersburg, MD 20899–2140.

FOR FURTHER INFORMATION CONTACT: Jeffrey Horlick, Program Manager, NVLAP, 100 Bureau Drive / MS 2140, Gaithersburg, MD 20899–2140, phone (301) 975–4016 or e-mail *nvlap.voting@nist.gov.* Information regarding NVLAP and the accreditation process can also be viewed at *www.nist.gov/nvlap.*

SUPPLEMENTARY INFORMATION:

Background

The Help America Vote Act (HAVA) of 2002 (Pub. L. 107–252) was signed into law by President Bush on October 29, 2002. Section 231 of the HAVA requires the Director of NIST to provide for the accreditation of laboratories that conduct testing on the hardware and software of voting systems. In response to the HAVA, the National Voluntary

Laboratory Accreditation Program (NVLAP) is establishing a program for laboratories that test voting systems. This notice is issued in accordance with the NVLAP procedures and general requirements, found in title 15 part 285 of the Code of Federal Regulations.

Technical Requirements for the Accreditation Process

Laboratories conducting this testing will be required to meet ISO/IEC International Standard 17025, *General requirements for the competence of testing and calibration laboratories,* the 2002 Voting System Standards, and any other criteria deemed necessary by the EAC.

Accreditation criteria are established in accordance with the Code of Federal Regulations (15 CFR part 285), NVLAP Procedures and General Requirements. NVLAP is in full conformance with the standards of the International Organization for Standardization (ISO) and the International Electrotechnical Commission (IEC), including ISO/IEC 17025 and ISO/IEC Guide 58.

Accreditation is granted to a laboratory following successful completion of a process which includes submission of an application and payment of fees by the laboratory, an on-site assessment by technical experts, resolution of any deficiencies identified during the on-site assessment, and participation in proficiency testing. The accreditation is formalized through issuance of a Certificate of Accreditation and Scope of Accreditation.

NVLAP provides an unbiased, third-party evaluation and recognition of competence. NVLAP accreditation signifies that a laboratory has demonstrated that it operates in accordance with NVLAP management and technical requirements pertaining to quality systems; personnel; accommodation and environment; test and calibration methods; equipment; measurement traceability; sampling; handling of test and calibration items; and test and calibration reports.

NVLAP accreditation does not imply any guarantee (certification) of laboratory performance or test/calibration data; it is a finding of laboratory competence.

Those laboratories receiving accreditation by NVLAP must still be formally recognized by the EAC prior to conducting testing of voting systems under HAVA.

PRA Clearance

This action contains collection of information requirements subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. Collection activities for the National Voluntary Laboratory Accreditation Program are currently approved by the Office of Management and Budget under control number 0693–0003. Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information unless it displays a currently valid OMB Control Number.

Executive Order 12866

This action has been determined to be not significant under Executive Order 12866.

Dated: June 17, 2004.

Hratch G. Semerjian,

Acting Director.

[FR Doc. 04–14137 Filed 6–22–04; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Evaluation of State Coastal Management Programs and National Estuarine Research Reserves

AGENCY: Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration (NOAA), DOC.

ACTION: Notice of intent to evaluate and notice of availability of final findings.

SUMMARY: The NOAA Office of Ocean and Coastal Resource Management (OCRM) announces its intent to evaluate the performance of the South Carolina Coastal Management Program.

The Coastal Zone Management Program evaluation will be conducted pursuant to section 312 of the Coastal Zone Management Act of 1972, as amended, (CZMA) and regulations at 15 CFR part 923, subpart L.

The CZMA requires continuing review of the performance of states with respect to coastal program implementation. Evaluation of Coastal Zone Management Programs requires findings concerning the extent to which a state has met the national objectives, adhered to its Coastal Management Program document approved by the Secretary of Commerce, and adhered to the terms of financial assistance awards funded under the CZMA.

The evaluation will include a site visit, consideration of public comments, and consultations with interested Federal, State and local agencies and members of the public. A public meeting will be held as part of the site visit.

Notice is hereby given of the dates of the site visit for the listed evaluation, and the date, local time, and location of the public meeting during the site visit.

The South Carolina Coastal Management Program evaluation site visit will be held July 19–23, 2004. One public meeting will be held during the week. The public meeting will be on Monday, July 19, 2004, at 5 p.m., South Carolina Department of Health and Environmental Control, Office of Ocean and Coastal Resource Management, 1362 McMillan Avenue (site of the old Charleston Navy Base), 3rd floor conference room, Charleston, South Carolina.

Copies of a State's most recent performance reports, as well as OCRM's notifications and supplemental request letters to the State, are available upon request from OCRM. Written comments from interested parties regarding this Program are encouraged and will be accepted until 15 days after the public meeting. Please direct written comments to Ralph Cantral, Chief, National Policy and Evaluation Division, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, 10th Floor, Silver Spring, Maryland 20910. When the evaluation is completed, OCRM will place a notice in the **Federal Register** announcing the availability of the final evaluation findings.

Notice is hereby given of the availability of the final evaluation findings for the Oregon and New Hampshire Coastal Management Programs (CMPs); and the Chesapeake Bay-Maryland and Chesapeake Bay-Virginia National Estuarine Research Reserves (NERRs). Sections 312 and 315 of the Coastal Zone Management Act of 1972 (CZMA), as amended, require a continuing review of the performance of coastal States with respect to approval of CMPs and the operation and management of NERRs.

The States of Oregon and New Hampshire were found to be implementing and enforcing their federally approved coastal management programs, addressing the national coastal management objectives identified in CZMA section 303(2)(A)–(K), and adhering to the programmatic terms of their financial assistance awards. Chesapeake Bay-Maryland and Chesapeake Bay-Virginia NERRs were found to be adhering to programmatic requirements of the NERR System.

Copies of these final evaluation findings may be obtained upon written request from: Ralph Cantral, Chief,

National Policy and Evaluation Division, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, 10th Floor, Silver Spring, Maryland 20910, or *Ralph.Cantral@noaa.gov*, (301) 713–3155, extension 118.

FOR FURTHER INFORMATION CONTACT: Ralph Cantral, Chief, National Policy and Evaluation Division, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, 10th Floor, Silver Spring, Maryland 20910, (301) 713–3155, extension 118.

Federal Domestic Assistance Catalog 11.419; Coastal Zone Management Program Administration.

Dated: June 14, 2004.

Alan Neuschatz,

Associate Assistant Administrator for Management, Ocean Services and Coastal Zone Management.

[FR Doc. 04–14212 Filed 6–22–04; 8:45 am]

BILLING CODE 3510–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 040610181–4181–01; I.D. 060204C]

Listing Endangered and Threatened Wildlife and Plants and Designating Critical Habitat; 90–Day Finding on a Petition to List Elkhorn Coral, Staghorn Coral, and Fused-staghorn Coral

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

ACTION: Notice of petition finding; request for information.

SUMMARY: NMFS announces the 90–day finding for a petition to list elkhorn coral (*Acropora palmata*), staghorn coral (*A. cervicornis*), and fused-staghorn coral (*A. prolifera*) as endangered or threatened, and to designate critical habitat under the Endangered Species Act (ESA). NMFS finds that the petition presents substantial scientific information indicating the petitioned action may be warranted. NMFS will conduct a status review of the three acroporids to determine if the petitioned action is warranted. To ensure that the review is comprehensive, NMFS is soliciting information pertaining to these species and potential critical habitat from any interested party. NMFS also seeks suggestions from the public for peer reviewers to take part in the peer review process for the forthcoming status review.

DATES: Information related to this petition finding must be received no later than August 23, 2004.

ADDRESSES: You may submit comments by any of the following methods:

- E-mail: Acropora.Info@noaa.gov. Include docket number in the subject line of the message.
- Fax: 727–570–5517, Attention Jennifer Moore.
- Mail: Information on paper, disk, or CD-ROM should be addressed to the Assistant Regional Administrator for Protected Resources, NMFS Southeast Regional Office, 9721 Executive Center Drive North, Suite 102, St. Petersburg, FL 33702.

FOR FURTHER INFORMATION CONTACT: Jennifer Moore or Dr. Stephania Bolden, NMFS, Southeast Regional Office, (727) 570–5312, or Marta Nammack, NMFS, Office of Protected Resources, (301) 713–1401, ext. 180.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the ESA (16 U.S.C. 1533(b)(3)(A)) requires NMFS to make a finding as to whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating the petitioned action may be warranted. NMFS' ESA implementing regulations define ''substantial information '' as the amount of information that would lead a reasonable person to believe the measure proposed in the petition may be warranted (50 CFR 424.14(b)(1). In determining whether substantial information exists for a petition to list a species, NMFS takes into account several factors, including information submitted with, and referenced in, the petition and all other information readily available in NMFS' files. To the maximum extent practicable, this finding is to be made within 90 days of the receipt of the petition (16 U.S.C. 1533(b)(3)(A)), and the finding is to be published promptly in the **Federal Register**. If NMFS finds that a petition presents substantial information indicating that the requested action may be warranted, section 4(b)(3)(A) of the ESA requires the Secretary of Commerce (Secretary) to conduct a status review of the species. ESA section 4(b)(3)(B) requires the Secretary to make a finding as to whether or not the petitioned action is warranted within 1 year of the receipt of the petition. The Secretary has delegated the authority for these actions to the NOAA Assistant Administrator for Fisheries.

In 1991, NMFS identified elkhorn coral and staghorn coral as candidate species under the ESA, but removed them from the candidate species list in 1997 because the available information indicated decline in certain populations, but not throughout the species' range (62 FR 37560; July 14, 1997). Subsequently, in 1999, elkhorn coral and staghorn coral were added again to the candidate species list because of the availability of reliable information which met the criteria for inclusion at that time. Elkhorn coral and staghorn coral were transferred to the species of concern list when this list was established in 2004 (69 FR 19976; April 15, 2004).

Analysis of Petition

On March 4, 2004, NMFS received a petition from the Center for Biological Diversity requesting NMFS list three Caribbean acroporids (elkhorn coral, staghorn coral, and fused-staghorn coral) as endangered or threatened, and to designate critical habitat under the ESA. The petition contained a detailed description of each species, including the present legal status; taxonomy and physical appearance; ecological and economic importance; distribution; physical and biological characteristics of its habitat and ecosystem relationships; population status and trends; and factors contributing to the population's decline. The petition also discussed how the species would benefit from being listed under the ESA and cited references in support of the petition.

Under the ESA, a listing determination can address a species, subspecies, or a distinct population segment (DPS) of a vertebrate species (16 U.S.C. 1532 (16)). Because corals are invertebrates, they cannot be listed by DPSs. Therefore, the petition requested that NMFS list the three acroporid species throughout their entire range. These species are found in warm waters throughout the Gulf of Mexico, Caribbean Sea, and tropical portions of the Atlantic Ocean. All three acroporids are fast growing branching corals, found predominantly in shallow reefs from subtidal to 30 m depth.

The petition asserts that the three acroporids warrant listing based on all five of the factors for listing specified in the ESA, 16 U.S.C. 1533(a)(1). According to the petition, of over 100 studies performed on the status of the three Acroporids throughout the Caribbean, virtually all documented rapid declines in coral cover with no significant recovery. The petition states the predominant causes of the decline in the 1980s and 1990s were coral

diseases, mass coral bleaching induced by rising sea surface temperatures, and hurricanes occurring with escalating frequency and severity. The petition alleges these threats continue to occur and are accompanied by coastal development, boat and diver damage, siltation, damaging fishing practices, predation, competition, pollution, global climate change resulting in elevated sea surface temperatures, and inadequacy of regulatory mechanisms. The petition concludes that because of the interrelated nature and synergistic effects of these threats, addressing each threat individually will not be sufficient to preserve these species.

Petition Finding

Based on the above information and the criteria specified in 50 CFR 424.14(b)(2), NMFS finds that the petition presents substantial scientific and commercial information indicating listing of the three acroporids may be warranted. Under section 4(b)(3)(A) of the ESA, this finding requires NMFS to commence a status review on the three species. NMFS is now initiating this review. These three species are now considered to be candidate species (69 FR 19976; April 15, 2004). Within 1 year of the receipt of the petition (March 4, 2005), NMFS must make a finding as to whether listing the elkhorn coral, staghorn coral, or fused-staghorn coral as endangered or threatened under the ESA is warranted, as required by section 4(b)(3)(B) of the ESA. If warranted, NMFS will publish a proposed rule and take public comment before developing and publishing a final rule.

Listing Factors and Basis for Determination

Under section 4(a)(1) of the ESA, a species shall be listed if it is determined to be threatened or endangered as a result of any one of the following factors: (1) Present or threatened destruction, modification, or curtailment of habitat or range; (2) over-utilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) inadequacy of existing regulatory mechanisms; or (5) other natural or manmade factors affecting its continued existence. Listing determinations are made solely on the basis of the best scientific and commercial data available, after conducting a review of the status of the species and taking into account efforts made by any state or foreign nation to protect such species.

Information Solicited

To ensure the status review is completed in a timely manner and based on the best available scientific and commercial data, NMFS is soliciting information on whether the elkhorn coral, staghorn coral, or fused-staghorn coral are endangered or threatened based on the above listing factors. Specifically, NMFS is soliciting information in the following areas: (1) Historical and current distribution and abundance of these three acroporids throughout the Gulf of Mexico, tropical portions of the Atlantic Ocean, and the Caribbean Sea (specifically in the southern Bahamas), Nicaragua, Pedro Banks, northern Cuba, Virgin Gorda, Antigua, banks off Turks and Caicos, Saba Banks, Trinidad and Tobago, and eastern Caribbean; (2) historic and current condition; (3) population status and trends; (4) information on any current or planned activities that may adversely impact the three acroporids, especially related to the five listing factors identified above; and (5) ongoing efforts to protect the three acroporids and their habitat. NMFS requests that all information be accompanied by: (1) Supporting documentation such as maps, bibliographic references, or reprints of pertinent publications; and (2) the submitter's name, address, and any association, institution, or business that the person represents.

Critical Habitat

NMFS is also requesting information on areas that may qualify as critical habitat for the three acroporids. Areas that include the physical and biological features essential to the conservation of the species should be identified. Areas outside the present range should also be identified if such areas are essential to the conservation of the species. Essential features may include, but are not limited to: (1) space for individual growth and for normal behavior; (2) food, water, air, light, minerals, or other nutritional or physiological requirements; (3) cover or shelter; (4) sites for reproduction and development of offspring; and (5) habitats that are protected from disturbance or are representative of the historical, geographical, and ecological distributions of the species (50 CFR 424.12(b)).

For areas potentially qualifying as critical habitat, NMFS requests information describing: (1) the activities that affect the essential features or that could be affected by the designation, and (2) the economic costs and benefits of management measures likely to result from the designation. NMFS is required to consider the probable economic and other impacts on proposed or ongoing activities in making a final critical habitat designation (50 CFR 424.19).

Peer Review

On July 1, 1994, NMFS, jointly with the U.S. Fish and Wildlife Service, published a series of policies regarding listings under the ESA, including a policy for peer review of scientific data (59 FR 34270). The intent of the peer review policy is to ensure listings are based on the best scientific and commercial data available. NMFS is soliciting the names of recognized experts in the field that could take part in the peer review process for this status review (see **ADDRESSES**). Independent peer reviewers will be selected from the academic and scientific community, tribal and other Native American groups, Federal and state agencies, the private sector, and public interest groups.

Authority: 16 U.S.C. 1531 *et seq.*

Dated: June 17, 2004.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 04–14244 Filed 6–22–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 051704A]

Small Takes of Marine Mammals Incidental to Specified Activities; Marine Seismic Survey in the Gulf of Alaska, Northeastern Pacific Ocean

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

ACTION: Notice of receipt of application and proposed incidental take authorization; request for comments.

SUMMARY: NMFS has received an application from the Lamont-Doherty Earth Observatory (L-DEO), a part of Columbia University, for an Incidental Harassment Authorization (IHA) to take small numbers of marine mammals, by harassment, incidental to conducting oceanographic seismic surveys in the Gulf of Alaska (GOA). Under the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an authorization to L-DEO to incidentally take, by harassment, small numbers of several species of cetaceans and pinnipeds for a limited period of time within the next year.

DATES: Comments and information must be received no later than July 23, 2004.

ADDRESSES: Comments on the application should be addressed to P.

Michael Payne, Chief, Marine Mammal Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225, or by telephoning the contact listed here. The mailbox address for providing email comments is *PR2.051704A@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: 051704A. Comments sent via e-mail, including all attachments, must not exceed a 10–megabyte file size. A copy of the application containing a list of the references used in this document may be obtained by writing to this address or by telephoning the contact listed here and is also available at: *http://www.nmfs.noaa.gov/prot__res/PR2/Small__Take/smalltake__info.htm#applications*

FOR FURTHER INFORMATION CONTACT: Kenneth Hollingshead, Office of Protected Resources, NMFS, (301) 713–2322, ext 128.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Permission may be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses and that the permissible methods of taking and requirements pertaining to the monitoring and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''...an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Under section 3(18)(A), the MMPA defines ''harassment'' as:

> any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Section 101(a)(5)(D) establishes a 45–day time limit for NMFS review of an application followed by a 30–day public notice and comment period on any proposed authorizations for the incidental harassment of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

Summary of Request

On April 19, 2004, NMFS received an application from L-DEO for the taking, by harassment, of several species of marine mammals incidental to conducting a seismic survey program during a four-week period within a general time window from late July to October 2004. The purpose of the seismic survey is to locate sedimentary records of environmental change in the GOA, including Holocene climate variability, anthropogenic warming and glacier melting of the past century, and dynamics of erosion and deposition associated with glaciation. This research has important implications for understanding long-term variability of North Pacific ecosystems, with relevance towards managing fisheries, marine mammals and other species. Geophysical site survey and safety information will be used to optimally locate coring sites and to understand regional sedimentation patterns. The marine paleoclimatic record in this region has received relatively little study because very few suitable sediment cores have been taken. Nevertheless, enough basic knowledge of fjord sedimentation processes exists to support a strategy of targeting deep-silled basins of fjords with adequate connections to the open ocean, as well as shelf and slope sediments in the open ocean. Fjord basins likely contain a rich array of biogenic and sedimentologic evidence for regional climate change. Regions of turbidite sedimentation (i.e., coarse sediments transported down-slope in turbidity currents) will be documented using shipboard geophysical sensing and sedimentological proxies in recovered sediments and will be avoided during coring. However, if some isolated turbidites are present, this may present an opportunity to examine seismically triggered events that provide useful synchronous stratigraphic markers.

Description of the Activity

The proposed seismic survey will involve one vessel, the *R/V Maurice Ewing (Ewing*). The Ewing will deploy a pair of low-energy Generator-Injector (GI) airguns as an energy source (each with a discharge volume of 105 in3). The energy to the airguns will be compressed air supplied by compressors on board the source vessel. Seismic pulses will be emitted at intervals of 6–10 seconds. This spacing corresponds to a shot interval of approximately 16–26 m (52–85 ft). The *Ewing* will also tow a hydrophone streamer that is up to 1500 m (4922 ft) long. As the airguns are operated along the survey lines, the hydrophone receiving system will receive and record the returning acoustic signals. In constrained fjord settings, only part of the streamer may be deployed, or a shorter streamer may be used, to increase the maneuverability of the ship.

The program will consist of approximately 1779 km (960 nm) of surveys, not including transits. Water depths within the seismic survey area are approximately 30 3000 m (98 9843 ft). There will be additional operations associated with airgun testing, start-up, line changes, and repeat coverage of any areas where initial data quality is sub-standard.

The GOA research will consist of four different stages of seismic surveys interspersed with coring operations in 4 general areas. The 4 different stages are outlined here in the order that they are currently planned to take place. Transit time between areas and between lines is not included in the estimates of survey time below, because the seismic source will generally not be operating during transits.

Stage 1–Prince of Wales Island. During this stage, 4 short seismic surveys will be completed in conjunction with 4 coring sites that will be sampled. Each of the 4 surveys, including seismic lines and coring, will take 9–14 hr and cover 17.7- 45.3 nm (32.9–83.8 km), for a total of 229 km (124 nm). All lines will be conducted in water depths less than 100 m (328 ft). A total of 13 lines will be shot around the 4 coring stations. Stage 1 will take approximately 50 hr of survey time over approximately 3 days to complete.

Stage 2–Baranof Island. During this stage, five short seismic surveys will be completed in conjunction with 6 coring sites that will be sampled. Each of the 5 surveys, including seismic lines and coring, will take approximately 6–17 hr

and cover 4.1–54.5 nm (7.6–101.0 km), for a total of 109 km (59 nm) of which 25 km (13.5 nm) will be conducted in waters less than 100 m (328 ft) deep and 84 km (45 nm) will be in waters from 100 to 1000 m (328–3281 ft) deep. Stage 2 will take approximately 45 hr of survey time over approximately 4.5 days to complete.

Stage 3–Juneau (Southeast Alaska Inland Waters). During Stage 3, 3 short seismic surveys will be completed in conjunction with four coring sites that will be sampled. Each survey, including seismic lines and coring, will take approximately 8–21 hr and will cover 15.1–104.1 nm (27.7–192.9 km), for a total of 249 km (134 nm) conducted in water 100 m (328 ft) to 1000 m (3281 ft) deep. Stage 3 will take approximately 38 hr of survey time over 2.5 days to complete.

Stage 4–Glacier Bay, Yakutat Bay, Icy Bay, Prince William Sound, and Gulf of Alaska. During Stage 4, 14 seismic surveys will be conducted in conjunction with 16 coring sites that will be sampled. Surveys during Stage 4, including seismic lines and coring, will range in length from 5.3 - 111.2 nm (9.8–205.9 km),km), for a total of 1192 km (644 nm) of which 382 km (206 nm) will be conducted in waters less than 100 m (328 ft) deep, 453 km (245 nm) will be in waters from 100 to 1000 m (328 -3281 ft) deep and 357 km (187 nm) will be in waters deeper than 1000 m (3281 ft). Stage 4 will take approximately 72 h or survey time over approximately 13 days to complete.

In the event that one or more of the planned sites are unavailable due to poor weather conditions, ice conditions, unsuitable geology (shallow sediments), or other reasons, contingency sites (alternative seismic survey and coring locations) will be substituted. Alternative research sites (see Fig. 6 in the L-DEO application) will only be undertaken by L-DEO as replacements for the planned sites, and their use will not substantially change the total length or duration of the proposed seismic surveys. Seismic survey lines have not been selected or plotted by L-DEO for some contingency core sites. However, L-DEO anticipates that each contingency core site would require approximately 40 km (22 nm) of seismic surveying to locate optimal coring locations. It is highly unlikely that all contingency sites will be used. To the extent that contingency sites are used, a similar number of ''primary'' sites will be dropped from the project.

General-Injector Airguns

Two GI-airguns will be used from the Ewing during the proposed program. These 2 GI-airguns have a zero to peak (peak) source output of 237 dB re 1 microPascal-m (7.2 bar-m) and a peak-to-peak (pk-pk) level of 243 dB (14.0 bar-m). However, these downward-directed source levels do not represent actual sound levels that can be measured at any location in the water. Rather, they represent the level that would be found 1 m (3.3 ft) from a hypothetical point source emitting the same total amount of sound as is emitted by the combined airguns in the airgun array. The actual received level at any location in the water near the airguns will not exceed the source level of the strongest individual source. In this case, that will be about 231 dB re 1 microPa-m peak, or 237 dB re 1 microPa-m pk-pk. Actual levels experienced by any organism more than 1 m (3.3 ft) from either GI gun will be significantly lower.

Further, the root mean square (rms) received levels that are used as impact criteria for marine mammals (see Richardson et al., 1995) are not directly comparable to these peak or pk-pk values that are normally used to characterize source levels of airgun arrays. The measurement units used to describe airgun sources, peak or pk-pk decibels, are always higher than the rms decibels referred to in biological literature. For example, a measured received level of 160 decibels rms in the far field would typically correspond to a peak measurement of about 170 to 172 dB, and to a pk-pk measurement of about 176 to 178 decibels, as measured for the same pulse received at the same location (Greene, 1997; McCauley *et al.* 1998, 2000). The precise difference between rms and peak or pk-pk values depends on the frequency content and duration of the pulse, among other factors. However, the rms level is always lower than the peak or pk-pk level for an airgun-type source.

The depth at which the sources are towed has a major impact on the maximum near-field output, because the energy output is constrained by ambient pressure. The normal tow depth of the sources to be used in this project is 3 m (9.8 ft), where the ambient pressure is 3 decibars. This also limits output, as the 3 decibars of confining pressure cannot fully constrain the source output, with the result that there is loss of energy at the sea surface. Additional discussion of the characteristics of airgun pulses is provided later in this document.

For the 2 GI-airguns, the sound pressure field has been modeled by L-DEO in relation to distance and direction from the airguns, and in relation to depth. Table 1 shows the maximum distances from the airguns where sound levels of 190-, 180-, 170- and 160–dB re 1 microPa (rms) are predicted to be received. Empirical data concerning the 180, 170 and 160 dB distances have been acquired based on measurements during an acoustic verification study conducted by L-DEO in the northern Gulf of Mexico from 27 May to 3 June 2003 (Tolstoy *et al.*, 2004). Although the results are limited, the data showed that radii around the airguns where the received level would be 180 dB re 1 microPa (rms), NMFS' current injury threshold safety criterion applicable to cetaceans (NMFS, 2000), varies with water depth. Similar depth-related variation is likely in the 190–dB distances applicable to pinnipeds. The proposed L-DEO study area will occur in water approximately 30 3000 m (98 9843 ft).

TABLE 1. Estimated distances to which sound levels ≥190, 180, 170 and 160 dB re 1 μPa (rms) might be received from two 105 in^3 GI guns that will be used during the seismic survey in the GOA during 2004. Distance estimates are given for operations in deep, intermediate, and shallow water. The 180- and 190-dB distances are the safety radii to be used during the survey.

Water depth	Estimated Distances at Received Levels (m)			
	190 dB	180 dB	170 dB	160 dB
>1000 m	17	54	175	510
100–1000 m	26	81	263	765
<100 m	250	400	750	1500

Bathymetric Sonar, Sub-bottom Profiler, and Pinger

In addition to the 2 GI-airguns, a multibeam bathymetric sonar and a low-energy 3.5–kHz sub-bottom profiler will be used during the seismic profiling and continuously when underway. While on station for coring, a 12–kHz pinger will be used to monitor the depth of coring devices relative to the sea floor.

Bathymetric Sonar-Atlas Hydrosweep– The 15.5–kHz Atlas Hydrosweep sonar is mounted on the hull of the *Maurice Ewing*, and it operates in three modes, depending on the water depth. There is one shallow water mode and two deep-water modes: an Omni mode (similar to the shallow-water mode but with a source output of 220 dB (rms)) and a Rotational Directional Transmission (RDT) mode. The RDT mode is normally used during deep-water operation and has a 237–dB rms source output. In the RDT mode, each ''ping'' consists of five successive transmissions, each ensonifying a beam that extends 2.67 degrees fore-aft and approximately 30 degrees in the cross-track direction. The five successive transmissions (segments) sweep from port to starboard with minor overlap, spanning an overall cross-track angular extent of about 140 degrees, with small (much less than 1 millisec) gaps between the pulses for successive 30–degree segments. The total duration of the ''ping'' including all five successive segments, varies with water depth, but is 1 millisec in water depths less than 500 m and 10 millisec in the deepest water. For each segment, ping duration is 1/5 of these values or 2/5 for a receiver in the overlap area ensonified by two beam segments. The ''ping'' interval during RDT operations depends on water depth and varies from once per second in less than 500 m (1640.5 ft) water depth to once per 15 seconds in the deepest water. During the proposed project, the Atlas Hydrosweep will generally be used in waters greater than 800 m (2624.7 ft), but whenever water depths are less than 400 m (1312 ft) the source output is 210 dB re 1 microPa-m (rms) and a single 1–ms pulse or ''ping'' per second is transmitted.

Bathymetric Sonar-EM1002 Portable Sonar – The EM1002 is a compact high-resolution multibeam echo sounder that operates at a frequency of 92 to 98 kHz in water depths from 10 to 800 m (33 2625 ft). The EM1002 will be used instead of the Atlas Hydrosweep in waters <800 m deep. The EM1002 will be pole mounted on the *Ewing*, either over the side or through a well. The system operates with one of three different pulselengths: 0.2, 0.7 and 2 ms. Pulselength increases with increased water depth. Overall angular coverage of the transmitted beam is 3 degrees along the fore-aft axis and 150 degrees (7.4 times the water depth) along the cross-track axis when operating in the shallowest mode. Maximum ping rate is 10/sec (in shallow water) with the ping rate decreasing with increasing water depth. Maximum output using long pulses in 800 m (2624.7 ft) water depth is 226 dB re 1 microPa, although operations in shallower depths, including most of the work in these surveys, will use significantly lower output levels.

Sub-bottom Profilers – The sub-bottom profiler is normally operated to provide information about the sedimentary features and the bottom topography that is simultaneously being mapped by the Hydrosweep. The energy from the EDO Corporation's (EDO) sub-bottom profiler is directed downward by a 3.5–kHz transducer mounted in the hull of the *Ewing*. The output varies with water depth from 50 watts in shallow water to 800 watts in deep water. Pulse interval is 1 second (s) but a common mode of operation is to broadcast five pulses at 1–s intervals followed by a 5–s pause. The beamwidth is approximately 30o and is directed downward. Maximum source output is 204 dB re 1 microPa (800 watts) while nominal source output is 200 dB re 1 microPa (500 watts). Pulse duration will be 4, 2, or 1 ms, and the bandwith of pulses will be 1.0 kHz, 0.5 kHz, or 0.25 kHz, respectively.

An ODEC Bathy 2000P ''chirp'' sonar may be used instead of the EDO sub-bottom profiler. This sonar transmits a 50–ms pulse during which the frequency is swept from 4 to 7 kHz. The transmission rate is variable from 1 to 10 seconds, and the maximum output power is 2 kW. This sonar uses a transducer array very similar to that used by the 3.5 kHz sub-bottom profiler.

The EDO sub-bottom profiler on the *Ewing* has a stated maximum source level of 204 dB re 1 microPa and a nominal source level of 200 dB. Although the sound levels have not been measured directly for the sub-bottom profilers used by the Ewing, Burgess and Lawson (2000) measured sounds propagating more or less horizontally from a sub-bottom profiler similar to the EDO unit with similar source output (i.e., 205 dB re 1 microPa m). For that profiler, the 160 and 180 dB re 1 microPa (rms) radii in the horizontal direction were estimated to be, respectively, near 20 m (66 ft) and 8 m (26 ft) from the source, as measured in 13 m or 43 ft water depth. The corresponding distances for an animal in the beam below the transducer would be greater, on the order of 180 m (591 ft) and 18 m (59 ft) respectively, assuming spherical spreading. Thus the received level for the EDO sub-bottom profiler would be expected to decrease to 160 and 180 dB about 160 m (525 ft) and 16 m (52 ft) below the transducer, respectively, assuming spherical

spreading. Corresponding distances in the horizontal plane would be lower, given the directionality of this source (300 beamwidth) and the measurements of Burgess and Lawson (2000).

12 kHz Pinger – A 12–kHz pinger will be used only during coring operations, to monitor the depth of the coring apparatus relative to the sea floor. The pinger is a battery-powered acoustic beacon that is attached to a wire just above the corehead. The pinger produces an omnidirectional 12 kHz signal with a source output of 193 dB re 1 microPa-m. The pinger produces a 2 ms pulse every second.

Characteristics of Airgun Pulses

Airguns function by venting high-pressure air into the water. The pressure signature of an individual airgun consists of a sharp rise and then fall in pressure, followed by several positive and negative pressure excursions caused by oscillation of the resulting air bubble. The resulting downward-directed pulse has a duration of only 10 to 20 ms, with only one strong positive and one strong negative peak pressure (Caldwell and Dragoset, 2000). Most energy emitted from airguns is at relatively low frequencies. For example, typical high-energy airgun arrays emit most energy at 10–120 Hz. However, the pulses contain some energy up to 500–1000 Hz and above (Goold and Fish, 1998).

The pulsed sounds associated with seismic exploration have higher peak levels than other industrial sounds to which whales and other marine mammals are routinely exposed. As mentioned previously, the pk-pk source levels of the 2 GI-gun array that will be used for the GOA project is 231 dB re 1 microPa (peak) and 237 dB re 1 microPa (pk-pk). However, the effective source level for horizontal propagation will be lower and actual levels experienced by any marine mammal more than 1 m (3.3 ft) from either GI-gun will be significantly lower.

Several important factors need are considered when assessing airgun impacts on the marine environment: (1) Airgun arrays produce intermittent sounds, involving emission of a strong sound pulse for a small fraction of a second followed by several seconds of near silence. In contrast, some other acoustic sources produce sounds with lower peak levels, but their sounds are continuous or discontinuous but continuing for much longer durations than seismic pulses. (2) Airgun arrays are designed to transmit strong sounds downward through the seafloor, and the amount of sound transmitted in near-horizontal directions is considerably reduced. Nonetheless, they also emit sounds that travel horizontally toward non-target areas. (3) An airgun array is a distributed source, not a point source. The nominal source level is an estimate of the sound that would be measured from a theoretical point source emitting the same total energy as the airgun array. That figure is useful in calculating the expected received levels in the far field (i.e., at moderate and long distances). Because the airgun array is not a single point source, there is no one location within the near field (or anywhere else) where the received level is as high as the nominal source level.

The strengths of airgun pulses can be measured in different ways, and it is important to know which method is being used when interpreting quoted source or received levels. Geophysicists usually quote pk-pk levels, in bar-meters or dB re 1 microPa-m. The peak level for the same pulse is typically about 6 dB less. In the biological literature, levels of received airgun pulses are often described based on the ''average'' or ''root-mean-square'' (rms) level over the duration of the pulse. The rms value for a given pulse is typically about 10 dB lower than the peak level, and 16 dB lower than the Pk-pk value (Greene, 1997; McCauley *et al.*, 1998; 2000). A fourth measure that is being used more frequently is the energy level, in dB re 1 microPa^{2}·s. Because the pulses are less than 1 sec in duration, the numerical value of the energy is lower than the rms pressure level, but the units are different. Because the level of a given pulse will differ substantially depending on which of these measures is being applied, it is important to be aware which measure is in use when interpreting any quoted pulse level. NMFS commonly references the rms levels when discussing levels of pulsed sounds that might harass marine mammals.

Seismic sound received at any given point will arrive via a direct path, indirect paths that include reflection from the sea surface and bottom, and often indirect paths including segments through the bottom sediments. Sounds propagating via indirect paths travel longer distances and often arrive later than sounds arriving via a direct path. These variations in travel time have the effect of lengthening the duration of the received pulse. At the source, seismic pulses are about 10 to 20 ms in duration. In comparison, the pulse duration as received at long horizontal distances can be much greater.

Another important aspect of sound propagation is that received levels of low-frequency underwater sounds diminish close to the surface because of pressure-release and interference phenomena that occur at and near the surface (Urick, 1983, Richardson *et al.*, 1995). Paired measurements of received airgun sounds at depths of 3 m (9.8 ft) vs. 9 or 18 m (29.5 or 59 ft) have shown that received levels are typically several decibels lower at 3 m (9.8. ft)(Greene and Richardson, 1988). For a mammal whose auditory organs are within 0.5 or 1 m (1.6 or 3.3 ft) of the surface, the received level of the predominant low-frequency components of the airgun pulses would be further reduced.

Pulses of underwater sound from open-water seismic exploration are often detected 50 to 100 km (30 to 54 nm) from the source location (Greene and Richardson, 1988; Burgess and Greene, 1999). At those distances, the received levels on an approximate rms basis are low (below 120 dB re 1 microPa). However, faint seismic pulses are sometimes detectable at even greater ranges (e.g., Bowles *et al.*, 1994; Fox *et al.*, 2002). Considerably higher levels can occur at distances out to several kilometers from an operating airgun array. Additional information is contained in the L-DEO application, especially in Appendix A.

Description of Habitat and Marine Mammals Affected by the Activity

A detailed description of the GOA area and its associated marine mammals can be found in the L-DEO application and a number of documents referenced in the L-DEO application, and is not repeated here. A total of 18 cetacean species, 3 species of pinnipeds, and the sea otter are known to or may occur in SE Alaska (Rice, 1998; Angliss and Lodge, 2002). The marine mammals that occur in the proposed survey area belong to four taxonomic groups: odontocetes (sperm whales (*Physeter macrocephalus*), beaked whales (Cuvier's (*Ziphius cavirostris*), Baird's (*Berardius bairdii*), and Stejneger's (*Mesoplodon stejnegeri*)), beluga (*Delphinapterus leucas*), Pacific white-sided dolphin (*Lagenorhynchus obliquidens*), Risso's dolphin (*Grampus griseus*), killer whale (*Orcinus orca*), short-finned pilot whale (*Globicephala macrorhynchus*), harbor porpoise* (*Phocoena phocoena*), and Dall's porpopise (*Phocoenoides dalli*)), mysticetes (North Pacific right whales (*Eubalaena japonica*), gray whales (*Eschrichtius robustus*), humpback whales (*Megaptera novaeangliae*), minke whales (*Balaenoptera acutorostrata*), sei whales (*Balaenoptera borealis*), fin whales (*Balaenoptera physalus*), and blue whales ((*Balaenoptera musculus*)), pinnipeds (Steller sea lion (*Eumetopias jubatus*), harbor seal (*Phoca vitulina*) and

northern fur seal (*Callorhinus ursinus*)), and fissipeds (sea otter (*Enhydra lutris*)). Of the 18 cetacean species in the area, nine are commonly found in the activity area (see Table 2) and may be affected by the proposed acitivty. Of the three species of pinnipeds that could potentially occur in SE Alaska, only the Steller sea lion and harbor seal are likely to be present. The northern fur seal inhabits the Bering Sea during the summer and is generally found in SE Alaska in low numbers during the winter, and during the northward migration in spring. Sea otters generally inhabit coastal waters within the 40–m (131–ft) depth contour (Riedman and Estes, 1990) and may be encountered in coastal areas of the study area. More detailed information on these species is contained in the L-DEO application and additional information is contained in Angliss and Lodge, 2002 which are available at: *http://www.nmfs.noaa.gov/prot__res/PR2/Small__Take/smalltake__info.htm#applications,* and *http://www.nmfs.noaa.gov/prot__res/PR2/Stock__Assessment__Program/sars.html*, respectively.

Potential Effects on Marine Mammals

As outlined in several previous NMFS documents, the effects of noise on marine mammals are highly variable, and can be categorized as follows (based on Richardson *et al.*, 1995):

(1) The noise may be too weak to be heard at the location of the animal (i.e., lower than the prevailing ambient noise level, the hearing threshold of the animal at relevant frequencies, or both);

(2) The noise may be audible but not strong enough to elicit any overt behavioral response;

(3) The noise may elicit reactions of variable conspicuousness and variable relevance to the well being of the marine mammal; these can range from temporary alert responses to active avoidance reactions such as vacating an area at least until the noise event ceases;

(4) Upon repeated exposure, a marine mammal may exhibit diminishing responsiveness (habituation), or disturbance effects may persist; the latter is most likely with sounds that are highly variable in characteristics, infrequent and unpredictable in occurrence, and associated with situations that a marine mammal perceives as a threat;

(5) Any anthropogenic noise that is strong enough to be heard has the potential to reduce (mask) the ability of a marine mammal to hear natural sounds at similar frequencies, including calls from conspecifics, and underwater environmental sounds such as surf noise;

(6) If mammals remain in an area because it is important for feeding, breeding or some other biologically important purpose even though there is chronic exposure to noise, it is possible that there could be noise-induced physiological stress; this might in turn have negative effects on the well-being or reproduction of the animals involved; and

(7) Very strong sounds have the potential to cause temporary or permanent reduction in hearing sensitivity. In terrestrial mammals, and presumably marine mammals, received sound levels must far exceed the animal's hearing threshold for there to be any temporary threshold shift (TTS) in its hearing ability. For transient sounds, the sound level necessary to cause TTS is inversely related to the duration of the sound. Received sound levels must be even higher for there to be risk of permanent hearing impairment. In addition, intense acoustic or explosive events may cause trauma to tissues associated with organs vital for hearing, sound production, respiration and other functions. This trauma may include minor to severe hemorrhage.

Effects of Seismic Surveys on Marine Mammals

The L-DEO application provides the following information on what is known about the effects on marine mammals of the types of seismic operations planned by L-DEO. The types of effects considered here are (1) masking, (2) disturbance, and (3) potential hearing impairment and other physical effects. Additional discussion on species specific effects can be found in the L-DEO application.

Masking

Masking effects of pulsed sounds on marine mammal calls and other natural sounds are expected to be limited, although there are very few specific data on this. Seismic sounds are short pulses generally occurring for less than 1 sec every 20 or 60–90 sec during this project. Sounds from the multibeam sonar are very short pulses, occurring for 1–10 msec once every 1 to 15 sec, depending on water depth. (During operations in deep water, the duration of each pulse from the multibeam sonar as received at any one location would actually be only 1/5 or at most 2/5 of 1–10 msec, given the segmented nature of the pulses.) Some whales are known to continue calling in the presence of seismic pulses. Their calls can be heard between the seismic pulses (Richardson *et al.*, 1986; McDonald *et al.*, 1995, Greene *et al.*, 1999). Although there has been one report that sperm whales cease calling when exposed to pulses from a very distant seismic ship (Bowles *et al.*, 1994), a recent study reports that sperm whales continued calling in the presence of seismic pulses (Madsen *et al.*, 2002). Given the small source planned for use during this survey, there is even less potential for masking of sperm whale calls during the present study than in most seismic surveys. Masking effects of seismic pulses are expected to be negligible in the case of the smaller odontocete cetaceans, given the intermittent nature of seismic pulses and the relatively low source level of the airguns to be used in the GOA. Also, the sounds important to small odontocetes are predominantly at much higher frequencies than are airgun sounds.

Most of the energy in the sound pulses emitted by airgun arrays is at low frequencies, with strongest spectrum levels below 200 Hz and considerably lower spectrum levels above 1000 Hz. These frequencies are mainly used by mysticetes, but not by odontocetes or pinnipeds. An industrial sound source will reduce the effective communication or echolocation distance only if its frequency is close to that of the cetacean signal. If little or no overlap occurs between the industrial noise and the frequencies used, as in the case of many marine mammals vs. airgun sounds, communication and echolocation are not expected to be disrupted. Furthermore, the discontinuous nature of seismic pulses makes significant masking effects unlikely even for mysticetes.

A few cetaceans are known to increase the source levels of their calls in the presence of elevated sound levels, or possibly to shift their peak frequencies in response to strong sound signals (Dahlheim, 1987; Au, 1993; Lesage *et al.*, 1999; Terhune, 1999; as reviewed in Richardson *et al.*, 1995). These studies involved exposure to other types of anthropogenic sounds, not seismic pulses, and it is not known whether these types of responses ever occur upon exposure to seismic sounds. If so, these adaptations, along with directional hearing, pre-adaptation to tolerate some masking by natural sounds (Richardson *et al.*, 1995) and the relatively low-power acoustic sources being used in this survey, would all reduce the importance of masking marine mammal vocalizations.

Disturbance by Seismic Surveys

Disturbance includes a variety of effects, including subtle changes in behavior, more conspicuous dramatic changes in activities, and displacement.

However, there are difficulties in defining which marine mammals should be counted as ''taken by harassment''. For many species and situations, scientists do not have detailed information about their reactions to noise, including reactions to seismic (and sonar) pulses. Behavioral reactions of marine mammals to sound are difficult to predict. Reactions to sound, if any, depend on species, state of maturity, experience, current activity, reproductive state, time of day, and many other factors. If a marine mammal does react to an underwater sound by changing its behavior or moving a small distance, the impacts of the change may not rise to the level of a disruption of a behavioral pattern. However, if a sound source would displace marine mammals from an important feeding or breeding area for a prolonged period, such a disturbance would constitute Level B harassment. Given the many uncertainties in predicting the quantity and types of impacts of noise on marine mammals, scientists often resort to estimating how many mammals may be present within a particular distance of industrial activities or exposed to a particular level of industrial sound. This likely overestimates the numbers of marine mammals that are affected in some biologically important manner.

The sound criteria used to estimate how many marine mammals might be harassed behaviorally by the seismic survey are based on behavioral observations during studies of several species. However, information is lacking for many species. More detailed information on potential disturbance effects on baleen whales, toothed whales, and pinnipeds can be found on pages 36–38 and Appendix A in L-DEO's application.

Hearing Impairment and Other Physical Effects

Temporary or permanent hearing impairment is a possibility when marine mammals are exposed to very strong sounds, but there has been no specific documentation of this for marine mammals exposed to airgun pulses. Current NMFS policy regarding exposure of marine mammals to high-level sounds is that cetaceans and pinnipeds should not be exposed to impulsive sounds ≥180 and 190 dB re 1 microPa (rms), respectively (NMFS, 2000). Those criteria have been used in defining the safety (shut down) radii for seismic surveys. However, those criteria were established before there were any data on the minimum received levels of sounds necessary to cause auditory impairment in marine mammals. As discussed in the L-DEO application and summarized here,

1. The 180 dB criterion for cetaceans is probably quite precautionary, i.e., lower than necessary to avoid TTS let alone permanent auditory injury, at least for delphinids.

2. The minimum sound level necessary to cause permanent hearing impairment is higher, by a variable and generally unknown amount, than the level that induces barely-detectable TTS.

3. The level associated with the onset of TTS is often considered to be a level below which there is no danger of permanent damage.

Because of the small size of the GI airguns, along with the planned monitoring and mitigation measures, there is little likelihood that any marine mammals will be exposed to sounds sufficiently strong to cause even the mildest (and reversible) form of hearing impairment. Several aspects of the planned monitoring and mitigation measures for this project are designed to detect marine mammals occurring near the 2 GI-airguns (and multibeam bathymetric sonar), and to avoid exposing them to sound pulses that might cause hearing impairment. In addition, many cetaceans are likely to show some avoidance of the area with ongoing seismic operations. In these cases, the avoidance responses of the animals themselves will reduce or avoid the possibility of hearing impairment.

Non-auditory physical effects may also occur in marine mammals exposed to strong underwater pulsed sound. Possible types of non-auditory physiological effects or injuries that theoretically might occur in mammals close to a strong sound source include stress, neurological effects, bubble formation, resonance effects, and other types of organ or tissue damage. It is possible that some marine mammal species (i.e., beaked whales) may be especially susceptible to injury and/or stranding when exposed to strong pulsed sounds. However, L-DEO believes that it is especially unlikely that any of these non-auditory effects would occur during the proposed survey given the small size of the sources, the brief duration of exposure of any given mammal, and the planned mitigation and monitoring measures. The following paragraphs discuss the possibility of TTS, permanent threshold shift (PTS), and non-auditory physical effects.

TTS

TTS is the mildest form of hearing impairment that can occur during exposure to a strong sound (Kryter, 1985). When an animal experiences TTS, its hearing threshold rises and a sound must be stronger in order to be heard. TTS can last from minutes or hours to (in cases of strong TTS) days. Richardson *et al.* (1995) notes that the magnitude of TTS depends on the level and duration of noise exposure, among other considerations. For sound exposures at or somewhat above the TTS threshold, hearing sensitivity recovers rapidly after exposure to the noise ends. Little data on sound levels and durations necessary to elicit mild TTS have been obtained for marine mammals.

For toothed whales exposed to single short pulses, the TTS threshold appears to be, to a first approximation, a function of the energy content of the pulse (Finneran *et al.*, 2002). Given the available data, the received level of a single seismic pulse might need to be on the order of 210 dB re 1 microPa rms (approx. 221 226 dB pk pk) in order to produce brief, mild TTS. Exposure to several seismic pulses at received levels near 200 205 dB (rms) might result in slight TTS in a small odontocete, assuming the TTS threshold is (to a first approximation) a function of the total received pulse energy (Finneran *et al.*, 2002). Seismic pulses with received levels of 200 205 dB or more are usually restricted to a zone of no more than 100 m (328 ft) around a seismic vessel operating a large array of airguns. Such sound levels would be limited to distances within a few meters of the small airgun source to be used during this project.

There are no data, direct or indirect, on levels or properties of sound that are required to induce TTS in any baleen whale. However, TTS is not expected to occur during this survey given the small size of the source, and the strong likelihood that baleen whales would avoid the approaching airguns (or vessel) before being exposed to levels high enough for there to be any possibility of TTS.

TTS thresholds for pinnipeds exposed to brief pulses (single or multiple) have not been measured, although exposures up to 183 db re 1 microPa (rms) have been shown to be insufficient to induce TTS in California sea lions (Finneran *et al.* (2003). However, prolonged exposures show that some pinnipeds may incur TTS at somewhat lower received levels than do small odontocetes exposed for similar durations (Kastak *et al.*, 1999; Ketten *et al.*, 2001; Au *et al.*, 2000).

A marine mammal within a zone of ≤100 m (≤ 328 ft) around a typical large array of operating airguns might be exposed to a few seismic pulses with

levels of ≥205 dB, and possibly more pulses if the mammal moved with the seismic vessel. Also, around smaller arrays, such as the 2 GI-airgun proposed for use during this survey, a marine mammal would need to be even closer to the source to be exposed to levels >205 dB, at least in waters greater than 100 m (328 ft) deep. However, as noted previously, most cetacean species tend to avoid operating airguns, although not all individuals do so. In addition, ramping up airgun arrays, which is standard operational protocol for L-DEO and other seismic operators, should allow cetaceans to move away from the seismic source and to avoid being exposed to the full acoustic output of the airgun array. It is unlikely that these cetaceans would be exposed to airgun pulses at a sufficiently high level for a sufficiently long period to cause more than mild TTS, given the relative movement of the vessel and the marine mammal. However, TTS would be more likely in any odontocetes that bow-ride or otherwise linger near the airguns. While bow-riding, odontocetes would be at or above the surface, and thus not exposed to strong sound pulses given the pressure-release effect at the surface. However, bow-riding animals generally dive below the surface intermittently. If they did so while bow-riding near airguns, they would be exposed to strong sound pulses, possibly repeatedly. If some cetaceans did incur TTS through exposure to airgun sounds, this would very likely be a temporary and reversible phenomenon.

Currently, NMFS believes that, whenever possible to avoid Level A harassment, cetaceans should not be exposed to pulsed underwater noise at received levels exceeding 180 dB re 1 microPa (rms). The corresponding limit for pinnipeds has been set at 190 dB. The predicted 180- and 190–dB distances for the airgun arrays operated by L-DEO during this activity are summarized elsewhere in this document. These sound levels are not considered to be the levels at or above which TTS might occur. Rather, they are the received levels above which, in the view of a panel of bioacoustics specialists convened by NMFS (at a time before TTS measurements for marine mammals started to become available), one could not be certain that there would be no injurious effects, auditory or otherwise, to marine mammals. As noted here, TTS data that are now available imply that, at least for dolphins, TTS is unlikely to occur unless the dolphins are exposed to airgun pulses substantially stronger that 180 dB re 1 microPa (rms).

It has also been shown that most whales tend to avoid ships and associated seismic operations. Thus, whales will likely not be exposed to such high levels of airgun sounds. Because of the slow ship speed, any whales close to the trackline could move away before the sounds become sufficiently strong for there to be any potential for hearing impairment. Therefore, there is little potential for whales being close enough to an array to experience TTS. In addition, as mentioned previously, ramping up the 2 GI-airgun array, which has become standard operational protocol for many seismic operators including L-DEO, should allow cetaceans to move away from the seismic source and to avoid being exposed to the full acoustic output of the GI airguns.

Permanent Threshold Shift (PTS)

When PTS occurs, there is physical damage to the sound receptors in the ear. In some cases, there can be total or partial deafness, while in other cases, the animal has an impaired ability to hear sounds in specific frequency ranges. Physical damage to a mammal's hearing apparatus can occur if it is exposed to sound impulses that have very high peak pressures, especially if they have very short rise times (time required for sound pulse to reach peak pressure from the baseline pressure). Such damage can result in a permanent decrease in functional sensitivity of the hearing system at some or all frequencies.

Single or occasional occurrences of mild TTS are not indicative of permanent auditory damage in terrestrial mammals. However, very prolonged exposure to sound strong enough to elicit TTS, or shorter-term exposure to sound levels well above the TTS threshold, can cause PTS, at least in terrestrial mammals (Kryter, 1985). Relationships between TTS and PTS thresholds have not been studied in marine mammals but are assumed to be similar to those in humans and other terrestrial mammals. The low-to-moderate levels of TTS that have been induced in captive odontocetes and pinnipeds during recent controlled studies of TTS have been confirmed to be temporary, with no measurable residual PTS (Kastak *et al.*, 1999; Schlundt *et al.*, 2000; Finneran *et al.*, 2002; Nachtigall *et al.*, 2003). In terrestrial mammals, the received sound level from a single non-impulsive sound exposure must be far above the TTS threshold for any risk of permanent hearing damage (Kryter, 1994; Richardson *et al.*, 1995). For impulse sounds with very rapid rise times (e.g., those associated with explosions or gunfire), a received level not greatly in excess of the TTS threshold may start to elicit PTS. Rise times for airgun pulses are rapid, but less rapid than for explosions.

Some factors that contribute to onset of PTS are as follows: (1) exposure to single very intense noises, (2) repetitive exposure to intense sounds that individually cause TTS but not PTS, and (3) recurrent ear infections or (in captive animals) exposure to certain drugs.

Cavanagh (2000) has reviewed the thresholds used to define TTS and PTS. Based on his review and SACLANT (1998), it is reasonable to assume that PTS might occur at a received sound level 20 dB or more above that which induces mild TTS. However, for PTS to occur at a received level only 20 dB above the TTS threshold, it is probable that the animal would have to be exposed to the strong sound for an extended period.

Sound impulse duration, peak amplitude, rise time, and number of pulses are the main factors thought to determine the onset and extent of PTS. Based on existing data, Ketten (1994) has noted that the criteria for differentiating the sound pressure levels that result in PTS (or TTS) are location and species-specific. PTS effects may also be influenced strongly by the health of the receiver's ear.

Given that marine mammals are unlikely to be exposed to received levels of seismic pulses that could cause TTS, it is highly unlikely that they would sustain permanent hearing impairment. If we assume that the TTS threshold for exposure to a series of seismic pulses may be on the order of 220 dB re 1 microPa (pk-pk) in odontocetes, then the PTS threshold might be about 240 dB re 1 microPa (pk-pk). In the units used by geophysicists, this is 10 bar-m. Such levels are found only in the immediate vicinity of the largest airguns (Richardson et al., 1995; Caldwell and Dragoset, 2000). However, it is very unlikely that an odontocete would remain within a few meters of a large airgun for sufficiently long to incur PTS. The TTS (and thus PTS) thresholds of baleen whales and pinnipeds may be lower, and thus may extend to a somewhat greater distance. However, baleen whales generally avoid the immediate area around operating seismic vessels, so it is unlikely that a baleen whale could incur PTS from exposure to airgun pulses. Some pinnipeds do not show strong avoidance of operating airguns. In summary, it is highly unlikely that marine mammals could receive sounds strong enough

(and over a sufficient period of time) to cause permanent hearing impairment during this project. In the proposed project, marine mammals are unlikely to be exposed to received levels of seismic pulses strong enough to cause TTS and because of the higher level of sound necessary to cause PTS, it is even less likely that PTS could occur. This is due to the fact that even levels immediately adjacent to the 2 GI-airguns may not be sufficient to induce PTS because the mammal would not be exposed to more than one strong pulse unless it swam alongside an airgun for a period of time.

Strandings and Mortality

Marine mammals close to underwater detonations of high explosives can be killed or severely injured, and the auditory organs are especially susceptible to injury (Ketten *et al.*, 1993; Ketten, 1995). Airgun pulses are less energetic and have slower rise times. While there is no documented evidence that airgun arrays can cause serious injury, death, or stranding, the association of mass strandings of beaked whales with naval exercises and, recently, an L-DEO seismic survey have raised the possibility that beaked whales may be especially susceptible to injury and/or stranding when exposed to strong pulsed sounds.

In March 2000, several beaked whales that had been exposed to repeated pulses from high intensity, mid-frequency military sonars stranded and died in the Providence Channels of the Bahamas Islands, and were subsequently found to have incurred cranial and ear damage (NOAA and USN, 2001). Based on post-mortem analyses, it was concluded that an acoustic event caused hemorrhages in and near the auditory region of some beaked whales. These hemorrhages occurred before death. They would not necessarily have caused death or permanent hearing damage, but could have compromised hearing and navigational ability (NOAA and USN, 2001). The researchers concluded that acoustic exposure caused this damage and triggered stranding, which resulted in overheating, cardiovascular collapse, and physiological shock that ultimately led to the death of the stranded beaked whales. During the event, five naval vessels used their AN/SQS–53C or -56 hull-mounted active sonars for a period of 16 hours. The sonars produced narrow (<100 Hz) bandwidth signals at center frequencies of 2.6 and 3.3 kHz (-53C), and 6.8 to 8.2 kHz (-56). The respective source levels were usually 235 and 223 dB re 1 μ Pa, but the -53C briefly operated at an unstated but substantially higher source level. The unusual bathymetry and constricted channel where the strandings occurred were conducive to channeling sound. This, and the extended operations by multiple sonars, apparently prevented escape of the animals to the open sea. In addition to the strandings, there are reports that beaked whales were no longer present in the Providence Channel region after the event, suggesting that other beaked whales either abandoned the area or perhaps died at sea (Balcomb and Claridge, 2001).

Other strandings of beaked whales associated with operation of military sonars have also been reported (e.g., Simmonds and Lopez-Jurado, 1991; Frantzis, 1998). In these cases, it was not determined whether there were noise-induced injuries to the ears or other organs. Another stranding of beaked whales (15 whales) happened on 24–25 September 2002 in the Canary Islands, where naval maneuvers were taking place. Jepson et al. (2003) concluded that cetaceans might be subject to decompression injury in some situations. If so, this might occur if the mammals ascend unusually quickly when exposed to aversive sounds. Previously, it was widely assumed that diving marine mammals are not subject to the bends or air embolism.

It is important to note that seismic pulses and mid-frequency sonar pulses are quite different. Sounds produced by the types of airgun arrays used to profile sub-sea geological structures are broadband with most of the energy below 1 kHz. Typical military mid-frequency sonars operate at frequencies of 2 to 10 kHz, generally with a relatively narrow bandwidth at any one time (though the center frequency may change over time). Because seismic and sonar sounds have considerably different characteristics and duty cycles, it is not appropriate to assume that there is a direct connection between the effects of military sonar and seismic surveys on marine mammals. However, evidence that sonar pulses can, in special circumstances, lead to hearing damage and, indirectly, mortality suggests that caution is warranted when dealing with exposure of marine mammals to any high-intensity pulsed sound.

In addition to the sonar-related strandings, there was a September, 2002 stranding of two Cuvier's beaked whales in the Gulf of California (Mexico) when a seismic survey by the *Ewing* was underway in the general area (Malakoff, 2002). The airgun array in use during that project was the *Ewing*'s 20–gun 8490–in^3 array. This might be a first indication that seismic surveys can have effects, at least on beaked whales, similar to the suspected effects of naval sonars. However, the evidence linking the Gulf of California strandings to the seismic surveys is inconclusive, and to date is not based on any physical evidence (Hogarth, 2002; Yoder, 2002). The ship was also operating its multi-beam bathymetric sonar at the same time but this sonar had much less potential than these naval sonars to affect beaked whales. Although the link between the Gulf of California strandings and the seismic (plus multi-beam sonar) survey is inconclusive, this plus the various incidents involving beaked whale strandings associated with naval exercises suggests a need for caution in conducting seismic surveys in areas occupied by beaked whales.

Non-auditory Physiological Effects

Possible types of non-auditory physiological effects or injuries that might theoretically occur in marine mammals exposed to strong underwater sound might include stress, neurological effects, bubble formation, resonance effects, and other types of organ or tissue damage. There is no evidence that any of these effects occur in marine mammals exposed to sound from airgun arrays. However, there have been no direct studies of the potential for airgun pulses to elicit any of these effects. If any such effects do occur, they would probably be limited to unusual situations when animals might be exposed at close range for unusually long periods.

Long-term exposure to anthropogenic noise may have the potential to cause physiological stress that could affect the health of individual animals or their reproductive potential, which could theoretically cause effects at the population level (Gisner (ed.), 1999). However, there is essentially no information about the occurrence of noise-induced stress in marine mammals. Also, it is doubtful that any single marine mammal would be exposed to strong seismic sounds for sufficiently long that significant physiological stress would develop. This is particularly so in the case of broad-scale seismic surveys where the tracklines are generally not as closely spaced as in many industry seismic surveys.

Gas-filled structures in marine animals have an inherent fundamental resonance frequency. If stimulated at this frequency, the ensuing resonance could cause damage to the animal. There may also be a possibility that high sound levels could cause bubble formation in the blood of diving mammals that in turn could cause an air

embolism, tissue separation, and high, localized pressure in nervous tissue (Gisner (ed), 1999; Houser et al., 2001). In 2002, NMFS held a workshop (Gentry (ed.) 2002) to discuss whether the stranding of beaked whales in the Bahamas in 2000 might have been related to air cavity resonance or bubble formation in tissues caused by exposure to noise from naval sonar. A panel of experts concluded that resonance in air-filled structures was not likely to have caused this stranding. Among other reasons, the air spaces in marine mammals are too large to be susceptible to resonant frequencies emitted by mid- or low-frequency sonar; lung tissue damage has not been observed in any mass, multi-species stranding of beaked whales; and the duration of sonar pings is likely too short to induce vibrations that could damage tissues (Gentry (ed.), 2002). Opinions were less conclusive about the possible role of gas (nitrogen) bubble formation/growth in the Bahamas stranding of beaked whales. Workshop participants did not rule out the possibility that bubble formation/growth played a role in the stranding and participants acknowledged that more research is needed in this area. The only available information on acoustically-mediated bubble growth in marine mammals is modeling that assumes prolonged exposure to sound.

In summary, little is known about the potential for seismic survey sounds to cause either auditory impairment or other non-auditory physical effects in marine mammals. Available data suggest that such effects, if they occur at all, would be limited to short distances from the sound source. However, the available data do not allow for meaningful quantitative predictions of the numbers (if any) of marine mammals that might be affected in these ways. Marine mammals that show behavioral avoidance of seismic vessels, including most baleen whales, some odontocetes, and some pinnipeds, are unlikely to incur auditory impairment or other physical effects.

Possible Effects of Mid-frequency Sonar Signals

A multi-beam bathymetric sonar (Atlas Hydrosweep DS–2 (15.5–kHz) or Simrad EM1002 (95 kHz)) and a sub-bottom profiler will be operated from the source vessel essentially continuously during the planned survey. Details about these sonars were provided previously in this document.

Navy sonars that have been linked to avoidance reactions and stranding of cetaceans generally (1) are more powerful than the Atlas Hydrosweep or EM1002 sonars, (2) have a longer pulse duration, and (3) are directed close to horizontally (vs. downward for the Atlas Hydrosweep and EM1002). The area of possible influence for the *Ewing*'s sonars is much smaller – a narrow band below the source vessel. For the Hydrosweep there is no horizontal propagation as these signals project at an angle of approximately 45 degrees from the ship. For the deep-water mode, under the ship the 160- and 180–dB zones are estimated to be 3200 m (10500 ft) and 610 m (2000 ft), respectively. However, the beam width of the Hydrosweep signal is only 2.67 degrees fore and aft of the vessel, meaning that a marine mammal diving could receive at most 1–2 signals from the Hydrosweep and a marine mammal on the surface would be unaffected. Marine mammals that do encounter the bathymetric sonars at close range are unlikely to be subjected to repeated pulses because of the narrow fore-aft width of the beam, and will receive only limited amounts of pulse energy because of the short pulses and vessel speed. Therefore, as harassment or injury from pulsed sound is a function of total energy received, the actual harassment or injury threshold for the bathymetric sonar signals (approximately 10 ms) such sounds would be at a much higher dB level than that for longer duration pulses such as seismic signals. As a result, NMFS believes that marine mammals are unlikely to be harassed or injured from the multibeam sonar.

Masking by Mid-frequency Sonar Signals

Marine mammal communications will not be masked appreciably by the multibeam sonar signals or the sub-bottom profiler given the low duty cycle and directionality of the sonars and the brief period when an individual mammal is likely to be within its beam. Furthermore, in the case of baleen whales, the sonar signals from the Hydrosweep sonar do not overlap with the predominant frequencies in the calls, which would avoid significant masking. The 95–kHz pulses from the EM1002 sonar will be inaudible to baleen whales and pinnipeds.

For the sub-bottom profiler and 12–kHz pinger, marine mammal communications will not be masked appreciably because of their relatively low power output, low duty cycle, directionality (for the profiler), and the brief period when an individual mammal may be within the sonar's beam. In the case of most odonotocetes, the sonar signals from the profiler do not overlap with the predominant frequencies in their calls. In the case of mysticetes, the pulses from the pinger do not overlap with their predominant frequencies.

Behavioral Responses Resulting from Mid-Frequency Sonar Signals

Behavioral reactions of free-ranging marine mammals to military and other sonars appear to vary by species and circumstance. Observed reactions have included silencing and dispersal by sperm whales (Watkins *et al.*, 1985), increased vocalizations and no dispersal by pilot whales (Rendell and Gordon, 1999), and the previously-mentioned beachings by beaked whales. Also, Navy personnel have described observations of dolphins bow-riding adjacent to bow-mounted mid-frequency sonars during sonar transmissions. However, all of these observations are of limited relevance to the present situation. Pulse durations from these sonars were much longer than those of the L-DEO multibeam sonar, and a given mammal would have received many pulses from the naval sonars. During L-DEO's operations, the individual pulses will be very short, and a given mammal would not receive many of the downward-directed pulses as the vessel passes by.

Captive bottlenose dolphins and a white whale exhibited changes in behavior when exposed to 1–sec pulsed sounds at frequencies similar to those that will be emitted by the multi-beam sonar used by L-DEO and to shorter broadband pulsed signals. Behavioral changes typically involved what appeared to be deliberate attempts to avoid the sound exposure (Schlundt *et al.*, 2000; Finneran *et al.*, 2002). The relevance of these data to free-ranging odontocetes is uncertain and in any case the test sounds were quite different in either duration or bandwidth as compared to those from a bathymetric sonar.

L-DEO and NMFS are not aware of any data on the reactions of pinnipeds to sonar sounds at frequencies similar to those of the 15.5 kHz frequency of the Ewing's multibeam sonar. Based on observed pinniped responses to other types of pulsed sounds, and the likely brevity of exposure to the bathymetric sonar sounds, pinniped reactions are expected to be limited to startle or otherwise brief responses of no lasting consequences to the individual animals. As mentioned, the 95–kHz sounds from the EM1002 will be inaudible to pinnipeds and to baleen whales, so it will have no disturbance effects on those groups of mammals. The pulsed signals from the sub-bottom profiler and pinger are much weaker than those from the airgun array and the multibeam sonar. Therefore, significant behavioral responses are not expected.

Hearing Impairment and Other Physical Effects

Given recent stranding events that have been associated with the operation of naval sonar, there is much concern that sonar noise can cause serious impacts to marine mammals (for discussion see Effects of Seismic Surveys). However, the multi-beam sonars proposed for use by L-DEO are quite different than sonars used for navy operations. Pulse duration of the bathymetric sonars is very short relative to the naval sonars. Also, at any given location, an individual marine mammal would be in the beam of the multi-beam sonar for much less time given the generally downward orientation of the beam and its narrow fore-aft beam-width. (Navy sonars often use near-horizontally-directed sound.) These factors would all reduce the sound energy received from the multi-beam sonar rather drastically relative to that from the sonars used by the Navy. Therefore, hearing impairment by multi-beam bathymetric sonar is unlikely.

Source levels of the sub-bottom profiler are much lower than those of the airguns and the multi-beam sonar. Sound levels from a sub-bottom profiler similar to the one on the Ewing were estimated to decrease to 180 dB re 1 microPa (rms) at 8 m (26 ft) horizontally from the source (Burgess and Lawson, 2000), and at approximately 18 m downward from the source. Furthermore, received levels of pulsed sounds that are necessary to cause temporary or especially permanent hearing impairment in marine mammals appear to be higher than 180 dB (see earlier discussion). Thus, it is unlikely that the sub-bottom profiler produces pulse levels strong enough to cause hearing impairment or other physical injuries even in an animal that is (briefly) in a position near the source.

The sub-bottom profiler is usually operated simultaneously with other higher-power acoustic sources. Many marine mammals will move away in response to the approaching higher-power sources or the vessel itself before the mammals would be close enough for there to be any possibility of effects from the less intense sounds from the sub-bottom profiler. In the case of mammals that do not avoid the approaching vessel and its various sound sources, mitigation measures that would be applied to minimize effects of the higher-power sources would further reduce or eliminate any minor effects of the sub-bottom profiler.

The 12–kHz pinger is unlikely to cause hearing impairment or physical injuries even in an animal that is in a position near the source because is does not produce strong pulse levels.

Estimates of Take by Harassment for the Gulf of Alaska Seismic Survey

Although information contained in this document indicates that injury to marine mammals from seismic sounds potentially occurs at sound pressure levels significantly higher than 180 and 190 dB, NMFS' current criteria for onset of Level A harassment of cetaceans and pinnipeds from impulse sound are, respectively, 180 and 190 re 1 microPa rms. The rms level of a seismic pulse is typically about 10 dB less than its peak level and about 16 dB less than its pk-pk level (Greene, 1997; McCauley *et al.*, 1998; 2000a). The criterion for Level B harassment onset is 160 dB.

Given the proposed mitigation (see Mitigation later in this document), all anticipated takes involve a temporary change in behavior that may constitute Level B harassment. The proposed mitigation measures will minimize or eliminate the possibility of Level A harassment or mortality. L-DEO has calculated the ''best estimates'' for the numbers of animals that could be taken by level B harassment during the proposed GOA seismic survey using data on marine mammal density and abundance from marine mammal surveys in the region, and estimates of the size of the affected area, as shown in the predicted RMS radii table (see Table 1).

These estimates are based on a consideration of the number of marine mammals that might be exposed to sound levels greater than 160 dB, the criterion for the onset of Level B harassment, by operations with the 2 GI-gun array planned to be used for this project. The anticipated zone of influence of the multi-beam sonar is less than that for the airguns, so it is assumed that any marine mammals close enough to be affected by the multi-beam sonar would already be affected by the airguns. Therefore, no additional incidental takings are included for animals that might be affected by the multi-beam sonar.

Table 2 explains the corrected density estimates as well as the best estimate of the numbers of each species that would be exposed to seismic sounds greater than 160 dB. A detailed description on the methodology used by L-DEO to arrive at the estimates of Level B harassment takes that are provided in Table 2 can be found in L-DEO's IHA application for the GOA survey.

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TABLE 2. Estimates of the possible numbers of marine mammal exposures to the different sound levels, and the numbers of different individuals that might be exposed, during L-DEO's proposed seismic program in SE Alaska in late summer/autumn 2004. The proposed sound source consists of 2 GI airguns. Received levels of airgun sounds are expressed in dB re 1 μPa (rms, averaged over pulse duration). Not all marine mammals will change their behavior when exposed to these sound levels but, partially offsetting that, some may alter their behavior when levels are lower (see text). The column of numbers in boldface shows the numbers of "takes" for which L-DEO has requeste Level B take authorization.[a]

	Number of Exposures to Sound Levels ≥160 dB		Number of Individuals Exposed to Sound Levels ≥160 dB			
			Best Estimate			
Species	Best Estimate	Maximum Estimate	Number	% of Regional Pop'n[b]	Maximum Estimate	Requested Take Authorization
Physeteridae						
Sperm whale	*3*	*4*	*2*	*0.0*	*3*	*5*
Ziphiidae						
Cuvier's beaked whale	18	26	11	0.1	17	**26**
Baird's beaked whale	4	6	3	0.0	4	**6**
Stejneger's beaked whale	0	0	0	0.0	0	**5**
Monodontidae						
Beluga	0	0	0	0.0	0	**5**
Delphinidae						
Pacific white-sided dolphin	161	329	103	0.1	211	**329**
Risso's dolphin	0	0	0	0.0	0	**5**
Killer whale	65	97	42	0.2	62	**97**
Short-finned pilot whale	0	0	0	0.0	0	**10**
Phocoenidae						
Harbor porpoise	187	230	120	0.4	148	**230**
Dall's porpoise	5218	7828	3354	0.8	5031	**7828**
Balaenopteridae						
North Pacific right whale	*0*	*0*	0	*0.0*	*0*	*2*
Gray whale	0	0	0	0.0	0	**15**
Humpback whale	*105*	*157*	67	*1.1*	*101*	*157*
Minke whale	2	3	1	*0.0*	2	**8**
Fin whale	*144*	*216*	93	*0.8*	*139*	*216*
Blue whale	*0*	*0*	0	*0.0*	*0*	*5*
Pinnipeds						
Northern fur seal [c]			0		0	**5**
Harbor seal [c]			1498	4.0		**1498**
Steller sea lion	*712*		*458*	*1.0*		*458*
Fissipeds						
Sea Otter [d]			68	0.3	123	**123**

[a] Best estimate and maximum estimates of density are from Table 5 in L-DEO's application

[b] Regional population size estimates are from Table 2 in L-DEO's application.

[c] Estimates for seals are not based on direct calculations from density data (see L-DEO's application for explanation).

[d] Estimates for the sea otter are based on the encounter rate per linear kilometer, not densities.

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Conclusions

Effects on Cetaceans

Strong avoidance reactions by several species of mysticetes to seismic vessels have been observed at ranges up to 6–8 km (3.2–4.3 nm) and occasionally as far as 20–30 km (10.8–16.2 nm) from the source vessel. However, reactions at the longer distances appear to be atypical of most species and situations, particular when feeding whales are involved. Many of the mysticetes that will be encountered in SE Alaska at the time of the proposed seismic survey will be feeding. In addition, the estimated numbers presented in Table 2 are considered overestimates of actual numbers that may be harassed. The estimated 160–dB radii used here are probably overestimates of the actual 160–dB radii at water depths ≥100 m (ft) based on the few calibration data obtained in deep water (Tolstoy *et al.*, 2004).

Odontocete reactions to seismic pulses, or at least the reactions of dolphins, are expected to extend to lesser distances than are those of mysticetes. Odontocete low-frequency hearing is less sensitive than that of mysticetes, and dolphins are often seen from seismic vessels. In fact, there are documented instances of dolphins approaching active seismic vessels. However, dolphins as well as some other types of odontocetes sometimes show avoidance responses and/or other changes in behavior when near operating seismic vessels.

Taking into account the small size and the relatively low sound output of the 2 GI-guns to be used, and the mitigation measures that are planned, effects on cetaceans are generally expected to be limited to avoidance of a small area around the seismic operation and short-term changes in behavior, falling within the MMPA definition of Level B harassment. Furthermore, the estimated numbers of animals potentially exposed to sound levels sufficient to cause appreciable disturbance are very low percentages of the affected populations.

Based on the 160–dB criterion, the best estimates of the numbers of individual cetaceans that may be exposed to sounds >160 dB re 1 microPa (rms) represent 0 to 1.1 percent of the populations of each species in the North Pacific Ocean (Table 2). For species listed as endangered under the Endangered Species Act (ESA), this includes no North Pacific right whales or blue whales; ≤0.01 percent of the Northeast Pacific population of sperm whales; 1.1 percent of the humpback whale population; and 0.8 percent of the whale population (Table 2). In the cases of belugas, beaked whales, and sperm whales, these potential reactions are expected to involve no more than very small numbers (0 to 11) of individual cetaceans. Humpback and whales are the endangered species that are most likely to be exposed and their Northeast Pacific populations are approximately 6000 (Caretta *et al.*, 2002) and 10970 (Ohsumi and Wada, 1974), respectively.

It is highly unlikely that any North Pacific right whales will be exposed to seismic sounds ≥160 dB re 1 microPa (rms). This conclusion is based on the rarity of this species in SE Alaska and in the Northeast Pacific (less than 100, Carretta *et al.*, 2002), and that the remnant population of this species apparently migrates to more northerly areas during the summer. However, L-DEO has requested an authorization to expose up to two North Pacific right whales to ≥160 dB, given the possibility (however unlikely) of encountering one or more of this endangered species. If a right whale is sighted by the vessel-based observers, the 2 GI-airguns will be shut down (not just powered down) regardless of the distance of the whale from the airguns.

Substantial numbers of phocoenids and delphinids may be exposed to airgun sounds during the proposed seismic studies, but the population sizes of species likely to occur in the operating area are large, and the numbers potentially affected are small relative to the population sizes (Table 2). The best estimates of the numbers of individual Dall's and harbor porpoises that might be exposed to ≥160 dB represent 0.8 percent and 0.4 percent of their Northeast Pacific populations. The best estimates of the numbers of individual delphinids that might be exposed to sounds ≥170 dB re 1 μPa (rms) represents much less than 0.01 percent of the approximately 600,000 dolphins estimated to occur in the Northeast Pacific, and 0 to 0.2 percent of the populations of each species occurring there (Table 2).

Varying estimates of the numbers of marine mammals that might be exposed to sounds from the 2 GI-airguns during the 2004 seismic surveys off SW Alaska have been presented, depending on the specific exposure criteria, calculation procedures (exposures vs. individuals), and density criteria used (best vs. maximum). The requested ''take authorization'' for each species is based on the estimated maximum number of exposures to ≤160 dB re 1 microPa (rms). That figure likely overestimates (in most cases by a large margin) the actual number of animals that will be exposed to these sounds; the reasons for this have been discussed previously and in L-DEO's application. Even so, the estimates for the proposed surveys are quite low percentages of the population sizes. Also, these relatively short-term exposures are unlikely to result in any long-term negative consequences for the individuals or their populations.

Mitigation measures such as controlled speed, course alteration, observers, ramp ups, and shut downs when marine mammals are seen within deed ranges (see Mitigation) should further reduce short-term reactions, and minimize any effects on hearing sensitivity. In all cases, the effects are expected to be short-term, with no lasting biological consequence. In light of the type of take expected and the small percentages of affected stocks, the action is expected to have no more than a negligible impact on the affected species or stocks of marine mammals.

Effects on Pinnipeds

Two pinniped species, the Steller sea lion and the harbor seal, are likely to be encountered in the study area. In addition, it is possible (although unlikely) that a small number of northern fur seals may be encountered. An estimated 1498 harbor seals and 195 Steller sea lions (or 1 percent of the Northeast Pacific population) may be exposed to airgun sounds during the seismic survey. It is unknown how many of these would actually be disturbed, but most likely it would only be a small percentage of that population. Similar to cetaceans, the short-term exposures to airgun and sonar sounds are not expected to result in any long-term negative consequences for the individuals or their populations.

Potential Effects on Fissipeds

As indicated in Table 2, L-DEO estimates that 68 sea otters that could potentially be encountered during airgun operations with a maximum estimate of 123 sea otters. L-DEO believes these estimates are likely an overestimate of the number of otters affected, as there is little evidence that sea otters are disturbed by sounds from either a small airgun source or from a large array of airguns (Riedman 1983, 1984). However, sea otters are under the jurisdiction of the U.S. Fish and Wildlife Service (USFWS). L-DEO is consulting with the USFWS regarding whether sea otters will be affected by the 2 GI-airguns being employed in the GOA project.

Potential Effects on Habitat

The proposed seismic survey will not result in any permanent impact on habitats used by marine mammals, or to

the food sources they utilize. The main impact issue associated with the proposed activity will be temporarily elevated noise levels and the associated direct effects on marine mammals. The actual area that will be affected by coring operations will be a very small fraction of the marine mammal habitat and the habitat of their food species in the area; thus, any effects are expected to be highly localized and insignificant. Coring operations would result in no more than a negligible and highly localized short-term disturbance to sediments and benthic organisms. The area that might be disturbed is a very small fraction of the overall area occupied by a fish or marine mammal species.

One of the reasons for the adoption of airguns as the standard energy source for marine seismic surveys was that they (unlike the explosives used in the distant past) do not result in any appreciable fish kill. Various experimental studies showed that airgun discharges cause little or no fish kill, and that any injurious effects were generally limited to the water within a meter or so of an airgun. However, it has recently been found that injurious effects on captive fish, especially on fish hearing, may occur to somewhat greater distances than previously thought (McCauley *et al.*, 2000a,b, 2002; 2003). Even so, any injurious effects on fish would be limited to short distances. Also, many of the fish that might otherwise be within the injury-zone are likely to be displaced from this region prior to the approach of the airguns through avoidance reactions to the passing seismic vessel or to the airgun sounds as received at distances beyond the injury radius.

Fish often react to sounds, especially strong and/or intermittent sounds of low frequency. Sound pulses at received levels of 160 dB re 1 μPa (peak) may cause subtle changes in behavior. Pulses at levels of 180 dB (peak) may cause noticeable changes in behavior (Chapman and Hawkins, 1969; Pearson *et al.*, 1992; Skalski *et al.*, 1992). It also appears that fish often habituate to repeated strong sounds rather rapidly, on time scales of minutes to an hour. However, the habituation does not endure, and resumption of the disturbing activity may again elicit disturbance responses from the same fish. Fish near the airguns are likely to dive or exhibit some other kind of behavioral response. This might have short-term impacts on the ability of cetaceans to feed near the survey area. However, only a small fraction of the available habitat would be ensonified at any given time, and fish species would return to their pre-disturbance behavior once the seismic activity ceased. Thus, the proposed surveys would have little impact on the abilities of marine mammals to feed in the area where seismic work is planned. Some of the fish that do not avoid the approaching airguns (probably a small number) may be subject to auditory or other injuries.

Zooplankters that are very close to the source may react to the airgun's impulse. These animals have an exoskeleton and no air sacs; therefore, little or no mortality is expected. Many crustaceans can make sounds and some crustacea and other invertebrates have some type of sound receptor. However, the reactions of zooplankters to sound are not known. Some mysticetes feed on concentrations of zooplankton. A reaction by zooplankton to a seismic impulse would only be relevant to whales if it caused a concentration of zooplankton to scatter. Pressure changes of sufficient magnitude to cause this type of reaction would probably occur only very close to the source, so few zooplankton concentrations would be affected. Impacts on zooplankton behavior are predicted to be negligible, and this would translate into negligible impacts on feeding mysticetes.

Potential Effects on Subsistence Use of Marine Mammals

The proposed seismic project could potentially impact the availability of marine mammals for subsistence harvests in a very small area immediately around the *Ewing*, and for a very short time period while conducting seismic activities. However, considering the limited time and locations for the planned surveys, the proposed survey is not expected to have an unmitigable adverse impact on the availability of Steller sea lions, harbor seals or northern sea otters for subsistence harvests. Nevertheless, L-DEO plans to coordinate its activities with local subsistence communities so that seismic activities will be conducted outside subsistence hunting areas and times, if possible.

Mitigation

For the proposed seismic survey in the GOA, L-DEO will deploy 2 GI-airguns as an energy source, with a total discharge volume of 210 in3. The energy from the airguns will be directed mostly downward. The directional nature of the airguns to be used in this project is an important mitigating factor. This directionality will result in reduced sound levels at any given horizontal distance as compared with the levels expected at that distance if the source were omnidirectional with the stated nominal source level. Also, the small size of these airguns is an inherent and important mitigation measure that will reduce the potential for effects relative to those that might occur with large airgun arrays. This measure is in conformance with NMFS encouraging seismic operators to use the lowest intensity airguns practical to accomplish research objectives.

Proposed Safety Radii

Received sound levels have been modeled by L-DEO for the 2 GI-airguns, in relation to distance and direction from the airguns. The model does not allow for bottom interactions, and is most directly applicable to deep water. Based on the model, the distances from the 2 G-airguns where sound levels of 190 dB, 180 dB, 170 dB, and 160 dB re 1 microPa (rms) are predicted to be received are shown in the >1000 m (3281 ft) line of Table 1.

Empirical data concerning these safety radii have been acquired based on measurements during the acoustic verification study conducted by L-DEO in the northern Gulf of Mexico from 27 May to 3 June 2003 (see 68 FR 32460, May 30, 2003). Although the results are limited, L-DEO's analysis of the acoustic data from that study (Tolstoy *et al.*, 2004) indicate that the radii around the airguns where the received level would be 180 dB re 1 microPa (rms), the safety zone applicable to cetaceans, vary with water depth.

The proposed study area will occur in water approximately 30–3000 m (98–9843 ft) deep. In deep water (>1000 m (3281 ft)), the safety radii during airgun operations will be the values predicted by L-DEO's model (Table 1). Therefore, the assumed 180- and 190–dB radii are 54 m (177 ft) and 17 m (56 ft), respectively. For operations in shallow (<100 m (328 ft)) water, conservative correction factors were applied to the predicted radii for the 2 GI-airgun array. The 180- and 190–dB radii in shallow water are assumed to be 400 m (1312 ft) and 250 m (820 ft), respectively. In intermediate depths (100–1000 m (328–3281 ft)), a 1.5x correction factor was applied to the estimates provided by the model for deep water situations. The assumed 180- and 190–dB radii in intermediate-depth water are 81 m (266 ft) and 26 m (85 ft), respectively. The 2 GI-airguns will be immediately shutdown when cetaceans or pinnipeds are detected within or about to enter the appropriate 180- or 190–dB zone.

Additional Mitigation Measures

The following mitigation measures, as well as marine mammal visual monitoring (discussed later in this

document), are proposed for the subject seismic surveys: (1) Speed and course alteration (provided that they do not compromise operational safety requirements); (2) shut-down procedures; and (3) avoid encroaching upon critical habitat around Steller sea lion rookeries and haulouts. As discussed elsewhere in this document, special mitigation measures will be implemented for the North Pacific right whale.

Although a ''power-down'' procedure is often applied by L-DEO during seismic surveys with larger arrays of airguns, L-DEO does not propose powering down to a single gun during this proposed project. Powering down from two guns to one gun would make only a small difference in the 180- or 190–dB zone, which is probably not enough distance to allow one-gun to continue operations if a mammal came within the safety zone for two guns.

At night, vessel lights and/or night-vision devices (NVDs) could be useful in sighting some marine mammals at the surface within a short distance from the ship (within the safety radii for the 2–GI guns in deep and intermediate waters). Thus, start up of the airguns may be possible at night in deep and intermediate waters, in situations when the entire safety zone is visible with vessel lights and NVDs. However, lights and NVDs will probably not be very effective for monitoring the larger safety radii around the 2 GI-airguns operating in shallow water. In shallow water, therefore, nighttime start ups of the airguns are not proposed to be authorized.

Speed and Course Alteration

If a marine mammal is detected outside the safety zone and, based on its position and the relative motion, is likely to enter the safety zone, the vessel's speed and/or direct course may, when practical and safe, be changed in a manner that also minimizes the effect to the planned science objectives. The marine mammal activities and movements relative to the seismic vessel will be closely monitored to ensure that the marine mammal does not approach within the safety zone. If the mammal appears likely to enter the safety zone, further mitigative actions will be taken (i.e., either further course alterations or shut down of the airguns). In the closely constrained waters of Lynn Canal, Muir Inlet, and Frederick Sound, it is unlikely that significant alterations to the vessel's speed or course could be made. In these circumstances, shut-down procedures would be implemented rather than speed or course changes.

Shut-down Procedures

If a marine mammal is detected outside the safety zone but is likely to enter the safety zone, and if the vessel's speed and/or course cannot be changed to avoid having the mammal enter the safety zone, the airguns will be shut down before the mammal is within the safety zone. Likewise, if a mammal is already within the safety zone when first detected, the airguns will be shut down immediately. The airguns will be shut down if a North Pacific right whale is sighted from the vessel, even if it is located outside the safety zone.

Following a shut down, airgun activity will not resume until the marine mammal has cleared the safety zone. The animal will be considered to have cleared the safety zone if it (1) is visually observed to have left the safety zone, or (2) has not been seen within the zone for 15 min in the case of small odontocetes and pinnipeds, or (3) has not been seen within the zone for 30 min in the case of mysticetes and large odontocetes, including sperm, pygmy sperm, dwarf sperm, and beaked whales.

If the complete safety zone has not been visible for at least 30 min prior to the start of operations in either daylight or nighttime, airgun operations will not commence. However, if the airgun array has been operational before nightfall, it can remain operational throughout the night, even though the entire safety radius may not be visible. If the entire safety zone is visible at night, using vessel lights and NVDs (as may be the case in deep and intermediate waters), then start up of the airguns may occur at night.

Ramp-up

When airgun operations commence after a certain period without airgun operations, the number of guns firing will be increased gradually, or ''ramped up'' (also described as a ''soft start''). Usually, operations begin with the smallest gun in the array and guns are added in sequence such that the source level of the array will increase in steps not exceeding 6 dB per 5–min period. However, during this survey, with only 2 GI-guns, ramp-up will be implemented by turning on one airgun, followed 5 minutes later by the second airgun. Throughout the ramp-up procedure, the safety zone will be maintained.

Comments on past IHAs raised the issue of prohibiting nighttime operations as a practical mitigation measure. However, this is not practicable due to cost considerations. The daily cost to the federal government to operate vessels such as Ewing is approximately $33,000 to $35,000/day (Ljunngren, pers. comm. May 28, 2003). If the vessels were prohibited from operating during nighttime, it is possible that each trip would require an additional three to five days, or up to $175,000 more, depending on average daylight at the time of work.

If a seismic survey vessel is limited to daylight seismic operations, efficiency would be much reduced. Without commenting specifically on how that would affect the present project, for seismic operators in general, a daylight-only requirement would be expected to result in one or more of the following outcomes: cancellation of potentially valuable seismic surveys; reduction in the total number of seismic cruises annually due to longer cruise durations; a need for additional vessels to conduct the seismic operations; or work conducted by non-U.S. operators or non-U.S. vessels when in waters not subject to U.S. law.

Taking into consideration the additional costs of prohibiting nighttime operations and the likely impact of the activity (including all mitigation and monitoring), NMFS has preliminarily determined that the proposed mitigation and monitoring ensures that the activity will have the least practicable impact on the affected species or stocks. Marine mammals will have sufficient notice of a vessel approaching with operating seismic airguns, thereby giving them an opportunity to avoid the approaching array; if ramp-up is required, two marine mammal observers will be required to monitor the safety radii using shipboard lighting or NVDs for at least 30 minutes before ramp-up begins and verify that no marine mammals are in or approaching the safety radii; ramp-up may not begin unless the entire safety radii are visible. Therefore it is likely that the 2 GI-airgun array will not be ramped-up from a shut-down at night when in waters shallower than 100 m (328 ft).

Marine Mammal Monitoring

L-DEO must have at least three visual observers on board the *Ewing*, and at least two must be an experienced marine mammal observer that NMFS has approved in advance of the start of the GOA cruise. These observers will be on duty in shifts of no longer than 4 hours.

The visual observers will monitor marine mammals and sea turtles near the seismic source vessel during all daytime airgun operations, during any nighttime start-ups of the airguns and at night, whenever daytime monitoring resulted in one or more shut-down

situations due to marine mammal presence. During daylight, vessel-based observers will watch for marine mammals and sea turtles near the seismic vessel during periods with shooting (including ramp-ups), and for 30 minutes prior to the planned start of airgun operations after a shut-down.

Use of multiple observers will increase the likelihood that marine mammals near the source vessel are detected. L-DEO bridge personnel will also assist in detecting marine mammals and implementing mitigation requirements whenever possible (they will be given instruction on how to do so), especially during ongoing operations at night when the designated observers are on stand-by and not required to be on watch at all times.

The observer(s) will watch for marine mammals from the highest practical vantage point on the vessel, which is either the bridge or the flying bridge. On the bridge of the *Ewing*, the observer's eye level will be 11 m (36 ft) above sea level, allowing for good visibility within a 210° arc. If observers are stationed on the flying bridge, the eye level will be 14.4 m (47.2 ft) above sea level. The observer(s) will systematically scan the area around the vessel with Big Eyes binoculars, reticle binoculars (e.g., 7 X 50 Fujinon) and with the naked eye during the daytime. Laser range-ding binoculars (Leica L.F. 1200 laser rangefinder or equivalent) will be available to assist with distance estimation. The observers will be used to determine when a marine mammal or sea turtle is in or near the safety radii so that the required mitigation measures, such as course alteration and power-down or shut-down, can be implemented. If the airguns are shut down, observers will maintain watch to determine when the animal is outside the safety radius.

Observers will not be on duty during ongoing seismic operations at night; bridge personnel will watch for marine mammals during this time and will call for the airguns to be shut-down if marine mammals are observed in or about to enter the safety radii. However, a biological observer must be on standby at night and available to assist the bridge watch if marine mammals are detected. If the airguns are ramped-up at night, two marine mammal observers will monitor for marine mammals for 30 minutes prior to ramp-up and during the ramp-up using either deck lighting or night vision equipment that will be available (ITT F500 Series Generation 3 binocular image intensifier or equivalent).

Passive Acoustic Monitoring (PAM)

Although PAM has been used in previous seismic surveys, L-DEO does not propose to use the PAM system during this research cruise. First, the 180–dB zones are significantly smaller than those found for the larger L-DEO arrays making the PAM unnecessary for locating marine mammals. Secondly, the effectiveness of the PAM in shallow water is not high and third, because of the coring operations, additional berthing is unavailable for the PAM operators.

Reporting

L-DEO will submit a report to NMFS within 90 days after the end of the cruise, which is currently predicted to occur during August, 2004. The report will describe the operations that were conducted and the marine mammals that were detected. The report must provide full documentation of methods, results, and interpretation pertaining to all monitoring tasks. The report will summarize the dates and locations of seismic operations, marine mammal sightings (dates, times, locations, activities, associated seismic survey activities), and estimates of the amount and nature of potential take of marine mammals by harassment or in other ways.

ESA

Under section 7 of the ESA, the National Science Foundation (NSF), the agency funding L-DEO, has begun consultation on the proposed seismic survey. NMFS will also consult on the issuance of an IHA under section 101(a)(5)(D) of the MMPA for this activity. Consultation will be concluded prior to a determination on the issuance of an IHA.

National Environmental Policy Act (NEPA)

The NSF has prepared an EA for the GOA oceanographic surveys. NMFS is reviewing this EA and will either adopt it or prepare its own NEPA document before making a determination on the issuance of an IHA. A copy of the NSF EA for this activity is available upon request (see **ADDRESSES**).

Preliminary Conclusions

NMFS has preliminarily determined that the impact of conducting the seismic survey in the GOA in the northeastern Pacific Ocean will result, at worst, in a temporary modification in behavior by certain species of marine mammals. This activity is expected to result in no more than a negligible impact on the affected species or stocks.

For reasons stated previously in this document, this preliminary determination is supported by (1) the likelihood that, given sufficient notice through slow ship speed and ramp-up, marine mammals are expected to move away from a noise source that it ds annoying prior to its becoming potentially injurious; (2) recent research that indicates that TTS is unlikely (at least in delphinids) until levels closer to 200–205 dB re 1 microPa are reached rather than 180 dB re 1 microPa; (3) the fact that 200–205 dB isopleths would be within 100 m (328 ft) of the vessel even in shallow water; and (4) the likelihood that marine mammal detection ability by trained observers is close to 100 percent during daytime and remains high at night to that distance from the seismic vessel. As a result, no take by injury and/or death is anticipated, and the potential for temporary or permanent hearing impairment is very low and will be avoided through the incorporation of the mitigation measures mentioned in this document.

While the number of potential incidental harassment takes will depend on the distribution and abundance of marine mammals in the vicinity of the survey activity, the number of potential harassment takings is estimated to be small. In addition, the proposed seismic program is not expected to interfere with any subsistence hunts, since seismic operations will not take place in subsistence whaling and sealing areas and will not affect marine mammals used for subsistence purposes.

Proposed Authorization

NMFS proposes to issue an IHA to L-DEO for conducting a oceanographic seismic survey in the GOA, northeastern Pacific Ocean, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. NMFS has preliminarily determined that the proposed activity would result in the harassment of small numbers of marine mammals; would have no more than a negligible impact on the affected marine mammal stocks; and would not have an unmitigable adverse impact on the availability of species or stocks for subsistence uses.

Information Solicited

NMFS requests interested persons to submit comments and information concerning this request (see **ADDRESSES**).

Dated: June 17, 2004.

Laurie K. Allen,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 04–14242 Filed 6–22–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 061704C]

Mid-Atlantic Fishery Management Council; Public Meeting

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

Notice of public meeting.

The Trawl Survey Advisory Committee, composed of representatives from the Northeast Fisheries Science Center (NEFSC), the Mid-Atlantic Fishery Management Council (MAFMC), the New England Fishery Management Council (NEFMC), and several independent scientific researchers, will hold a public meeting.

The meeting will be held on Wednesday, July 7, 2004, from 9 a.m. to 5 p.m. and Thursday, July 8, 2004, from 8 a.m. to 4 p.m.

The meeting will be held at the Sheraton Society Hill, One Dock Street, Philadelphia, PA, telephone: 215–238–6000.

Council address: Mid-Atlantic Fishery Management Council, 300 S. New Street, Room 2115, Dover, DE 19904.

FOR FURTHER INFORMATION CONTACT: Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council; telephone302–674–2331, ext. 19.

The purpose of this meeting is to assist the NEFSC in developing effective and consistent trawl survey protocols and practices for the trawl surveys. The Committee will be describing what they envision the scientific sampling gear should do in terms of the sampling focus and performance. They will be making recommendations on the design of the new gear fishing package for the new research vessel.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Debbie Donnangelo at the Mid-Atlantic Council Office (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: June 18, 2004.

Alan D. Risenhoover,

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

[FR Doc. E4–1391 Filed 6–22–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 061704D]

New England Fishery Management Council; Public Meetings

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

Notice of a public meeting.

The New England Fishery Management Council (Council) is scheduling a public meeting of its Social Sciences Advisory Committee in July, 2004 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

The meeting will be held on Thursday, July 8, 2004, at 10 a.m.

The meeting will be held in Location: Holiday Inn, 31 Hampshire Street, Mansfield, MA 02048; telephone: (508) 339–2200.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council (978) 465–0492.

SUPPLEMENTARY INFORMATION: The Social Science Advisory Committee will meet to discuss progress and plans for reviewing Council actions.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: June 18, 2004.

Alan D. Risenhoover,

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

[FR Doc. E4–1390 Filed 6–22–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 052604A]

Marine Mammals; File No. 1066–1750

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

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that Michael T. Williams [Principal Investigator], LGL Alaska Research Associates, Inc., 1101 East 76th Avenue, Anchorage, Alaska 99518, has been issued a permit to take northern fur seals (*Callorhinus ursinus*) for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376;

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668; phone (907)586–7221; fax (907)586–7249; and

Alaska Fisheries Science Center, National Marine Mammal Laboratory, NMFS, 7600 Sand Point Way, NE, Seattle, WA 98115 (206)526–4032; fax (206)526–6614.

FOR FURTHER INFORMATION CONTACT: Ruth Johnson or Amy Sloan, (301)713–2289.

SUPPLEMENTARY INFORMATION: On April 7, 2004, notice was published in the **Federal Register** (69 FR 18352) that a request for a scientific research permit to take the species identified above had been submitted by the above-named individual. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and

Importing of Marine Mammals (50 CFR part 216), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

The Permit authorizes the Holder to conduct round-ups of fur seals on St. Paul and St. George Islands and to disentangle seals on St. Paul, AK.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an environmental assessment was prepared analyzing the effects of the permitted activities. After a Finding of No Significant Impact, the determination was made that it was not necessary to prepare an environmental impact statement.

Dated: June 17, 2004.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 04–14243 Filed 6–22–04; 8:45 am]

BILLING CODE 3510–22–S

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Notice of Closed Meetings

AGENCY: Corporation for National and Community Service.

ACTION: Notice of Closed Meetings of the Board of Directors.

SUMMARY: On Friday, June 18, 2004, a majority of the Board of Directors (Board) of the Corporation for National and Community Service (Corporation) voted, pursuant to 45 CFR 2505.4, to close public observation for a newly-scheduled meeting on June 21, 2004, and for a portion of an expanded meeting on June 22, 2004 that was previously noticed in the **Federal Register**. The meetings, or portions thereof, to be closed involve discussions of the draft AmeriCorps rulemaking proposal the Corporation plans to submit to the Office of Management and Budget rulemaking docket. The vote followed a determination, in accordance with the Government in the Sunshine Act and the Corporation's regulations, that Board business required this discussion without the delay that would be necessary to make a public announcement at least one week before the meeting, as described in 45 CFR 2505.6. Thus, the Board determined by a majority vote that an additional meeting on June 21, 2004 was necessary and that the subject matter of the Board meeting on June 22, 2004, as previously announced, should be expanded, to add the discussion of this proposal to the agenda for this meeting, and that no earlier announcement of the change was possible.

In accordance with 45 CFR 2505.5(e), the General Counsel of the Corporation for National and Community Service has certified that, in his opinion, the portions of the meetings to be closed could properly be closed to public observation on the grounds that disclosing the information to be discussed to the public prematurely would significantly frustrate implementation of a proposed agency action, pursuant to 45 C.F.R. 2505.4(h)(i). The Board accepted that determination in voting to close the meetings.

As provided in 45 CFR 2505.5(c), the members of the Board voting in favor of closing this portion of the meeting were: Stephen Goldsmith; Alan Solomont; Dorothy Johnson; Donna Williams; Cynthia Burleson; and Carol Kinsley.

The Corporation expects the following Corporation for National and Community staff to attend the closed portions of the meetings: David Eisner, Chief Executive Officer; Michelle Guillermin, Chief Financial Officer and Acting Chief Operating Officer; Amy Mack, Chief of Staff; Frank Trinity, General Counsel; Rosie Mauk, Director of AmeriCorps; Katherine Hoehn, Director of Congressional Affairs; Nicola Goren, Associate General Counsel. In addition, the Corporation expects the following members of the Board of Directors to attend: Stephen Goldsmith (Chair); Alan Solomont; Dorothy Johnson; Donna Williams; Cynthia Burleson; Carol Kinsley; Henry Lozano; Marc Racicot; William Schambra; Juanita Doty.

FOR FURTHER INFORMATION CONTACT: For further information, contact Frank Trinity, General Counsel, at (202) 606–5000 ext. 256.

Dated: June 18, 2004.

Frank R. Trinity,

General Counsel.

[FR Doc. 04–14289 Filed 6–18–04; 4:58 pm]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Government-Owned Invention; Available for Licensing

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The invention listed below is assigned to the United States Government as represented by the Secretary of the Navy and is available for licensing by the Department of the Navy. Patent application 10/774,649: NON-INVASIVE CORROSION SENSOR. The invention provides a method that will permit quantitative measurement of the rate of corrosion of material surfaces not accessible during normal operations. The process is predictive and does not require visual observation of the surfaces.

ADDRESSES: Requests for copies of the invention cited should be directed to the Naval Surface Warfare Center, Crane Div, Code 054, Bldg 1, 300 Highway 361, Crane, IN 47522–5001.

FOR FURTHER INFORMATION CONTACT: Mr. Brian Bailey, Naval Surface Warfare Center, Crane Div, Code 054, Bldg 1, 300 Highway 361, Crane, IN 47522–5001, telephone (812) 854–2378. To download an application for license, see: *http://www.crane.navy.mil/newscommunity/TechTrans CranePatents.asp?bhcp=1*

(Authority: 35 U.S.C. 207, 37 CFR part 404.)

Dated: June 15, 2004.

S.K. Melancon,

Paralegal Specialist, Office of the Judge Advocate General, Alternate Federal Register Liaison Officer.

[FR Doc. 04–14171 Filed 6–22–04; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Government-Owned Inventions; Available for Licensing

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The inventions listed below are assigned to the U.S. Government as represented by the Secretary of the Navy and are available for licensing by the Department of the Navy.

U.S. Patent No. 6,592,681: FLOATING OIL BOOM CLEANING APPARATUS.// U.S. Patent No. 6,601,529: STABLIZED TUMBLEHOME HULL FORM.//U.S. Patent No. 6,606,526: SYSTEM BEHAVIOR MODIFICATION FOR MAINTENANCE OF CHAOS.//U.S. Patent No. 6,606,959: HIGH SPEED DRAG REDUCING VENTILATION FOR MARINE VESSEL HULLS.//U.S. Patent No. 6,606,960: SCUBA DIVER FARING.//U.S. Patent No. 6,611,151: COATING ASSESSMENT SYSTEM BASED ON ELECTROCHEMICAL NOISE.//U.S. Patent No. 6,612,155: TESTING CONDITION OF INTERNAL COMBUSTION ENGINES BY SAMPLED DETECTION OF GAS LEAKAGE.//U.S. Patent No. 6,624,416: UNCOOLED NIOBIUM TRISULFIDE

MIDWAVELENGTH INFRARED DETECTOR.//U.S. Patent No. 6,628,036: ELECTRICAL CURRENT TRANSFERRING AND BRUSH PRESSURE EXERTING SPRING DEVICE.//U.S. Patent No. 6,632,762: OXIDATION RESISTANT COATING FOR CARBON.//U.S. Patent No. 6,635,368: HTS FILM-BASED ELECTRONIC DEVICE CHARACTERIZED BY LOW ELF AND WHITE NOISE.//U.S. Patent No. 6,643,337: CODIFFERENCE CORRELATOR FOR IMPULSIVE SIGNALS AND NOISE.//U.S. Patent No. 6,659,290: OIL WATER SEPARATOR WITH AIR SPARGING ARRAY FOR IN-SITU CLEANING.//U.S. Patent No. 6,663,803: FABRICATION OF A FRACTALLY ATTRIBUTIVELY DELAMINATION RESISTIVE COMPOSITE STRUCTURE.//U.S. Patent No. 6,686,917: MINE LITTORAL THREAT ZONE VISUALIZATION PROGRAM.//U.S. Patent No. 6,688,819: MODULAR MULTI-FUNCTION VEHICLE INTERFACE SYSTEM.//U.S. Patent No. 6,694,271: INTEGRATED CIRCUIT BREAKER PROTECTION SOFTWARE.//U.S. Patent No. 6,696,126: VISUAL-TACTILE SIGNAGE.//U.S. Patent No. 6,698,370: HYDRODYNAMIC AND SUPPORTIVE STRUCTURE FOR GATED SHIP STERN.//U.S. Patent No. 6,710,328: FIBER OPTIC COMPOSITE DAMAGE SENSOR.//U.S. Patent No. 6,714,008: GRADIOMETRIC MEASUREMENT METHODOLOGY FOR DETERMINING MAGNETIC FIELDS OF LARGE OBJECTS.//U.S. Patent No. 6,725,130: METHOD, APPARATUS AND CONTROL LOGIC FOR DAMAGE RECONFIGURATION OF AN ELECTRO-MECHANICAL SYSTEM.//U.S. Patent No. 6,729,383: FLUID-COOLED HEAT SINK WITH TURBULENCE-ENHANCING SUPPORT PINS.//U.S. Patent No. 6,734,602: LINEAR MAGNETOSTRICTIVE ACTUATOR.// U.S. Patent No. 6,737,776: HYBRID LINEAR MOTOR.//U.S. Patent No. 6,738,315: UNDERWATER TARGET TESTING.//U.S. Patent No. 6,740,205: PROCESSING OF SHIPBOARD WASTEWATER.

ADDRESSES: Requests for copies of the patents cited should be directed to: Naval Surface Warfare Center Carderock Division, Code 0117, 9500 MacArthur Blvd, West Bethesda, MD 20817–5700, and must include the patent number.

FOR FURTHER INFORMATION CONTACT: Joseph Teter Ph.D., Director, Technology Transfer Office, Naval Surface Warfare Center Carderock Division, Code 0117, 9500 MacArthur Blvd, West Bethesda, MD 20817–5700, telephone (301) 227–4299.

(Authority: 35 U.S.C. 207, 37 CFR Part 404.)

Dated: June 15, 2004.

S.K. Melancon,

Paralegal Specialist, Office of the Judge Advocate General, Alternate Federal Register Liaison Officer.

[FR Doc. 04–14172 Filed 6–22–04; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before August 23, 2004.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: June 17, 2004.

Angela C. Arrington,

Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: New.

Title: Written Application for the Independent Living Services for Older Individuals Who are Blind Formula Grant.

Frequency: Every three years.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs (primary).

Reporting and Recordkeeping Hour Burden:

Responses: 56.

Burden Hours: 9.

Abstract: This document is used by States to request funds to administer the Independent Living Services for Older Individuals Who are Blind (IL–OIB) program. The IL–OIB is provided for under Title VII, Chapter 2 of the Rehabilitation Act of 1973, as amended (Act) to assist individuals who are age 55 or older whose significant visual impairment makes competitive employment extremely difficult to attain but for whom independent living goals are feasible.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 2560. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–245–6621. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Shelia Carey at her e-mail address *Sheila.Carey@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information

Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 04–14132 Filed 6–22–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before August 23, 2004.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: June 17, 2004.

Angela C. Arrington,

Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

Federal Student Aid

Type of Review: Extension.

Title: Consolidation Loan Rebate Fee Report.

Frequency: Monthly.

Affected Public: Businesses or other for-profit (primary), State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 7,560.

Burden Hours: 8,190.

Abstract: The Consolidation Loan Rebate Fee Report for payment by check or Electronic Funds Transfer (EFT) will be used by approximately 817 lenders participating in the Title IV, Part B loans program. The information collected is used to transmit interest payment rebate fees to the Secretary of Education.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 2563. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–245–6621. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joe Schubart at his e-mail address Joe.Schubart@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 04–14133 Filed 6–22–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP04–355–000]

CenterPoint Energy Gas Transmission Company; Notice of Application

June 15, 2004.

Take notice that on June 7, 2004, CenterPoint Energy Gas Transmission Company (CEGT), 1111 Louisiana Street, Houston, Texas 77002–5231, filed in Docket No. CP04–355–000 an application pursuant to section 7(b) of the Natural Gas Act (NGA) for permission and approval to abandon, in place and by sale, certain facilities located in Caddo Parish, Louisiana. CEGT further requests a finding that the facilities to be sold to Moransco Energy Corporation (Moransco), the purchasing party, would be exempt from the Commission's jurisdiction when operated as part of Moransco's gathering system, all as more fully set forth in the application. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''e-Library'' 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 at *FERCOnlineSupport@ferc.gov* or toll free, (866) 208–3676, or TTY, contact (202) 502–8659.

Any questions concerning this request may be directed to Lawrence O. Thomas, Director-Rates & Regulatory, CenterPoint Energy Gas Transmission Company, P.O. Box 21734, Shreveport, Louisiana 71151, or call (318) 429–2804.

Specifically, CEGT proposes to abandon its Line RM–1 and appurtenant facilities, and in conjunction with the proposed abandonment, sell an approximately 2-mile segment of Line RM–1 to Moransco, a local natural gas producer.

CEGT states that it is uneconomical for CEGT to continue to operate this segment of the Line RM–1. CEGT states further that the abandonment would have no material impact on CEGT's cost of service nor would it result in or cause any interruption, disruption, or termination of the transportation service presently rendered by CEGT.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should file on or before the date listed below with the Federal Energy Regulatory Commission, 888 First

Street, NE., Washington DC 20426, a motion to intervene in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 385.214 or 385.211) and the regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

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: July 6, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1389 Filed 6–22–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2090–003]

Green Mountain Power Corporation; Notice Granting Late Intervention

June 15, 2004.

On February 18, 2000, the Commission issued a notice of application accepted for filing and soliciting motions to intervene and protests for the Waterbury Hydroelectric Project No. 2090, located on the Little River in Washington County, Vermont. The notice established April 17, 2000, as the deadline for filing motions to intervene.

On March 25, 2002, the Vermont Agency of Natural Resources filed a motion to intervene. Granting the motion to intervene will not unduly delay or disrupt the proceeding, or prejudice other parties to it. Therefore, pursuant to Rule 214,[1] the motion to intervene filed by the Vermont Agency of Natural Resources is granted, subject to the Commission's rules and regulations.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1388 Filed 6–22–04; 9:15 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. P–2114–116, P–2145–000, P–2244–000]

Priest Rapids, Rocky Reach, Packwood Lake; Notice of Meetings

June 15, 2004.

The Director of the Office of Energy Projects of the Federal Energy Regulatory Commission is scheduled to meet with representatives of Indian tribes with an interest in one or more of the following three hydropower licensing proceedings: Priest Rapids Project No. 2114–116, Rocky Reach Project No. 2145, and Packwood Lake Project No. 2244. Meetings will be held with the following tribes at the locations and times listed below:

Confederated Tribes of the Colville Reservation: June 28, 2004, 9:30 a.m. (P.s.t.), Boardroom, Best Western Lincoln Inn Suite, 211 Umptanum Road, Ellensburg, WA 98926.

Confederated Tribes of Warm Springs and Wanapum Tribe: June 28, 2004, 1 p.m. (P.s.t.), Boardroom, Best Western Lincoln Inn Suite, 211 Umptanum Road, Ellensburg, WA 98926.

Confederated Tribes and Bands of the Yakama Nation: June 29, 2004, 8:30 a.m. (P.s.t.), Tribal Council Chambers, Yakama Agency Building, 401 Fort Road, Toppenish, WA 98948.

Confederated Tribes of the Umatilla Reservation: June 29, 2004, 3:30 p.m. (P.s.t.), Tribal Board Office, 73239 Confederated Way (Old Mission Highway), Pendleton, OR 97801.

Members of the public and intervenors in the referenced proceedings may attend these meetings; however, participation will be limited to tribal representatives and the Commission representatives. If you plan to attend any of these meetings, please contact Dr. Frank Winchell at the Federal Energy Regulatory Commission. He can be reached at 202–502–6104. All meetings will be transcribed by a court reporter, and transcripts will be made available by the Commission after the meetings.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1386 Filed 6–22–04; 8:45 am]

BILLING CODE 6717–01–P

[1] 18 CFR 385.214 (2003).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP04–60–000]

Tennessee Gas Pipeline Company; Notice of Site Visit

June 15, 2004.

On Tuesday, June 22, 2004, the staff of the Federal Energy Regulatory Commission (FERC) will conduct a site visit of Tennessee Gas Pipeline Company's (Tennessee) proposed Tewksbury-Andover Lateral Project located near the town of Tewksbury, Massachusetts. We will meet at 9:30 a.m. (e.s.t.) at the Tewksbury-Andover Holiday Inn, 4 Highwood Drive, Tewksbury, Massachusetts. Interested persons may attend, but must provide their own transportation.

For additional information about the site visit, please contact the FERC's Office of External Affairs at 1–866–208–3372.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1387 Filed 6–22–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RM04–7–000, ER96–2495–016, ER96–2495–017, ER97–4143–004, ER97–4143–005, ER97–1238–011, ER97–1238–012, ER98–2075–010, ER98–2075–011, ER98–542–006 and ER98–542–007 (Not consolidated), ER97–4166–010 and ER97–4166–011, PL02–8–000]

Market-Based Rates For Public Utilities, AEP Power Marketing, Inc., AEP Service Corporation, CSW Power Marketing, Inc., CSW Energy Services, Inc., and Central and South West Services, Inc., Entergy Services, Inc., Southern Company Energy Marketing L.P., Conference on Supply Margin Assessment; Notice Inviting Comments

June 10, 2004.

On June 9, 2004, the Commission Staff held a technical conference to discuss issues associated with the rulemaking proceeding on market-based rates. All interested persons are invited to file written comments no later than June 30, 2004, in relation to the issues that were the subject of the technical conference.

Filing Requirements for Paper and Electronic Filings

Comments, papers, or other documents related to this proceeding may be filed in paper format or electronically. The Commission strongly encourages electronic filings. Those filing electronically do not need to make a paper filing.

Documents filed electronically via the Internet must be prepared in MS Word, Portable Document Format, or ASCII format. To file the document, access the Commission's Web site at *http://www.ferc.gov*, click on ''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 acknowledgement to the sender's e-mail address upon receipt of comments. User assistance for electronic filing is available at 202–502–8258 or by e-mail to *efiling@ferc.gov*. Do not submit comments to this e-mail address.

For paper filings, the original and 14 copies of the 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 the above-referenced Docket Nos.

All written comments will be placed in the Commission's public files and will be available for inspection at the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426, during regular business hours.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–1365 Filed 6–22–04; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0156; FRL–7365–6]

MCPA; Availability of Risk Assessments (Interim Process)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of risk assessments that were developed as part of EPA's process for making pesticide Reregistration Eligibility Decisions (REDs) and tolerance reassessments consistent with the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA). These risk assessments are the human health and environmental fate and effects risk assessments and related documents for 4-chloro-2-methylphenoxy acetic acid (MCPA). This notice also starts a 60–day public comment period for the risk assessments. By allowing access and opportunity for comment on the risk assessments, EPA is seeking to strengthen stakeholder involvement and help ensure decisions made under FQPA are transparent and based on the best available information. The tolerance reassessment process will ensure that the United States continues to have the safest and most abundant food supply.

DATES: Comments, identified by the docket ID number OPP–2004–0156, must be received on or before August 23, 2004.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Kelly White, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–8401; e-mail address: *white.kelly@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, nevertheless, a wide range of stakeholders will be interested in obtaining the risk assessments for MCPA, including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the use of pesticides on food. Since other entities also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPP–2004–0156. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

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

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other

information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

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

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

II. How Can I Respond to this Action?

A. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the on line instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID number OPP–2004–0156. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail*. Send your comments to: Public Information and Records Integrity Branch (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID number OPP–2004–0156.

3. *By hand delivery or courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs, Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID number OPP–2004–0156. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

B. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the notice or collection activity.
7. Make sure to submit your comments by the deadline in this document.
8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

III. What Action is the Agency Taking?

EPA is making available to the public the risk assessments that have been developed as part of the Agency's interim public participation process for tolerance reassessment and reregistration. During the next 60 days, EPA will accept comments on the human health and environmental fate and effects risk assessments and other related documents for MCPA, available in the individual pesticide docket. Like other REDs for pesticides developed under the interim process, the MCPA RED will be made available for public comment.

EPA and United States Department of Agriculture (USDA) have been using a pilot public participation process for the assessment of organophosphate pesticides since August 1998. In considering how to accomplish the movement from the current pilot being used for the organophosphate pesticides to the public participation process that will be used in the future for non-organophosphates, such as MCPA, EPA and USDA have adopted an interim public participation process. EPA is using this interim process in reviewing the non-organophosphate pesticides scheduled to complete tolerance reassessment and reregistration in 2001 and early 2002. The interim public participation process ensures public access to the Agency's risk assessments while also allowing EPA to meet its reregistration commitments. It takes into account that the risk assessment development work on these pesticides is substantially complete. The interim public participation process involves: A registrant error correction period; a period for the Agency to respond to the registrant's error correction comments; the release of the refined risk assessments and risk characterizations to the public via the docket and EPA's internet website; a significant effort on stakeholder consultations, such as meetings and conference calls; and the issuance of the risk management decision document (i.e., RED) after the consideration of issues and discussions with stakeholders. USDA plans to hold meetings and conference calls with the public (i.e., interested stakeholders such as growers, USDA Cooperative Extension Offices, commodity groups, and other Federal Government agencies) to discuss any identified risks and solicit input on risk management strategies. EPA will participate in USDA's meetings and conference calls with the public. This feedback will be used to complete the risk management decisions and the RED. EPA plans to conduct a close-out conference call with interested stakeholders to describe the regulatory decisions presented in the RED. REDs for pesticides developed under the interim process will be made available for public comment.

Included in the public version of the official record are the Agency's risk assessments and related documents for MCPA. As additional comments, reviews, and risk assessment modifications become available, these will also be docketed. The MCPA risk assessments reflect only the work and analysis conducted as of the time they were produced and it is appropriate that, as new information becomes available and/or additional analyses are performed, the conclusions they contain may change.

List of Subjects

Environmental protection, Chemicals, Pesticides and pests.

Dated: June 16, 2004.

Debra Edwards,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 04–14093 Filed 6–22–04 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0167; FRL–7362–7]

2,4-Dichlorophenoxyacetic Acid; Availability of Risk Assessment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of risk assessments that were developed as part of EPA's process for making pesticide Reregistration Eligibility Decisions (REDs) and tolerance reassessments consistent with the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act (FQPA) of 1996. These risk assessments are the human health, the environmental fate and effects risk assessments, and related documents for the broad-spectrum herbicide 2,4-dichlorophenoxyacetic acid (2,4–D acid), registered for the control of broadleaf weeds in numerous agricultural, forestry, aquatic, and turf applications. This notice also starts a 60–day public comment period for the risk assessments. By allowing access and opportunity for comment on the risk assessments, EPA is seeking to strengthen stakeholder involvement and help ensure decisions made under FQPA are transparent and based on the best available information.

DATES: Comments, identified by the docket identification (ID) number OPP–2004–0167, must be received on or before August 23, 2004.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Mark Seaton, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 306–0469; e-mail address: *seaton.mark@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the use of

pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FURTHER INFORMATION CONTACT**.

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

1. *Docket*. EPA has established an official public docket for this action under docket ID number OPP–2004–0167. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through EPA's Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*.

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

Certain types of information will not be placed in EPA's Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

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

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2004–0167. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2004–0167. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail*. Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP),

Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2004–0167.

3. *By hand delivery or courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2004–0167. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the notice.
7. Make sure to submit your comments by the deadline in this document.
8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Background

EPA is making available to the public the risk assessments that have been developed as part of the Agency's public participation process for tolerance reassessment and reregistration. During the next 60 days, EPA will accept comments on the human health and environmental fate and effects risk assessments and other related documents for 2,4–D acid, which is registered for the control of broadleaf weeds in numerous agricultural, forestry, aquatic, and turf applications.

The Agency cautions that the 2,4–D acid risk assessment is preliminary and that further refinements may be appropriate. Risk assessment documents reflect only the work and analysis conducted as of the time they were produced and it is appropriate that, as new information becomes available and/or additional analyses are performed, the conclusions they contain may change.

EPA is providing an opportunity, through this notice, for interested parties to provide written comments and input to the Agency on the risk assessment for the pesticide specified in this notice. Such comments and input could address, for example, the availability of additional data to further refine the risk assessments, or could address the Agency's risk assessment methodologies and assumptions as applied to this specific chemical. Comments should be limited to issues raised within the risk assessment and associated documents. EPA will provide other opportunities for public comment on other science issues associated with the pesticide tolerance reassessment program. Failure to comment on any such issues as part of this opportunity will in no way prejudice or limit a commenter's opportunity to participate fully in later notice and comment processes. All comments should be submitted by August 23, 2004, using the methods in Unit I. of the **SUPPLEMENTARY INFORMATION**. Comments will become part of the Agency record for 2,4–D acid.

List of Subjects

Environmental protection, Chemicals, Pesticides, and pests.

Dated: May 27, 2004.

Debra Edwards,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 04–13858 Filed 6–22–04; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0163; FRL–7361–7]

Pesticide Product; Registration Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing new active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments, identified by the docket ID number OPP–2004–0163, must be received on or before July 23, 2004.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Tessa Milofsky, Regulatory Action Leader, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–0455; e-mail address: *milofsky.tessa@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide

for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPP–2004–0163. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

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

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

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

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2004–0163. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2004–0163. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic

submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail*. Send your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency (7502C), 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2004–0163.

3. *By hand delivery or courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2004–0163. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the registration activity.

7. Make sure to submit your comments by the deadline in this notice.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Registration Applications

EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

Products Containing Active Ingredients not Included in any Previously Registered Products

1. *File Symbol:* 69193–G. *Applicant:* Custom Biologicals, Inc., 902 Clint Moore Road, Suite 208, Boca Raton, FL 33487. *Product Name:* Custom BTI Technical Concentrate. Insecticide. *Active ingredient: Bacillus thuringiensis israelensis* strain BK at 28.0%. *Proposed classification/Use:* Manufacturing use product for formulation into insecticidal products for mosquito control.

2. *File Symbol:* 69193–U. *Applicant:* Custom Biologicals, Inc. *Product Name:* Custom BTI Flowable Concentrate. Insecticide. *Active ingredient: Bacillus thuringiensis israelensis* strain BK at 1.4%. *Proposed classification/Use:* Control of mosquitoes.

3. *File Symbol:* 69193–A. *Applicant:* Custom Biologicals, Inc., 902 Clint Moore Road, Suite 208, Boca Raton, FL 33487. *Product Name:* Custom BTT Technical Concentrate. Insecticide. *Active ingredient: Bacillus thuringiensis tenebrionis* strain CB at 28.0%. *Proposed classification/Use:* Manufacturing use product for formulation into insecticidal products for control of Colorado potato beetle on growing crops.

4. *File Symbol:* 69193–T. *Applicant:* Custom Biologicals, Inc. *Product Name:* Custom BTT Flowable Concentrate. Insecticide. *Active ingredient: Bacillus thuringiensis tenebrionis* strain CB at 1.4%. *Proposed classification/Use:* Control of Colorado potato beetle.

List of Subjects

Environmental protection, Pesticides and pest.

Dated: June 14, 2004.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 04–14223 Filed 6–22–04; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0179; FRL–7363–6]

Dinocap; Completion of Comment Period for Reregistration Eligibility Decision Document

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice, pursuant to section 4(g)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), concludes the comment period for the Reregistration Eligibility Decision (RED) for dinocap. No comments were submitted.

FOR FURTHER INFORMATION CONTACT: Carmen Rodia, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 306–0327; fax number: (703) 308–8041; e-mail address: *rodia.carmen@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This notice is directed to the public in general. As such, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this notice, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

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

1. *Docket.* EPA has established an official public docket for the action under docket identification (ID) number OPP–2004–0179. The official public docket consists of the documents specifically referenced in this action, any public comments received and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI)

or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Room 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202–4501, from 8:30 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. Electronic copies of the dinocap RED, the fact sheet and supporting documents are available on the Agency's website at *http://www.epa.gov/pesticides/*. The site provides background information for dinocap. Technical questions can be directed to the person listed under **FOR FURTHER INFORMATION CONTACT**.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may access EPA Dockets at *http://www.epa.gov/edocket/* to view public comments, to access the index listing of the contents of the official public docket and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

II. Background

A. What Action is the Agency Taking?

On September 17, 2003 (OPP–2003–0268) (FRL–7321–8), EPA published a notice in the **Federal Register** announcing the availability of the RED document for dinocap, thus concluding the reregistration. This notice constitutes and announces the closing of the 30–day public comment period for dinocap. Because EPA did not receive any comments, the Agency considers the RED for dinocap a final decision.

B. What is the Agency's Authority for Taking this Action?

The legal authority for this RED falls under FIFRA, as amended in 1988 and 1996. Section 4(g)(2)(A) of FIFRA directs that, after submission of all data concerning a pesticide active ingredient, ''the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration,'' before calling in product specific data on individual end-use products, and either reregistering products or taking ''other appropriate regulatory action.''

List of Subjects

Environmental protection, Dinocap.

Dated: June 7, 2004.

Debra Edwards,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 04–13689 Filed 6–22–04; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0042; FRL–7358–3]

Spinosad; Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket ID number OPP–2004–0042, must be received on or before July 23, 2004.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: William G. Sproat, Jr., Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8587]; e-mail address:*sproat.william@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS codes 111)
- Animal production (NAICS codes 112)
- Food manufacturing (NAICS codes 311)
- Pesticide manufacturing (NAICS codes 32532)

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

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

1. *Docket*. EPA has established an official public docket for this action under docket ID number OPP–2004–0042. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although, a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although, not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

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in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although, not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

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

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically*. If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also, include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2004–0042. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID number OPP–2004–0042. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail*. Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID number OPP–2004–0042.

3. *By hand delivery or courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID number OPP–2004–0042. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

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

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 8, 2004.

Lois Rossi,

Director, Registration Division, Office of PesticidePrograms.

Summary of Petition

The petitioner's summary of the pesticide petition is printed below as required by FFDCA section 408(d)(3). The summary of the petition was prepared by Dow AgroScience LLC, and represents the view of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

AgroSciences LLC

PP 3F6754

EPA has received a pesticide petition PP 3F6754 from Dow AgroSciences LLC, 9330 Zionsville Road, Indianapolis, IN 46268 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180, by establishing a tolerance for residues ofspinosad in or on the raw agricultural commodity stored grain (wheat, barley, corn, oats, rice, and sorghum/milo), soybean, sunflower, peanut, and cotton seed at 1 part per million (ppm) and birdseed at 3 ppm. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism*. The metabolism of spinosad in plants apples, cabbage, cotton, tomato, and turnip, and animals (goats and poultry) are adequately understood for the purposes of these tolerances. A rotational crop study showed no carryover of measurable spinosad related residues in representative test crops.

2. *Analytical method*. There is a practical method (immunoassay) for detecting (0.005 ppm) and measuring (0.01 ppm) levels of spinosad in or on food with a limit of detection that allows monitoring of food with residues at or above the level set for these tolerances. The method has had a successful method tryout in the EPA laboratories.

3. *Magnitude of residues*. Tolerances as high as 22 ppm for dried herb, 10 ppm (Brassica) and 8 ppm (leafy vegetables) have been previously established for crop commodities treated with spinosad. Magnitude of residue studies were conducted at three sites for artichokes. Residues found in these studies ranged from 0.062 to 0.156 ppm. Magnitude of residue studies were conducted at three sites for asparagus. Residues found in these studies were all less than 0.009 ppm. Magnitude of residues studies were conducted at five sites for garden beet tops (one of the representative crops for the leaves of root and tuber vegetable crop group). Residues found in these studies ranged from 0.03 to 4.0 ppm. Previously submitted data used in support of the established residue tolerance on Brassica (cole) leafy vegetables are also to be used in support of the proposed residue tolerance for leaves of root and tuber vegetables. Magnitude of residue studies were conducted at six sites for pears (one of the representative crops for the pome fruit crop group). Residues found in these studies ranged from non-detectable to 0.08 ppm. Previously submitted data used in support of the established residue tolerance on apples are also to be used in support of the proposed residue tolerance for pome fruit. Magnitude of residue studies were conducted at 4 sites on pecans (one of the representative crops for the tree nut crop group). Residues found in these studies ranged from less than 0.0010 to 0.0076 ppm. Previously submitted data used in support of the established residue tolerance on almonds are to be used also, in support of the proposed residue tolerance for tree nuts and pistachio. A magnitude of residue study was conducted at 20 sites on tomatoes and peppers (two of the representative crops for the fruiting vegetables crop group). Residues found in this study ranged from less than 0.01 to 0.13 ppm in tomatoes, and 0.01 to 0.18 ppm in peppers. Previously submitted data used in support of the established residue tolerance on fruiting vegetables (except cucurbits) are to be used in support of the proposed residue tolerance for okra. Magnitude of residue studies were conducted at six sites for cranberry. No quantifiable residues >0.01 ppm were observed in any test sample. Magnitude of residue studies were conducted at five sites for garden beet roots (one of the representative crops for the root and tuber vegetable crop group) and tops (one of the representative crops for the leaves of root and tuber vegetable crop group). Residues found in beet tops ranged from 0.03 to 4.0 ppm. Previously submitted data used in support of the established residue tolerance on Brassica (cole) leafy vegetables are also to be used in support of the proposed residue tolerance for leaves of root and tuber vegetables. These data support tolerances of 0.1 ppm in garden and sugar beet roots and a 10.0 ppm tolerance for Crop Group 2.

B. Toxicological Profile

1. *Acute toxicity*. Spinosad has low acute toxicity. The rat oral LD_{50} is 3,738 milligrams/kilogram (mg/kg) for males and >5,000 mg/kg for females, whereas the mouse oral LD_{50} is >5,000 mg/kg. The rabbit dermal LD_{50} is >5,000 mg/kg and the rat inhalation LC_{50} is >5.18 milligrams per liter (mg/L) air. In addition, spinosad is not a skin sensitizer in guinea pigs and does not produce significant dermal or ocular irritation in rabbits. End use formulations of spinosad that are water based suspension concentrates have similar low acute toxicity profiles.

2. *Genotoxicty*. Short term assays for genotoxicity consisting of a bacterial reverse mutation assay (Ames test), an

in vitro assay for cytogenetic damage using the Chinese hamster ovary cells, an *in vitro* mammalian gene mutation assay using mouse lymphoma cells, an *in vitro* assay for DNA damage and repair in rat hepatocytes, and an *in vivo* cytogenetic assay in the mouse bone marrow (micronucleus test) have been conducted with spinosad. These studies show a lack of genotoxicity.

3. *Reproductive and developmental toxicity*. Spinosad caused decreased body weights in maternal rats given 200 mg/kg/day by gavage highest dose tested (HDT). This was not accompanied by either embryo toxicity, fetal toxicity, or teratogenicity. The no observed adverse effect levels (NOAELs) for maternal and fetal toxicity in rats were 50 and 200 mg/kg/day, respectively. A teratology study in rabbits showed that spinosad caused decreased body weight gain and a few abortions in maternal rabbits given 50 mg/kg/day HDT. Maternal toxicity was not accompanied by either embryo toxicity, fetal toxicity, or teratogenicity. The NOAELs for maternal and fetal toxicity in rabbits were 10 and 50 mg/kg/day, respectively. In a two-generation reproduction study in rats, parental toxicity was observed in both males and females given 100 mg/kg/day HDT. Perinatal effects (decreased litter size and pup weight) at 100 mg/kg/day were attributed to maternal toxicity. The NOEL for maternal and pup effects was 10 mg/kg/day.

4. *Subchronic toxicity.* Spinosad was evaluated in 13–week dietary studies and showed NOELs/NOAELs of 4.89 and 5.38 mg/kg/day, respectively in male and female dogs; 6 and 8 mg/kg/day, respectively in male and female mice; and 33.9 and 38.8 mg/kg/day, respectively, in male and female rats. No dermal irritation or systemic toxicity occurred in a 21–day repeated dose dermal toxicity study in rabbits given 1,000 mg/kg/day.

5. *Chronic toxicity*. Based on chronic testing with spinosad in the dog and the rat, the EPA has set a reference dose (RfD) of 0.027 mg/kg/day for spinosad. The RfD has incorporated a 100–fold safety factor to the NOELs found in the chronic dog study to account for inter-specoes and intra-species variation. The NOELs shown in the dog chronic study were 2.68 and 2.72 mg/kg/day, respectively for male and female dogs. The NOELs (systemic) shown in the rat chronic/carcinogenicity/neurotoxicity study were 9.5 and 12.0 mg/kg/day, respectively for male and female rats. Using the Guidelines for Carcinogen Risk Assessment published September 24, 1986 (51 FR 33992), it is proposed that spinosad be classified as Group E for carcinogenicity (no evidence of carcinogenicity) based on the results of carcinogenicity studies in two species. There was no evidence of carcinogenicity in an 18–month mouse feeding study and a 24–month rat feeding study at all dosages tested. The NOELs shown in the mouse oncogenicity study were 11.4 and 13.8 mg/kg/day, respectively for male and female mice. A maximum tolerated dose was achieved at the top dosage level tested in both of these studies based on excessive mortality. Thus, the doses tested are adequate for identifying a cancer risk. Accordingly, a cancer risk assessment is not needed.

Spinosad did not cause neurotoxicity in rats in acute, subchronic, or chronic toxicity studies.

6. *Animal metabolism*. There were no major differences in the bioavailability, routes or rates of excretion, or metabolism of spinosyn A and spinosyn D following oral administration in rats. Urine and fecal excretions were almost completed in 48–hours post-dosing. In addition, the routes and rates of excretion were not affected by repeated administration.

7. *Metabolite toxicology*. The residue of concern for tolerance setting purposes is the parent material (spinosyn A and spinosyn D). Thus, there is no need to address metabolite toxicity.

8. *Endocrine disruption*. There is no evidence to suggest that spinosad has an effect on any endocrine system.

C. Aggregate Exposure

1. *Dietary exposure*. For purposes of assessing the potential dietary exposure from use of spinosad on the raw agricultural commodities listed in this notice as well as from other existing spinosad crop uses, a conservative estimate of aggregate exposure is determined by basing the theoretical maximum residue contribution (TMRC) on the proposed tolerance level for spinosad and assuming that 100% of these proposed new crops and other existing (registered for use) crops grown in the U.S. were treated with spinosad. The TMRC is obtained by multiplying the tolerance residue levels by the consumption data which estimates the amount of crops and related foodstuffs consumed by various population subgroups. The use of a tolerance level and 100% of crop treated clearly results in an overestimate of human exposure and a safety determination for the use of spinosad on crops cited in this summary that is based on a conservative exposure assessment. In addition for the use of dermal application of spinosad to cattle, the risk assessment applies a conservative (overestimate) 35% percent of market share for the dermal application to cattle to the tolerance levels for animal commodities based on existing crop uses.

Drinking water. Another potential source of dietary exposure is residues in drinking water. Based on the available environmental studies conducted with spinosad wherein it's properties show little or no mobility in soil, there is no anticipated exposure to residues of spinosad in drinking water. In addition, there is no established maximum concentration level for residues of spinosad in drinking water.

2. *Non-dietary exposure*. Spinosad is currently registered for use on a number of crops including cotton, fruits, and vegetables in the agriculture environment. Spinosad is also currently registered for outdoor use on turf and ornamentals at low rates of application (0.04 to 0.54 lb active ingredents (a.i.,) per acre and indoor use for drywood termite control (extremely low application rates used with no occupant exposure expected). Thus, the potential for non-dietary exposure to the general population is considered negligible.

D. Cumulative Effects

The potential for cumulative effects of spinosad and other substances that have a common mechanism of toxicity is also considered. In terms of insect control, spinosad causes excitation of the insect nervous system, leading to involuntary muscle contractions, prostration with tremors, and finally paralysis. These effects are consistent with the activation of nicotinic acetylcholine receptors by a mechanism that is clearly novel and unique among known insecticidal compounds. Spinosad also, has effects on the gamma aminobatopic acid (GABA) receptor function that may contribute further to its insecticidal activity. Based on results found in tests with various mammalian species, spinosad appears to have a mechanism of toxicity like that of many amphiphilic cationic compounds. There is no reliable information to indicate that toxic effects produced by spinosad would be cumulative with those of any other pesticide chemical. Thus, it is appropriate to consider only the potential risks of spinosad in an aggregate exposure assessment. Spinosad is classified in a mechanism-of-action group of its own for the purpose of resistance management in insects and for rotation with other crop protection products.

E. Safety Determination

1. *U.S. population*. Using the conservative exposure assumptions and the RfD described above, the aggregate exposure to spinosad use on existing crop uses utilizes 30% of the RfD for the U.S. population from a previous EPA assessment based on the chronic population adjusted dose (cPAD) (as posted in the **Federal Register** of September 27, 2002) (FRL–7199–5). EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. The new crop uses proposed in this notice are minor ones and are expected to contribute only a negligible impact to the RfD. Thus, it is clear that there is reasonable certainty that no harm will result from aggregate exposure to spinosad residues on existing and all pending crop uses listed in this notice.

2. *Infants and children*. In assessing the potential for additional sensitivity of infants and children to residues of spinosad, data from developmental toxicity studies in rats and rabbits and a 2-generation reproduction study in the rat are considered. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from pesticide exposure during prenatal development. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability and potential systemic toxicity of mating animals and on various parameters associated with the well-being of pups.

FFDCA section 408 provides that EPA may apply an additional safety factor for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base. Based on the current toxicological data requirements, the data base for spinosad relative to prenatal and postnatal effects for children is complete. Further, for spinosad, the NOELs in the dog chronic feeding study which was used to calculate the RfD (0.027 mg/kg/day) are already lower than the NOELs from the developmental studies in rats and rabbits by a factor of more than 10–fold. Concerning the reproduction study in rats, the pup effects shown at the highest dose tested were attributed to maternal toxicity. Therefore, it is concluded that an additional uncertainty factor is not needed and that the RfD at 0.027 mg/kg/day is appropriate for assessing risk to infants and children. In addition, the EPA has determined that the 10X factor to account for enhanced sensitivity of infants and children is not needed because:

i. The data provided no indication of increased susceptibility of rats or rabbits to *in utero* and/or postnatal exposure to spinosad. In the prenatal developmental toxicity studies in rats and rabbits and two-generation reproduction in rats, effects in the offspring were observed only at or below treatment levels that resulted in evidence of parental toxicity.

ii. No neurotoxic signs have been observed in any of the standard required studies conducted.

iii. The toxicology data base is complete and there are no data gaps.

iv. Exposure data are complete or are estimated based on data that reasonably account for potential exposure.

Using the conservative exposure assumptions previously described (tolerance level residues), the percent RfD utilized by the aggregate exposure to residues of spinosad on existing crop uses is 69% for children 1–6 years old, the most sensitive population subgroup from an EPA assessment based on the chronic population adjusted dose (cPAD) (as posted in the **Federal Register** May 3, 2000. Additional refinements to the dietary exposure based on market share information would reduce the exposure of children 1–6 years old to less than 50% the cPAD. Grain treated under a tolerance is expected to have only a slight impact to the RfD since the vast majority of grain is untreated. Thus, based on the completeness and reliability of the toxicity data and the conservative exposure assessment, it is concluded, that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to spinosad residues on the above proposed uses including existing crop uses.

F. International Tolerances

There is no Codex maximum residue levels established for residues of spinosad.

[FR Doc. 04–13857 Filed 6–22–04; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7778–6]

Air Quality Criteria for Particulate Matter (External Review Draft)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of drafts of chapters for public review and comment.

SUMMARY: On or about June 21, 2004, the National Center for Environmental Assessment (NCEA), within EPA's Office of Research and Development, will make available for public review and comment revised drafts of Chapters 7, 8, and 9 of EPA's document *Air Quality Criteria for Particulate Matter,* which incorporate revisions made in response to earlier external review of those chapters. Under sections 108 and 109 of the Clean Air Act, the purpose of this document is to provide an assessment of the latest scientific information on the effects of airborne particulate matter (PM) on the public health and welfare for use in EPA's current review of the National Ambient Air Quality Standards (NAAQS) for PM.

DATES: Comments on the draft chapters must be submitted in writing no later than July 20, 2004. Send the written comments to the Project Manager for Particulate Matter, National Center for Environmental Assessment—RTP (B243–01), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711.

ADDRESSES: The revised Chapters 7, 8, and 9 of the *Air Quality Criteria for Particulate Matter* will be available on CD ROM from NCEA–RTP. Contact Ms. Diane Ray by phone (919–541–3637), fax (919–541–1818), or e-mail (*ray.diane@epa.gov*) to request these chapters. Please provide the document's title, *Air Quality Criteria for Particulate Matter,* and the EPA numbers for each of the three revised chapters (EPA/600/P–99/002aE, EPA/600/P–99/002bE), as well as your name and address, to properly process your request. Internet users will be able to download a copy from the NCEA home page. The URL is *http://www.epa.gov/ncea/*. Hard copies of the revised chapters can also be made available upon request.

FOR FURTHER INFORMATION CONTACT: Dr. Robert Elias, National Center for Environmental Assessment—RTP (B243–01), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; telephone: 919–541–4167; fax: 919–541–1818; e-mail: *elias.robert@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA is in the process of updating and revising, where appropriate, its *Air Quality Criteria for Particulate Matter* as issued in 1996 (usually referred to as the ''Criteria Document''). Sections 108 and 109 of the Clean Air Act require that EPA carry out a periodic review and revision, where appropriate, of the air quality criteria and national ambient air

quality standards (NAAQS) for ''criteria'' air pollutants such as PM. Details of EPA's plans for the review of the NAAQS for PM were initially announced in a previous **Federal Register** notice (62 FR 55201, October 23, 1997). EPA made a first external review draft of the updated *Air Quality Criteria for Particulate Matter* available for review by the Clean Air Act Scientific Advisory Committee (CASAC) and members of the public in October 1999 (64 FR 57884, October 27, 1999). Following that public review period and a meeting of the CASAC in December 1999 (64 FR 61875, November 15, 1999), EPA revised the document as appropriate to incorporate CASAC and public comments, as well as to reflect many new studies on the effects of PM that were not available in time for discussion in the first external review draft.

EPA then made a second external review draft of the *Air Quality Criteria for Particulate Matter* available for CASAC and public review in April 2001 (66 FR 18929, April 12, 2001). Following that public review period and a second CASAC meeting in July 2001 (66 FR 34924, July 2, 2001), EPA again revised the document as appropriate to incorporate changes in response to CASAC and public comments and also made further revisions reflecting new studies on effects of particulate matter that had become available between issuance of the first and second external review drafts.

EPA then made a third external review draft of the *Air Quality Criteria for Particulate Matter* available for CASAC and public review in May 2002 (67 FR 31303, May 9, 2002). Following that public review period and a third CASAC meeting in July 2002 (67 FR 41723, June 19, 2002), EPA again revised the document as appropriate to incorporate revisions in response to CASAC and public comments and also made further revisions reflecting new studies on effects of particulate matter that had become available between issuance of the second and third external review drafts, as well as re-analyses of certain existing studies occasioned after discovery of problems with applications of statistical software.

EPA made a fourth external review draft available for CASAC and public review in June 2003 (68 FR 36985, June 20, 2003). A public meeting with CASAC was held August 25–26, 2003 (68 FR 47061, August 7, 2003), during which CASAC reached closure on Chapters 1,2,3,4,5, and 6, with only relatively minor final revisions to be made. No further public review is requested on these chapters. However, CASAC did not reach closure on Chapters 7 (toxicology), 8 (epidemiology), and 9 (integrative synthesis), each of which were to be more extensively revised or, in the case of Chapter 9, significantly restructured.

In December 2003, EPA made revised drafts of Chapters 7 and 8 available for CASAC and public review (68 FR 75240, December 30, 2003). These two revised draft chapters were reviewed by CASAC via a publically accessible teleconference call on February 3, 2004 (69 FR 657, January 6, 2004). However, CASAC did not reach closure on Chapters 7 or 8, leading to further revisions of each that are now being released for further public comment and CASAC review.

These three revised draft chapters will be reviewed by CASAC on July 20 and 21, 2004. The date and arrangements for the CASAC meeting were announced in the **Federal Register** on June 9, 2004 (69 FR 32344).

Dated: June 17, 2004.

Peter W. Preuss,

Director, National Center for Environmental Assessment.

[FR Doc. 04–14367 Filed 6–22–04; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC, offices of the Commission, 800 North Capitol Street, NW., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 011117–033.

Title: United States/Australasia Discussion Agreement.

Parties: P&O Nedlloyd Limited; Australia-New Zealand Direct Line; Hamburg-Sud; Compagnie Maritime Marfret, S.A.; Wallenius Wilhelmsen Lines AS; CMA CGM, S.A.; Fesco Ocean Management Limited; A.P. Moller-Maersk A/S; and Lykes Lines Limited, LLC.

Synopsis: The amendment deletes language regarding base ports and updates the addresses of two agreement parties.

Agreement No.: 011695–006.

Title: CMA CGM/Norasia Reciprocal Space Charter, Sailing and Cooperative Working Agreement.

Parties: CMA CGM, S.A. and Norasia Container Lines Limited.

Synopsis: The amendment provides for the substitution of a larger vessel for a smaller vessel currently deployed under the agreement. The parties request expedited review.

Agreement No.: 011814–003.

Title: HSDG/King Ocean Space Charter Agreement.

Parties: A.P. Moller-Maersk A/S; Hamburg-Südamerikanische Dampfschifffahrts-Gesellschaft KG; King Ocean Services Limited; and King Ocean Service de Venezuela, S.A.

Synopsis: The amendment revises the agreement to indicate that King Ocean will be providing both vessels, to change the space allocations under the agreement, to delete the Dominican Republic from the geographic scope, to add that Hamburg-Süd has the right to provide a vessel, to reflect the new duration of the agreement, and to delete existing Article 9.3 and replace it with a new provision. The amendment restates the agreement.

Agreement No.: 011852–008.

Title: Maritime Security Discussion Agreement.

Parties: American President Lines, Ltd.; APL Co. Pte Ltd.; Australia-New Zealand Direct Line; China Shipping Container Lines, Co., Ltd.; Canada Maritime; CMA–CGM S.A.; Contship Container Lines; COSCO Container Lines Company, Ltd.; CP Ships (UK) Limited; Evergreen Marine Corp.; Hanjin Shipping Company, Ltd.; Hapag Lloyd Container Linie GmbH; Italia di Navigazione, LLC; Kawasaki Kisen Kaisha Ltd.; Lykes Lines Limited, LLC; A.P. Moller-Maersk A/S, trading under the name of Maersk Sealand; Mitsui O.S.K. Lines, Ltd.; Nippon Yusen Kaisha; Orient Overseas Container Line Limited; Safmarine Container Line, NV; TMM Lines Limited, LLC; Yang Ming Marine Transport Corp.; Zim Israel Navigation Co., Ltd.; Alabama State Port Authority; APM Terminals North America, Inc.; Ceres Terminals, Inc.; Cooper/T. Smith Stevedoring Co., Inc.; Eagle Marine Services Ltd.; Global Terminal & Container Services, Inc.; Howland Hook Container Terminal, Inc.; Husky Terminal & Stevedoring, Inc.; International Shipping Agency; International Transportation Service, Inc.; Lambert's Point Docks Inc.; Long Beach Container Terminal, Inc.; Maersk Pacific Ltd.; Maher Terminals, Inc.; Marine Terminals Corp.; Maryland Port Administration; Massachusetts Port Authority (MASSPORT); Metropolitan Stevedore Co.; P&O Ports North American, Inc.; Port of Tacoma; South Carolina State Ports Authority;

Stevedoring Services of America, Inc.; Trans Bay Container Terminal, Inc. TraPac Terminals; Universal Maritime Service Corp.; Virginia International Terminals; and Yusen Terminals, Inc.

Synopsis: The amendment adds Hyundai Merchant Marine Co., Ltd. as a Carrier Class member.

Agreement No.: 011885.

Title: CMA CGM/MSC Reciprocal Space Charter, Sailing and Cooperative Working Agreement.

Parties: CMA CGM, S.A. and Mediterranean Shipping Co. S.A.

Synopsis: The proposed agreement would authorize the establishment of a vessel-sharing agreement between the parties in the trade between U.S. Pacific Coast ports and ports in Asia.

Dated: June 17, 2004.

By Order of the Federal Maritime Commission.

Karen V. Gregory,

Assistant Secretary.

[FR Doc. 04–14136 Filed 6–22–04; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Revocations

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, effective on the corresponding date shown below:

License Number: 003576F.

Name: A I S International, Inc.

Address: 40 ''L'' Street, South Boston, MA 02127.

Date Revoked: May 28, 2004.

Reason: Failed to maintain a valid bond.

License Number: 004377F.

Name: Ceres Freight Systems, Inc.

Address: 26 East Bryan Street, Savannah, GA 31401.

Date Revoked: June 2, 2004.

Reason: Failed to maintain a valid bond.

License Number: 001287F.

Name: Crown Cargo Services, Inc.

Address: 1675 Market Street, Suite 215, Weston, FL 33326.

Date Revoked: May 28, 2004.

Reason: Surrendered license voluntarily.

License Number: 004492NF.

Name: International Transport Group, Inc.

Address: 1699 Wall Street, Suite 201, Mount Prospect, IL 60056.

Date Revoked: April 30, 2004.

Reason: Surrendered license voluntarily.

License Number: 000108F.

Name: The Bartel Shipping Co., Inc.

Address: 7 Dey Street, New York, NY 10007.

Date: June 4, 2004.

Reason: Failed to maintain a valid bond.

License Number: 004264N.

Name: Trans Freight Services Inc.

Address: 147–29 182nd Street, Jamaica, NY 11413.

Date: May 16, 2004.

Reason: Failed to maintain a valid bond.

Sandra L. Kusumoto,

Director, Bureau of Consumer Complaints and Licensing.

[FR Doc. 04–14247 Filed 6–22–04; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Rescission of Orders of Revocation

Notice is hereby given that the Orders revoking the following licenses are being rescinded by the Federal Maritime Commission pursuant to sections 14 and 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515.

License Number	Name/Address
016107N	Alisped U.S.A. Inc., 156–15 146th Street, Jamaica, NY 11434.
003854NF	Bennett International Transport, Inc., 1001 Industrial Parkway, P.O. Box 569, McDonough, GA 30253.
004101F	Distribution Support Management, Inc., 75 Northcrest, Newnan, GA 30265.

Sandra L. Kusumoto,

Director, Bureau of Consumer Complaints and Licensing.

[FR Doc. 04–14248 Filed 6–22–04; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Reissuances

Notice is hereby given that the following Ocean Transportation Intermediary licenses have been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515.

License No.	Name/Address	Date reissued
018075N	Rapidus, LLC, 3345 NW 116th Street, Miami, FL 33167	December 2, 2003.
017258NF	Skycel, Inc., dba Econcargo, 8211 NW 68th Street, Miami, FL 33166	February 18, 2004.
15847NF	Straightline Logistics, Inc., Cargo Bldg. 80, Suite 2A, JFK Int'l Airport, Jamaica, NY 11430.	August 29, 2003.
012530N	U.S. National Lines, Inc., 214–77 Jamaica Avenue, Queens Village, NY 11428	April 3, 2004.

Sandra L. Kusumoto,

Director, Bureau of Consumer Complaints and Licensing.

[FR Doc. 04–14246 Filed 6–22–04; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 12:00 p.m., Monday, June 28, 2004.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

FOR FURTHER INFORMATION CONTACT: Michelle A. Smith, Director, Office of Board Members; 202–452–2955.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Board of Governors of the Federal Reserve System, June 18, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–14288 Filed 6–18–04; 4:53 pm]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

Trans#	Acquiring	Acquired	Entities
Transactions Granted Early Termination—05/17/2004			
20040774	BioMarin Pharmaceutical Inc	Medicis Pharmaceutical Corporation	Ascent Pediatrics, Inc.
20040809	IDEX Corporation	Scivex, Inc	Scivex, Inc.
20040843	Convergys Corporation	Alan L. Summerlin	Encore Receivable Management, Inc.
20040857	Green Equity Investors IV, L.P	Hollywood Entertainment Corporation	Hollywood Entertainment Corporation.
20040862	Black Hills Corporation	Xcel Energy Inc	Cheyenne Light, Fuel & Power Company.
20040865	STB Beauty, Inc	MD Beauty, Inc	MD Beauty, Inc.
Transactions Granted Early Termination—05/18/2004			
20040845	GTCR Fund VIII, L.P	Honeywell International Inc	Honeywell International Inc.
20040868	Goense Bounds & Partners A, L.P	ITG Holdings LLC	EMESS Design Group LLC.
20040870	Helen of Troy Limited	WKI Holding Company, Inc	World Kitchen (GHC) LLC, World Kitchen Inc.
Transactions Granted Early Termination—05/19/2004			
20040854	Eaton Corporation	Invensys plc	Powerware Group Inc.
20040864	Sonoco Products Company	CorrFlex Graphics, LLC	CorrFlex Graphics, LLC.
Transactions Granted Early Termination—05/20/2004			
20040810	MedImmune, Inc	Wyeth	Wyeth.
20040850	Centrica Plc	FPL Group, Inc	Bastrop Energy Partners L.P.
20040851	FPL Group, Inc	El Paso Corporation	Bastrop Energy Partners, L.P.
Transactions Granted Early Termination—05/24/2004			
20040858	R2 Investments, LDC	i2 Technologies, Inc	i2 Technologies, Inc.
20040866	V.F. Corporation	Vans, Inc	Vans, Inc.
20040873	BMC Software, Inc	Marimba, Inc	Marimba, Inc.
20040877	The Wine Group LLC	Golden State Vintners, Inc	Golden State Vintners, Inc.
20040885	Onex Partners LP	Res-Care, Inc	Res-Care, Inc.
20040886	Brooklyn Sports, LLC	GW New Jersey Sports Partnership II, LLC.	New Jersey Basketball, LLC.

Trans#	Acquiring	Acquired	Entities
20040888	TPG Partners IV, L.P	JLL Partners Fund III, L.P	IASIS Healthcare Corporation.
20040892	U.S. Bancorp	Mitsubishi Tokyo Financial Group, Inc.	Union Bank of California.
20040893	Zhone Technologies, Inc	Sorrento Networks Corporation	Sorrento Networks Corporation.
20040897	Reebok International Ltd	The Hockey Company Holdings Inc	The Hockey Company Holdings Inc.
Transactions Granted Early Termination—05/25/2004			
20040798	Sempra Energy	American Electric Power Company, Inc.	AEP Texas Central Company.
20040799	Carlyle/Riverstone TAC Investment Partnership II, L.P.	American Electric Power Company, Inc.	AEP Texas Central Company.
20040818	Lyondell Chemical Company	Millennium Chemicals, Inc	Millennium Chemicals, Inc.
20040867	Castle Harlan Partners IV, L.P	Oak Hill Capital Partners, L.P	Caribbean Restaurants Holdings, Inc.
20040875	Input/Output, Inc	GX Technology Corporation	GX Technology Corporation.
20040878	Ripplewood Partners II, L.P	Akzo Nobel N.V	Akzo Nobel Functional Chemicals LLC.
20040880	NKT Holding A/S	The Estate After Incentive A/S	ALTO International A/S.
20040890	John C. Malone, c/o Liberty Media Corporation.	Liberty Media Corporation	Liberty Media Corporation.
20040901	Capital Z Financial Services Fund II, L.P.	Ingram Industries Inc	Permanent General Assurance Corporation of Ohio, Permanent General Companies, Inc.
Transactions Granted Early Termination—05/28/2004			
20040756	CVS Corporation	J.C. Penney Company, Inc	Eckerd Corporation, Eckerd Corporation of Florida, Inc. Eckerd Fleet, Inc., E.T.B., Inc., Genovese Drug Stores, Inc., Genplus Managed Care, Inc., JEC Facilities Funding II, Inc., JEC Funding, Inc., TDI Managed Care Services, Inc., Thrift Drug, Inc.
20040838	David H. Murdock	Wood Holdings, Inc	Wood Holdings, Inc.
Transactions Granted Early Termination—06/01/2004			
20040871	Macquarie Bank Limited	Executive Air Support, Inc	Executive Air Support, Inc.
20040874	LGB Pike Trust	John Charles Simpson	Red Simpson, Inc.
20040876	VCA Antech, Inc	National PetCare Centers, Inc	National PetCare Centers, Inc.
20040891	Superior Plus Income Fund	The Winroc Corporation	The Winroc Corporation.
20040900	Kenneth R. Thomson	Archipelago Holdings, Inc	Archipelago Holdings, Inc.
20040903	Marathon Oil Corporation	Ashland Inc	Ashland, Inc., Marathon Ashland Petroleum LLC.
20040914	American Coal Holdings, LLC	RAG Aktiengesellschaft	RAG American Coal Holding, Inc.
20040926	FFS Holdings, Inc	Hillenbrand Industries, Inc	Forethought Federal Savings Bank, Forethought Financial Services, Inc., Forethought Life Assurance Company, Forethought Life Insurance Company.
20040931	Providence Equity Partners IV L.P	The DIRECTV Group, Inc	PanAmSat Corporation.
20040934	Fenway Partners Capital Fund II, L.P	RK Holdings and Leasing, Inc	RK Holdings and Leasing, Inc.
20040937	KKR Millennium Fund L.P	The DIRECTV Group, Inc	PanAmSat Corporation.
Transactions Granted Early Termination—06/03/2004			
20040936	Thomson S.A	The DIRECTV Group, Inc	Hughes Network Systems, Inc.
Transactions Granted Early Termination—06/04/2004			
20040837	Itron, Inc	Schlumberger Limited	Schlumberger Electricity, Inc., Waisin Schlumberger Electricity Measurement Corporation.
20040908	Siemens Aktiengesellschaft	Veolia Environment S.A	USF Holdings Inc.
20040918	Genstar Capital Partners III, L.P	Woods Equipment Company	Woods Equipment Company.
20040920	CCG Investments BVI, L.P	NxTrend Technology, Inc	NxTrend Technology, Inc.

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, Contact Representative, or Renee Hallman, Case Management Assistant: Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room H–303, Washington, DC 20580, (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 04–14134 Filed 6–22–04; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[ATSDR–199]

Availability of Draft Document on Proposed Interim Oral Guidance Values for 2,3,5,6-Tetrachloroterephthalic Acid

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Department of Health and Human Services (HHS).

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of a draft document on the proposed interim oral health guidance values for 2,3,5,6-tetrachloroterephthalic acid prepared by ATSDR for review and comment for a 30-day public comment period.

FOR FURTHER INFORMATION CONTACT: Dr. Selene Chou, Division of Toxicology, Agency for Toxic Substances and Disease Registry, Mailstop F32, 1600 Clifton Road, NE., Atlanta, Georgia 30333, telephone (770) 488–3357.

SUPPLEMENTARY INFORMATION: The Superfund Amendments and Reauthorization Act (SARA) (Pub. L. 99–499) amends the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund) (42 U.S.C. 9601 *et seq.*) by establishing certain requirements for ATSDR and the U.S. Environmental Protection Agency (EPA) with regard to hazardous substances that are most commonly found at facilities on the CERCLA National Priorities List (NPL). Section 104(i)(4) of CERCLA (42 U.S.C. 9604(i)(4)), states that ''The Administrator of the ATSDR shall provide consultations upon request on health issues relating to exposure to hazardous or toxic substances, on the basis of available information, to the Administrator of EPA, state officials and local officials. Such consultation to individuals may be provided by states under cooperative agreements established under the Act.'' In response to a request of a state under cooperative agreement to provide guidance on 2,3,5,6-tetrachloroterephthalic acid (TPA), ATSDR has developed interim oral health guidance values for TPA. The information provided by ATSDR will enable the state to respond to a request it had received concerning groundwater contamination of TPA.

Availability

This notice announces the availability of the draft document on proposed interim oral health guidance values for 2,3,5,6-tetrachloroterephthalic acid (TPA). Although available key studies for TPA were considered during development of the draft document, this **Federal Register** notice seeks to solicit any additional studies, particularly unpublished data and ongoing studies, which will be evaluated for possible addition to the draft document. ATSDR remains committed to providing a public comment period as a means to best serve public health and our clients.

The draft document is available on the ATSDR Web site at *http://www.atsdr.cdc.gov/publiccomment.html.* The document will be available in a pdf file. You may request a hard copy by telephone at (770) 488–3357 or e-mail at *cjc3@cdc.gov.* ATSDR reserves the right to provide only one printed copy of the draft document, free of charge.

Written comments and other data submitted in response to this notice and the draft document should bear the docket control number ATSDR–199. Send one copy of all comments and three copies of all supporting documents to Dr. Selene Chou, ATSDR, Division of Toxicology, Mailstop F32, 1600 Clifton Road, NE., Atlanta, Georgia 30333 by the end of the comment period, July 23, 2004. Because all public comments to ATSDR on the proposed draft interim guidance values for TPA are available for public inspection after the document is finalized, no confidential business information or other confidential information should be submitted in response to this notice.

Dated: June 16, 2004.

Georgi Jones,

Director, Office of Policy, Planning, and Evaluation, National Center for Environmental Health/Agency for Toxic Substances and Disease Registry.

[FR Doc. 04–14173 Filed 6–22–04; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 04153]

Building National Monitoring and Evaluation Capacity in the Caribbean; Notice of Intent To Fund Single Eligibility Award

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the intent to fund fiscal year (FY) 2004 funds for a cooperative agreement program to increase the capacity for National AIDS Programs (NAP) to implement an effective monitoring and evaluation (M&E) framework. The Catalog of Federal Domestic Assistance number for this program is 93.941.

B. Eligible Applicant

Assistance will be provided only to the Caribbean Health Research Council (CHRC). CHRC is the most appropriate and qualified agency to conduct a specific set of activities supportive of CDC's M&E goals in the region because of CHRC's:

- Historical presence in the region for over 50 years.
- Support of key regional institutions to be the M&E technical lead in the region with support coming from:

—Caribbean Community Secretariat (CARICOM)
—Caribbean Epidemiology Centre (CAREC)
—Caribbean Regional Network of People Living with HIV/AIDS (CRN+)
—United Nations Joint Program in AIDS (UNAIDS)
—University of the West Indies (UWI)

Note: All partners listed to be in support of CHRC technical leadership are all currently working in collaboration and/or direct partnership with the CDC/GAP Caribbean Regional Office.

- Endorsement by the Caribbean Coalition of National AIDS Program Coordinators as technically leading the Monitoring & Evaluation Technical Working Group in collaboration with CAREC and UNAIDS.
- Experience in extending technical assistance for monitoring and evaluation in eight countries in the region.
- Publication of the ''Caribbean Indicators and Measurement Tools for the Evaluation of National AIDS Programmes (CIMT)''. This was the product of two workshops that included persons involved in the NAP in a number of Caribbean countries, other key stakeholders and M&E consultants.

C. Funding

Approximately $500,000 is available in FY 2004 to fund this award. It is expected that the award will begin on or before July 1, 2004, and will be made for a 12-month budget period within a project period of up to five years. Funding estimates may change.

D. Where To Obtain Additional Information

For general comments or 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 program technical assistance, contact: Ken Hunt, Project Officer, 8–9 Alexandra Street, St. Clair, Port of Spain, Trinidad, Office: 868–622–3651, Cell: 868–685–7751, E-mail: *khunt@cdc.gov.*

For financial, grants management, or budget assistance, contact: Diane Flournoy, Contract Specialist, International Territories Acquisition & Assistance, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770–488–2072, E-mail: *dflournoy@cdc.gov.*

Dated: June 16, 2004.

William P. Nichols,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 04–14175 Filed 6–22–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 04182]

Rapid Development of Infrastructure, Monitoring and Evaluation and Behavior Change Communication Activities at the Ministry Responsible for the Fight Against AIDS in Cote d'Ivoire; Notice of Intent To Fund Single Eligibility Award

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the intent to fund fiscal year (FY) 2004 funds for a cooperative agreement program to rapidly help the Ministry responsible for the fight against AIDS (MLS) to develop sustainable, indigenous capacity to support its role as the principal coordinating body for a multisectoral, decentralized and comprehensive response to HIV/AIDS in the Republic of Cote d'Ivoire. The Catalog of Federal Domestic Assistance number for this program is 93.941.

B. Eligible Applicant

The Ministry responsible for the fight against AIDS of Cote d'Ivoire (MLS) is the only organization that can apply for these funds. MLS is mandated by the government of Cote d'Ivoire to coordinate HIV/AIDS activities in the country, including monitoring and evaluation (M&E) of programs and behavior change communication (BCC) activities.

C. Funding

Approximately $250,000 is available in FY 2004 to fund this award. It is expected that the award will begin on or before September 1, 2004, and will be made for a 12-month budget period within a project period of up to three years. Funding estimates may change.

D. Where To Obtain Additional Information

For general comments or 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 program technical assistance, contact: Karen Ryder, Project Officer, CDC/Projet RETRO-CI, 2010 Abidjan Place, Dulles, Virginia 20189–2010, Telephone: (225) 21–25–41–89, E-mail: *kkr1@cdc.gov.*

For financial, grants management, or budget assistance, contact: Shirley Wynn, Contract Specialist, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770–488–1515, E-mail: *zbx6@cdc.gov.*

Dated: June 16, 2004.

William P. Nichols,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 04–14176 Filed 6–22–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 04192]

Enhancement of HIV/AIDS Prevention, Care and Treatment Services in Zanzibar in the United Republic of Tanzania; Notice of Intent To Fund Single Eligibility Award

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the intent to fund fiscal year (FY) 2004 funds for a cooperative agreement program to support the public health infrastructure in Zanzibar to increase their capacity to prevent HIV transmission from mother-to-child and to improve access to comprehensive HIV/AIDS care and support programs in the public sector. The Catalog of Federal Domestic Assistance number for this program is 93.941.

B. Eligible Applicant

Assistance will be provided only to Zanzibar AIDS Control Program (ZACP). The ZACP is currently the only appropriate and qualified organization to conduct a specific set of activities supportive of the CDC/GAP goals for enhancing HIV/AIDS prevention, care and treatment services in Zanzibar because:

The ZACP is uniquely positioned, in terms of legal authority and support from the Government of the United Republic of Tanzania, and has the ability and credibility among Tanzanian citizens residing on the island of Zanzibar to coordinate the implementation of initiatives for HIV/AIDS prevention, care and treatment services in Zanzibar.

The ZACP has developed ANC, HIV (sentinel and population based) surveillance, HIV laboratory guidelines and strategic plans for enhancing ANC and other care and treatment services in Zanzibar, which allows the ZACP to immediately become engaged in the activities listed in this announcement. The purpose of the announcement is to build upon the existing framework of health policy and programming that the ZACP has itself initiated.

The ZACP has been mandated by the United Republic of Tanzania government to coordinate and implement activities necessary for the control of epidemics, including HIV/AIDS and STDs.

The ZACP also has the ability to technically oversee the project, ensuring

the activities implemented are integrated into the national strategy for combating HIV/AIDS in Zanzibar.

C. Funding

Approximately $1,500,000 is available in FY 2004 to fund this award. It is expected that the award will begin on or before September 1, 2004, and will be made for a 12-month budget period within a project period of up to 5 years. Funding estimates may change.

D. Where To Obtain Additional Information

For general comments or 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 program technical assistance, contact: Cecil Threat, Project Officer, Global AIDS Program, c/o American Embassy, 2140 Dar es Salaam Place, Washington, DC 20521–2140, Telephone: 255–22–212–1407, Fax: 255–22–212–1462, E-mail: *Cthreat@cdc.gov.*

For budget assistance, contact: Diane Flournoy, Contract Specialist, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770–488–2072, E-mail: *dmf6@cdc.gov.*

Dated: June 16, 2004.

William P. Nichols,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 04–14177 Filed 6–22–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Demonstration Projects for Implementation of Rapid HIV Testing in Historically Black Colleges and Universities and Alternative Venues and Populations

Announcement Type: New.

Funding Opportunity Number: 04158.

Catalog of Federal Domestic Assistance Number: 93.943.

DATES: *Application Deadline:* July 23, 2004.

SUMMARY: The purpose of this project is to demonstrate new models for diagnosing HIV infection, a priority strategy in the context of the Advancing HIV Prevention Initiative (AHP). AHP is aimed at reducing the number of new infections caused by Human Immunodeficiency Virus (HIV) each year in the United States by emphasizing greater access to HIV testing and provision of prevention and care services for persons infected with HIV. Demonstration projects will be funded to show the feasibility, and demonstrate best methods of, integrating routine HIV testing programs (including rapid testing), in a variety of venues.

Current HIV screening programs rely on individual, provider-administered assessments of risks for HIV infection, and do not identify risks which would indicate HIV testing for all HIV-infected persons. The alternative to individual risk assessment is the offering of HIV testing on a routine basis. Where routine offering of HIV testing has been utilized in areas with high HIV prevalence, the rate of HIV positive tests (two to seven percent in hospitals and emergency rooms) is similar to or exceeds that observed nationally in publicly funded HIV counseling and testing sites (two percent) and Sexually Transmitted Disease (STD) clinics (1.5 percent). HIV prevalence among persons tested in outreach settings is also consistently higher than among those tested at traditional testing clinics.

Historically, many persons tested in outreach settings never receive their test results. Because results of rapid HIV tests are available within 30 minutes, rapid HIV testing offered routinely in a variety of clinical settings and outreach efforts in nonclinical settings in high-risk communities has the potential to both reach persons at high-risk for HIV infection and to ensure that they will receive their test results.

The first part of this announcement describes a funding opportunity for demonstration projects to provide rapid HIV testing at Historically Black Colleges and Universities (HBCUs). Recent presidential proclamations support the development of research aimed at, and resources earmarked for HBCUs. There are between 102 and 118 HBCUs in the US, mostly in the South. The collective African-American student body of these schools exceeds 150,000 with an approximate age range of 18–35.

New and innovative HIV prevention programs that focus on young African American college students are needed; this is made clear by the epidemiology of HIV in the United States, and by a recently identified cluster of HIV infections among young African American male college students attending HBCUs in the South. Black males (and to a lesser extent Black females), ages 18–44 are the racial/ethnic group most disproportionately affected by HIV in the entire United States. A recent cluster of HIV infections among black male college students in North Carolina underscored the urgency of focusing attention and prevention efforts on young adults who may not have been previously or adequately served by HIV prevention programs.

CDC will use findings from these demonstration projects to design and implement HIV/AIDS prevention messages and activities in diverse settings, and serving diverse populations.

The second part of this announcement includes new strategies to identify HIV positive persons in order to provide assistance for linkage to treatment, care and prevention services. Because many newly diagnosed HIV positive persons have received care in medical settings in the year preceding their diagnosis without being offered HIV testing, diverse medical settings are the focus of the second part of this announcement. CDC will support primary care clinics, or alternative medicine clinics (homeopathic, naturopathic or chiropractic), that service high risk populations and/or communities, to develop demonstration projects to offer HIV testing to their clients. The Primary Care clinics will include, but will not to be limited to: public or private health centers; ambulatory clinics; WIC clinics; managed care organizations; or other primary care facilities, either affiliated with a university, health department, or community based organization.

The third part of the announcement focuses on Native Americans, migrant farm workers and pre-or post-operative transgendered persons. These are communities that are disproportionately affected by HIV or are at increased risk for emerging HIV epidemics because of high levels of risk behaviors associated with HIV transmission. We will fund health departments and community based organizations to create projects to demonstrate new outreach models for rapid HIV testing in these populations.

I. Funding Opportunity Description

Authority: This program is authorized under the Public Health Service Act sections 301, 311, and 317 (42 U.S.C. 241, 243 and 247(b)), as amended.

Purpose: The purpose of the program is to: (PART 1) introduce rapid HIV testing programs to serve attendees of HBCUs and Hispanic Serving Institutions (HSIs); (PART 2) develop and evaluate new models for providing rapid and conventional HIV testing into clinical venues that have not offered routine HIV screening in the past in high risk communities ; and (PART 3) introduce rapid HIV testing in clinical

and nonclinical settings that serve three specific populations disproportionately affected by HIV: Native Americans, migrant worker populations, and pre-or post-operative transgendered persons. Organizations may apply for one or more parts of this announcement. This program addresses the AHP goals of CDC's initiative, Advancing HIV Prevention: New Strategies for a Changing Epidemic, aimed at reducing barriers to early diagnosis of HIV infection and increasing access to quality medical care, treatment, and ongoing prevention services for those diagnosed with HIV. This program addresses the ''Healthy People 2010'' focus area of identifying new HIV infections.

Measurable outcomes of the program will be in alignment with the following performance goal for the National Center for HIV/STD and TB Prevention (NCHSTP): Strengthen the capacity nationwide to monitor the epidemic, develop and implement effective HIV prevention interventions and evaluate prevention programs. In addition, this program addresses the Division of HIV/AIDS Prevention priorities: Develop new methods for diagnosing HIV infection, and institute integrated surveillance with emphasis on incidence, behavioral surveillance, and evaluation.

Activities: Activities for awardees under any part of this program are as follows:

- Develop a program plan in collaboration with CDC and other participating sites.
- Conduct routine HIV testing (using HIV rapid tests or conventional HIV screening tests depending on venue) in the funded facilities and for the funded populations. For these facilities, offer HIV testing to all patients between 18 and 49 years of age during the project year.
- Throughout the project, keep detailed records of barriers and successes in developing an HIV testing program within the population targeted or venue, to serve as guidance on how to create and implement similar programs in other venues.
- Collect and maintain a database of information linked to screening and confirmatory tests, including data routinely collected on patient characteristics, testing site, HIV test(s) performed, reasons for refusal of testing, modes of follow up and results of follow up, disposition of clients with confirmed positive tests with respect to services received, and other information deemed necessary by CDC and grantees. For persons with confirmed positive HIV tests, additional information will be collected at the time of receipt of confirmatory tests and at some point after (*e.g.*, six months) to determine potential and actual barriers to access to care and other qualitative information deemed important by funded organizations, the CDC and grantees.
- Develop a plan for evaluation of the project in conjunction with CDC, and conduct evaluations of the project near the end of the project period. Evaluations may include process outcomes such as numbers of clients tested and seropositivity rates, as well as comparisons to historical data on HIV testing in the facility or a description of uptake of testing by the populations served.
- Participate in periodic conference calls, site visits and grantee meetings with other funded sites and the CDC.
- Disseminate findings jointly with CDC and other participating sites.

In addition to the above activities, grantees for Part 1 may propose the following:

- During the first 6 months of the project period, develop and conduct a focus program of formative research to determine factors or services which might contribute to increasing acceptance of testing among students attending HBCUs.

In a cooperative agreement, CDC staff is substantially involved in the program activities, above and beyond routine grant monitoring. CDC Activities for this program are as follows:

- Assist in the development and review of required program plans, protocols, evaluation plans, and data collection tools.
- Provide guidelines for HIV counseling and testing and for rapid HIV testing.
- Provide guidance and assistance in the development of data management systems and procedures.
- Facilitate conference calls, grantee meetings, and site visits.
- Assist in the analysis and dissemination of single-site and multi-site data.

II. Award Information

Type of Award: Cooperative Agreement. CDC involvement in this program is listed in the Activities Section above.

Fiscal Year Funds: 2004.

Approximate Total Funding: $ 2,480,020.

Approximate Number of Awards:

Part 1: Two to three awards for the development of rapid HIV testing programs for attendees of HBCUs.

Part 2: Up to four awards for routine HIV testing in primary care clinics, community health centers, managed care organizations and alternative health clinics.

Part 3: Four to six awards for rapid HIV testing in disproportionately affected populations.

Approximate Average Award:

Part 1: Historically Black Colleges and Universities: $250,000.

Part 2: Primary care clinics and alternative health clinics: $250,000.

Part 3: Native American, migrant farm workers, and pre- or post-operative transgendered persons: $250,000.

Floor of Award Range: None.

Ceiling Award Range: None.

Anticipated Award Date: September 1, 2004.

Budget Period Length: 12 months.

Project Period Length: 12 months.

III. Eligibility Information

III.1. Eligible Applicants

Part 1. Applications may be submitted by:

- Historically Black Colleges and Universities
- Community-based organizations serving or collaborating with HBCUs

Part 2. Applications may be submitted by public and non-profit organizations, such as:

- Community-based organizations
- Primary care clinics, either free-standing or in affiliation with hospitals
- Community Health Centers
- Managed care organizations
- Private non-profit organizations

Part 3. Applications may be submitted by:

- Federally recognized Indian tribal governments
- Indian tribes
- Indian tribal organizations
- Community based organizations

III.2. Cost Sharing or Matching

Matching funds are not required for this program.

III.3. Other

CDC will accept and review applications with budgets greater than the ceiling of the award range.

If your application is incomplete or non-responsive to the requirements listed in this section, it will not be entered into the review process. You will be notified that your application did not meet submission requirements.

Part 1: For HBCUs, applicants must be colleges and universities with at least 50% Black enrollment and having a total student enrollment of at least 5,000 full and part time students. HBCUs who do not meet the minimum enrollment criteria may submit applications with strategies to include 2 or more HBCUs

located in the same geographic area in order to meet minimum enrollment requirements. In this latter case, one HBCU should take the lead on developing the proposal for submission.

This announcement is not intended to provide funds to support direct instruction or curriculum implementation and training, nor are they intended to solely provide resources for HIV counseling and testing in the student health center, although this may be part of a larger strategy for providing HIV counseling and testing to this population.

For community based organizations who apply for Part 1, a letter of collaboration or support from an HBCU or HBCUs serving a total enrollment of at least 5,000 full or part time students must be included.

Part 2: Preference will also be given to programs that propose routine screening rather than targeted HIV testing or HIV testing based on risk assessment. Preference will be given to programs that propose to implement HIV testing with existing clinical staff. Additional non-clinical staff, for example for data collection or entry, may be proposed.

Health care settings that already routinely offer HIV testing to all patients (*e.g.*, sexually transmitted disease clinics) will not be considered. Primary care clinics affiliated with hospitals and managed care organizations are encouraged to apply.

Alternative health care facilities must be able to document at least 3,000 patient visits per year, be staffed by two or more clinicians, and demonstrate that the facility serves high risk populations. Alternatively, a high HIV prevalence in the population served by the facility may be demonstrated by satisfying at least one of the criteria listed below.

High HIV prevalence may be demonstrated by: (1) HIV prevalence data demonstrating prevalence of at least one percent in the population served by the facility; (2) HIV or AIDS diagnosis rate of at least one per thousand hospital discharges for health centers and clinics in the referral network for the hospital; (3) eligibility for Title II Ryan White Care Act funds; (4) comparison data demonstrating that the facility's patient population is similar to that of other medical care facilities with HIV/AIDS prevalence rates of at least one percent; (5) demonstration that the facility serves a high risk population.

Part 3: Preference will be given to programs that propose routine screening rather than targeted HIV testing or HIV testing based on risk assessment. Preference will be given to programs that propose to implement HIV testing with existing clinical staff. Additional non-clinical staff, for example for data collection or entry, may be proposed.

For populations of Native Americans and migrant farm workers, outreach programs must be able to identify and test a minimum of 1000 persons per year in outreach or clinical settings from the population of interest, preferably using the HIV rapid test. For pre-or post-operative transgendered persons, outreach programs must be able to identify and test a minimum of 250 persons per year in outreach or clinical settings from this population. Primary care or specialty medical clinics that primarily serve these populations are encouraged to apply.

CBOs and Indian tribes are encouraged to apply and should collaborate with their respective Health Departments and other appropriate organizations. If non-tribal organizations apply to work with American Indian populations, they must show a past record of collaboration with these populations.

In addition, organizations should coordinate program activities with health department HIV/AIDS programs, and comply with all health department requirements regarding HIV counseling, testing and referral; HIV/AIDS reporting; partner counseling and referral services; and other program activities. Funded organizations should collect and report all information required by the health department related to services provided under this announcement.

Note: Title 2 of the United States Code 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, or loan.

IV. Application and Submission Information

IV.1. Address To Request Application Package

To apply for this funding opportunity, use application form PHS 5161. Application forms and instructions are available on the CDC Web site, at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm*. If you do not have access to the Internet, or if you have difficulty accessing the forms online, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO-TIM) staff at: 770–488–2700. Application forms can be mailed to you.

IV.2. Content and Form of Submission

Application: You must submit a project narrative with your application forms. The narrative must be submitted in the following format:

- Maximum number of pages: [20] If your narrative exceeds the page limit, only the first pages which are within the page limit will be reviewed
- Font size: 12 point unreduced
- Double spaced
- Paper size: 8.5 by 11 inches
- Page margin size: One inch
- Printed only on one side of page
- Held together only by rubber bands or metal clips; not bound in any other way.

Your narrative should address activities to be conducted over the entire project period, and must include the following items in the order listed: Understanding of the Need; Objectives; Methods; Timeline; Evaluation Plan; Staff; Budget and Justification.

Additional information may be included in the application appendices. The appendices will not be counted toward the narrative page limit. This additional information includes: resumes of key staff; staffing plans; training agreements and other memoranda of understanding to assure that linkages with other appropriate organizations are in place; descriptive information regarding the applicant's organization or affiliated programs, *i.e.*, pamphlets, brochures, other documents; appropriate reference materials to support applicant's application, *i.e.*, publications concerning risk within the communities served by the organization; references from other funding organizations that have previously funded the applicant for HIV prevention projects.

You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the Federal government. Your DUNS number must be entered on line 11 of the face page of the PHS 398 application form. 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. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711. For more information, see the CDC Web site at: *http://www.cdc.gov/od/pgo/funding/pubcommt.htm.*

If your application form does not have a DUNS number field, please write your DUNS number at the top of the first page of your application, and/or include

your DUNS number in your application cover letter.

Additional requirements that may require you to submit additional documentation with your application are listed in section ''VI.2. Administrative and National Policy Requirements.''

IV.3. Submission Dates and Times

Application Deadline Date: July 23, 2004.

Explanation of Deadlines: Applications must be received in the CDC Procurement and Grants Office by 4 p.m. eastern time on the deadline date. If you send your application by the United States Postal Service or commercial delivery service, you must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If CDC receives your application 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, you will be given the opportunity to submit documentation of the carriers guarantee. If the documentation verifies a carrier problem, CDC will consider the application as having been received by the deadline.

This announcement is the definitive guide on application submission address and deadline. It supersedes information provided in the application instructions. If your application does not meet the deadline above, it will not be eligible for review, and will be discarded. You will be notified that your application did not meet the submission requirements.

CDC will not notify you upon receipt of your application. 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.

IV.4. Intergovernmental Review of Applications

Your application is subject to Intergovernmental Review of Federal Programs, as governed by Executive Order (EO) 12372. This order sets up a system for state and local governmental review of proposed federal assistance applications. You should contact your state single point of contact (SPOC) as early as possible to alert the SPOC to prospective applications, and to receive instructions on your state's process. Click on the following link to get the current SPOC list: *http://www.whitehouse.gov/omb/grants/spoc.html.*

IV.5. Funding Restrictions

Restrictions, which must be taken into account while writing your budget, are as follows:

- Awards will not allow reimbursement of pre-award costs.

If you are requesting indirect costs in your budget, you must include a copy of your indirect cost rate agreement. If your indirect cost rate is a provisional rate, the agreement should be less than 12 months of age.

Guidance for completing your budget can be found on the CDC Web site, at the following Internet address: *http://www.cdc.gov/od/pgo/funding/budgetguide.htm.*

IV.6. Other Submission Requirements

Application Submission Address: Submit the original and two hard copies of your application by mail or express delivery service to: Technical Information Management-PA# 04158, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341.

Applications may not be submitted electronically at this time.

V. Application Review Information

V.1. Criteria

You are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goals stated in the ''Purpose'' section of this announcement. Measures must be objective and quantitative, and must measure the intended outcome. These measures of effectiveness must be submitted with the application and will be an element of evaluation.

Your application will be evaluated against the following criteria, whether you are applying to Part 1, Part 2 or Part 3:

1. Methods (40 points): Are the proposed methods feasible? Will they accomplish program goals? Can the proposed methods for offering routine testing be sustainable by existing staff after the project period (especially important for Part 2)? Does the applicant describe a plan for routinely recommending voluntary HIV testing in the identified setting or to the identified populations; the process for promoting and offering rapid or conventional HIV tests; the setting in which HIV counseling, testing, and referral services will be provided; clearly defined mechanisms for referral into care, treatment, and prevention services for patients testing positive for HIV; training for project staff; a reasoned approach of how to contact clients when necessary to ensure receipt of confirmatory test results for all positives; and a system for reporting HIV-positive test results to the health department, where required? Is a time line with realistic and measurable milestones for major project activities provided?

2. Capacity (20 points): Does the applicant have the appropriate facilities and staff to conduct this program? Is adequate and objective information provided to demonstrate the availability of sufficient numbers of clients and sufficient prevalence of HIV risk behaviors or rates of seroprevalence in the populations being targeted? Is the project director well qualified, by education and experience, to lead the project team, hire and train appropriate staff, and provide programmatic and scientific oversight? Has the applicant established relationships to assure oversight, supervision, and regulatory compliance for rapid HIV testing?

3. Objectives (20 points): Are the objectives reasonable, time-phased and measurable? Does the applicant provide reasonable methods to evaluate their progress toward the timely accomplishment of objectives?

4. Evaluation (20 points): Are evaluation methods described? Are the outcome measures clearly related to the objectives? Are the types of process and outcome data proposed in the evaluation plan readily collected? To determine the effectiveness of the program, does the applicant have access to counseling and testing data for their area to serve as a comparison group; or does the applicant intend to use data from existing counseling and testing programs within the proposed venue(s) as a comparison group; or does the applicant intend to compare different methods of delivering counseling and testing programs to a particular population or in a particular venue?

5. Budget (not scored): Is the budget reasonable for the proposed activities? Does the budget allow for sufficient time—approximately three to six months—for the development of the program plan and review by CDC and other entities?

V.2. Review and Selection Process

Applications will be reviewed for completeness by the Procurement and Grants Office (PGO) staff and for responsiveness by the National Center for HIV/STD/TB Prevention, Division of HIV/AIDS Prevention. Incomplete

applications and applications that are non-responsive to the eligibility criteria will not advance through the review process. Applicants will be notified that their application did not meet submission requirements.

An objective review panel will evaluate complete and responsive applications according to the criteria listed in the ''V.1. Criteria'' section above.

Applicants may apply for any or all of the target populations or settings. A separate application should be submitted for each setting or population proposed. Applications from each target population will be evaluated independently by the objective review panel and will be ranked against applications from the same target population according to the Evaluation Criteria.

In addition, the following factors may affect the funding decision:

Preference will be given to applicants who propose settings which will provide a diverse ethnic, racial or risk population with regard to the overall selection of venues participating in the demonstration projects.

V.3. Anticipated Announcement and Award Dates

Awards will be issued on or about September 1, 2004.

VI. Award Administration Information

VI.1. Award Notices

Successful applicants will receive a Notice of Grant Award (NGA) from the CDC Procurement and Grants Office. The NGA shall be the only binding, authorizing document between the recipient and CDC. The NGA will be signed by an authorized Grants Management Officer, and mailed to the recipient fiscal officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review by mail.

VI.2. Administrative and National Policy Requirements

45 CFR Part 74 and Part 92

For more information on the Code of Federal Regulations, see the National Archives and Records Administration at the following Internet address: *http://www.access.gpo.gov/nara/cfr/cfr-table-search.html.*

The following additional requirements apply to this project:

- AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
- AR–4 HIV/AIDS Confidentiality Provisions
- AR–5 HIV Program Review Panel Requirements
- AR–6 Patient Care
- AR–7 Executive Order 12372
- AR–8 Public Health System Reporting Requirements
- AR–10 Smoke-Free Workplace Requirements
- AR–11 Healthy People 2010
- AR–12 Lobbying Restrictions
- AR–14 Accounting System Requirements
- AR–15 Proof of Non-Profit Status
- AR–21 Small, Minority, and Women-Owned Business
- AR–24 Health Insurance Portability and Accountability Act Requirements

Additional information on these requirements can be found on the CDC Web site at the following Internet address: *http://www.cdc.gov/od/pgo/funding/ARs.htm.*

VI.3. Reporting Requirements

You must provide CDC with an original, plus two hard copies of the following reports:

1. Interim progress report, no less than 90 days before the end of the first 12-month budget period. The progress report will serve as your non-competing continuation application, and must contain the following elements:

a. Current Budget Period Activities Objectives
b. Current Budget Period Financial Progress
c. New Budget Period Program Proposed Activity Objectives
d. Budget
e. Additional Requested Information
f. Measures of Effectiveness

2. Financial status report, no more than 90 days after the end of the budget period.

3. Final financial and performance reports, no more than 90 days after the end of the project period.

These reports must be mailed to the Grants Management Specialist listed in the ''Agency Contacts'' section of this announcement.

VII. Agency Contacts

For general questions about this announcement, contact: Technical Information Management Section, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770–488–2700.

For program technical assistance, contact: Scott Kellerman, MD, MPH, Extramural Project Officer, 1600 Clifton Road, MS E–46, Atlanta, Georgia 30333, Telephone: 404–639–4484, E-mail: *SKellerman@CDC.GOV.*

For financial, grants management, or budget assistance, contact: Betty Vannoy, Contract Specialist, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770–488–2897, E-mail: *bbv9@cdc.gov.*

Dated: June 16, 2004.

William Nichols,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 04–14174 Filed 6–22–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Annual Influenza Vaccine Effectiveness Estimates in Healthy and High-Risk Populations, Program Announcement Number 04109

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 meeting:

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Annual Influenza Vaccine Effectiveness Estimates in Healthy and High-Risk Populations, Program Announcement Number 04109.

Times and Dates: 9 a.m.–9:30 a.m., July 26, 2004 (Open); 9:45 a.m.–4 p.m., July 26, 2004 (Closed).

Place: Marriott Airport Hotel, 4711 Best Road, College Park, GA 30337, telephone 404–766–7900.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to Program Announcement Number 04109.

Contact Person for More Information: Trudy Messmer, Ph.D., Scientific Review Administrator, National Center for Infectious Diseases, CDC, 1600 Clifton Road, NE., MS–C19, Atlanta, GA 30333, telephone 404–639–2176.

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: June 17, 2004.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 04–14178 Filed 6–22–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Survey of Early Head Start Programs.

OMB No.: New Collection.

Description: The Head Start Reauthorization Act of 1994 established a special initiative creating funding for services for families with infants and toddlers. In response, the Administration on Children, Youth and Families (ACYF) within the Administration for Children and Families (ACF) developed the Early Head Start program. Early Head Start programs are designed to produce outcomes in four domains: (1) Child development, (2) family development, (3) staff development, and (4) community development. As a requirement of the Reauthorization Act, ACYF funded a rigorous randomized trial to study the effectiveness of Early Head Start programs, sampling from 17 programs funded in the initial years. That research found positive effects of the program overall in a variety of areas, as well as effects for different program types and levels of implementation, and among study participants with different characteristics.

The aim of the current research is to obtain a national picture of Early Head Start. This initiative will begin a process of describing how the Early Head Start initiative has grown over time, how programs are currently implementing services, and who is being served. The study will be conducted between September 2004 and May 2005.

The data will consist of a survey of all Early Head Start programs in October 2004 and site visits to a selected sample of 25 programs in early 2005. All data collection instruments have been designed to minimize the burden on respondents by minimizing the time required to respond. Participation in the study is voluntary.

The results of the research will be used by the Head Start Bureau and ACF to gain a better understanding of changes in program processes and services over time, to identify areas of strength and weakness in order to target training and technical assistance or further research efforts, and finally, to provide a broader context for lessons learned from the impact study.

Respondents: Early Head Start directors, Early Head Start coordinators and specialists, teachers, home visitors, and parents of Early Head Start children.

Annual Burden Estimates

Estimated Response Burden for Respondents to the Survey of Early Head Start Programs

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Annual burden hours
Survey of Programs (2004)	[a] 595	1	3.0	1,785.0
Site Visit Protocol (2005):				
Director Protocol	25	1	3.0	75.0
Coordinator/Specialist Protocol: [b]				
Community Partnership	25	1	1.0	25.0
Disabilities	25	1	1.0	25.0
Early Childhood	25	1	1.0	25.0
Family Partnership	25	1	1.0	25.0
Home Visiting	25	1	1.0	25.0
Teacher Protocol [c]	125	1	1.5	187.5
Home Visitor Protocol [c]	125	1	1.5	187.5
Parent Protocol [c]	125	1	1.5	187.5
Total for Site Visits	525			762.5

[a] Assumes 85 percent response rate for the survey.

[b] Not all programs will have staff in each position, therefore, burden estimates for some programs may be overstated.

[c] Assumes group interviews with up to five individuals per site. Assumes that all sites have both home visitors and teachers, although when that is not the case, the burden estimates will be overstated.

Estimated Total Annual Burden Hours: 2,547.5.

In compliance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address: *grjohnson@acf.hhs.gov*.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: June 16, 2004.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 04–14169 Filed 6–22–04; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Public Law 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1129.

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

Proposed Project: The National Health Service Corps (NHSC) and Native Hawaiian Health (NHH) Scholarship Programs Data Collection Worksheets (OMB No. 0915–0226)—Extension.

Under the NHSC and NHH Scholarship Programs, allopathic physicians, osteopathic physicians, dentists, nurse practitioners, nurse midwives, physician assistants, and, if needed by the NHSC or NHH program, students of other health professions are offered the opportunity to enter into a contractual agreement with the Secretary under which the Public Health Service agrees to pay the total school tuition, required fees, other reasonable costs (ORC) and a stipend for living expenses. In exchange, the scholarship recipients agree to provide full-time services to medically needy communities.

In order to accurately determine the amount of scholarship support that students will need during their academic training, the Bureau of Health Professions must contact each scholar's school for an estimate of tuition, fees, and ORC. The Data Collection Worksheet collects these itemized costs for both resident and nonresident students.

Estimated burden hours:

HRSA form	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
Worksheet	600	1	600	.50	300

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 14–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: June 14, 2004.

Tina M. Cheatham,

Director, Division of Policy Review and Coordination.

[FR Doc. 04–13789 Filed 6–22–04; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Tribal Self-Governance Program Planning Cooperative Agreement; New Discretionary Funding Cycle for Fiscal Year 2004

Funding Opportunity Number: HHS–IHS–TSGP–2004–001.

CFDA Number: 93.210.

DATES: Application Kits sent out—June 28, 2004;

Applications Due—August 2, 2004;

Cost Analysis/Audit Reviews to Determine Eligibility—August 13, 2004;

Objective Review Committee to Evaluate Applications—August 19–20, 2004;

Project Start Date—September 15, 2004.

I. Funding Opportunity Description

The purpose of the program is to award cooperative agreements that provide planning resources to Tribes interested in participating in the Tribal Self-Governance Program (TSGP) as authorized by Title V, Tribal Self-Governance Amendments of 2000 of the Indian Self-Determination and Education Assistance Act of Pub. L. 93–638, as amended. The TSGP is designed to promote self-determination by allowing Tribes to assume more control of Indian Health Service (IHS) programs and services through compacts negotiated with the IHS. The planning cooperative agreement allows a tribe to gather information to determine the current types and amounts of programs, services, functions, and activities (PSFAs), and funding available at the Service Unit, Area, and Headquarters levels and identify programmatic alternatives that will better meet the needs of tribal members.

II. Award Information

Type of Award: Cooperative Agreement.

Estimated Funds Available: The total amount identified for fiscal year (FY) 2004 is $500,000 for approximately ten (10) tribes to enter the TSGP planning process for compacts beginning in FY 2006 or calender year 2006. Awards under this announcement are subject to the availability of funds.

Anticipated Number of Awards: The estimated number of awards to be funded is one to ten.

Project Period: 12 months.

Award Amount: $50,000 per year.

Substantial Programmatic Involvement: IHS TSGP funds will be awarded as cooperative agreements and will have substantial programmatic involvement as follows:

- Research and analysis of the complex IHS budget, at the Service Unit, Area and Headquarters levels.
- Estabishment of a basic understanding of IHS PSFAs operations at the Service Unit, Area, and Headquarters levels.
- Establishment of a process through which tribes can effectively approach IHS to identify programs and associated funding which could be incorporated into programs.
- Identification of IHS staff that will consult with applicants on methods used by IHS to manage and deliver health care.
- Provide applicants with a list of laws and regulations that provide authority for the various IHS programs.

III. Eligibility Information

I. Eligible Applicants

To be eligible for a planning cooperative agreement under this announcement, an applicant must meet all of the following criteria:

A. Be a federally-recognized tribe as defined in Title V, Pub. L. 106–260, Tribal Self-Governance Amendments of 2000, of the Indian Self-Determination and Education Assistance Act (the Act), Pub. L. 93–638, as amended. However, Alaska Native Villages or Alaska Native village corporations, who are located with the area served by an Alaska Native regional health entity already participating in compact status, are not eligible. (Pub. L. 106–260, Title V, Section 12(a)(2).)

B. Request participation in self-governance by resolution or other official action by the governing body of the Indian tribe. An Indian tribe that is proposing a cooperative agreement affecting another Indian tribe must include resolutions from all affected tribes to be served.

C. Demonstrate, for three fiscal years, financial stability and financial management capability, which is defined as no uncorrected significant and material audit exceptions in the required annual audit of the Indian tribe's self-determination contracts or self-governance funding agreements with any Federal agency.

D. Applicants must submit copies of audits prescribed by Pub. L. 98–502, the Single Audit Act, as amended (*see* OMB Circular A–133, revised June 24, 1979, Audits of States, Local Governments, and Non-Profit Organizations), for the three previous fiscal years (2000, 2001, 2002 or 2001, 2002, 2003).*

*If this documentation is not submitted, the application will be considered as unresponsive and will not be considered.

2. Cost Sharing or Matching Funds

The Self-Governance Planning Cooperative Agreement Announcement does not require matching funds or cost sharing to participate in the competitive grant process.

3. Other Requirements

The following documentation is required (if applicable):

A. This program is described at 93.210 of the Catalog of Federal Domestic Assistance. There is limited competition under this announcement because the authorizing legislation restricts eligibility to Tribes that meet specific criteria. (Refer to Section III, Eligibility Criteria in this announcement.)

B. Tribal Resolution—A resolution of the Indian tribe served by the project must accompany the application submission. An Indian tribe that is proposing a project affecting another Indian tribe must include resolutions from all affected tribes to be served. Draft resolutions are acceptable in lieu of an official resolution. However, an official signed tribal resolution must be received by the Grants Management Branch prior to the beginning of the Objective Review (August 19–20, 2004). If an official signed resolution is not submitted by the date referenced, the application will be considered incomplete and will be returned without consideration.

IV. Application and Submission Information

1. Address to request application package

Interested parties may request a copy of the application kit from either of the following persons:

Ms. Mary E. Trujillo, Office of Tribal Self-Governance, Indian Health Service, 801 Thompson Avenue, Suite 240, Rockville, Maryland 20852; (301) 443–7821.

Ms. Patricia Spotted Horse, Grants Management Branch, Indian Health Service, 801 Thompson Avenue, TMP 100, Rockville, Maryland 20852; (301) 443–5204.

2. Content and Form of Application Submission

A. All applications should:

- Be single spaced.
- Be typewritten.
- Have consecutively numbered pages.
- Use black type not smaller than 12 characters per one inch.
- Be printed on one side only of standard size 8½″ × 11″ paper.
- Not be tabbed, glued, or placed in a plastic holder.
- Contain a narrative that does not exceed 7 typed pages that includes the sections listed below. (The 7 page narrative does not include the work plan, standard forms, Tribal resolution(s), table of contents, budget, budget justifications, narratives, and/or other appendix items.)

Include in the application the following documents in the order presented. The Application Receipt Record, Checklists, General Information Page, Standard Forms, Certifications, and Disclosure of Lobbying Activities documents will be available in the appendix of the application kit.

- Application Receipt Record, IHS–815–1A (Rev. 2/04).
- FY 2005 Application Checklist.
- Tribal Resolution (final signed or draft unsigned).
- Standard Form 424A, Application for Federal Assistance.
- Standard Form 424A, Budget Information—Non-Construction Programs (pages 1–2).
- Standard Form 424B, Assurance—Non-Construction Programs (front and back). The application shall contain assurances to the Secretary that the applicant will comply with program regulations, 42 CFR Part 36, Subpart H.
- Certifications (pages 17–19).
- PHS–5161 Checklist (pages 25–26).
- Disclosure of Lobbying Activities.
- Table of Contents with corresponding numbered pages.
- Project Narrative not to exceed 7 typewritten pages.
- Categorical Budget and Budget Justification.
- Appendix Items.

3. Submission Dates and Times

Applications must be postmarked on or before Monday, August 2, 2004. The IHS is accepting only paper applications at this time. Include one original and two complete copies of the final proposal with all required signatures and documentation. Mark the original application with a cover sheet that states, ''Original Grant Application.'' Mail or hand-deliver applications to the Division of Grants Management, Indian Health Service, 801 Thompson Avenue, Suite 100, Rockville, Maryland 20852. Please note: All mailed applications must be postmarked on or before August 2, 2004.

Hand Delivered Proposals. Hand-delivered proposals will be accepted from 8 a.m. to 5 p.m. eastern standard time, Monday through Friday. Applications will be considered to meet the deadline if they are received on or before the deadline, with hand-carried applications received by close of business 5 p.m. For mailed applications, a dated, legible receipt from a commercial carrier or the U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks will not be accepted as proof of timely mailing. Late applications not accepted for processing will be returned to the applicant and will not be considered for funding. Receipt of applications will be acknowledged via the IHS–815–IA (Rev. 2/04) Application Receipt Record.

4. Intergovernmental Review

Executive Order 12372 requiring intergovernmental review is not applicable to this program.

5. Funding Restrictions

A. Only one planning cooperative agreement will be awarded per applicant.

B. Each planning cooperative agreement shall not exceed $50,000. The available funds are inclusive of direct and indirect costs.

C. Planning awards shall not exceed a maximum period of one year, unless a written request for extension is submitted and approved on a case-by-case basis.

6. Other Submission Requirements

The applicant must comply with the following:

A. Abstract (one page)—Summarizes the project.

B. Application for Federal Assistance (SF–424, Rev. 09/03).

C. Narrative (no more than 7 pages) with time frame chart (one page); pages numbered consecutively, including appendices, and Table of Contents, and should include the following:

(1) Background information on the tribe.

(2) Objectives and activities that provide a description of what will be accomplished.

(3) A line-item budget and narrative justification.

(4) Appendix to include:

a. Resumes or position descriptions of key staff.

b. Contractors/Consultants resumes or qualifications.

c. Proposed Scope of Work.

d. Application Receipt Card (IHS 815–1A, Rev. 2/04).

e. Two copies of a report of health activities that have been performed either through an IHS Self-Governance Health Cooperative Agreement or a comparable health-project.

D. ''DUNS'' Number. As of October 1, 2003, applicants must have a Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS) number as the Universal identifier when applying for Federal grants or cooperative agreements.

The DUNS number is a nine-digit identification number, which uniquely identifies business entities. There is no charge for applying.

The DUNS number can be obtained by calling (866) 705–5711 or through the Web site at *http://www.dunandbradstreet.com.* Internet applications for a DUNS number can take up to 30 days to process. It is quicker to obtain one by phone. The following information is needed when requesting a DUNS number:

(1) Organization.

(2) Organization address and telephone number.

(3) Name of CEO, Executive Director, President, etc. (the person in charge).

(4) Legal structure of the organization.

(5) Year organization started.

(6) Primary business (activity) line.

(7) Total number of employees.

V. Application Review Information

The instructions for preparing the application narrative also constitute the evaluation criteria for reviewing and scoring the application. Weights assigned to each section are noted in parentheses.

1. Criteria

Goals and Objectives of the Project (30 Points)

Are the goals and objectives measurable; are they consistent with the purpose of the program and terms of this announcement; and, are they achievable as demonstrated by an implementation schedule?

Organizational Capabilities and Qualifications (25 Points)

Describe the organizational structure of the tribe/tribal organization and the ability of the organization to manage the proposed project. Include resumes or position descriptions of key staff showing requisite experience and expertise and, where applicable, include resumes of consultants that demonstrate experience and expertise relevant to the project.

Methodology (20 Points)

Describe fully and clearly the methodology used to reflect the needs of tribal members and if the project can be accomplished with expected available resources.

Budget justification (15 Points)

Submit a line-item budget with a brief narrative justification for all expenditures. Are costs identified reasonable and allowable in accordance with OMB Circulars A–87m ''Cost Principles for State and Local Governments'' and A–122, ''Cost Principles for Non-Profit Organizations?''

Management of Health Programs(s) (10 Points)

Does the applicant propose an improved approach to managing the health program(s) and state/demonstrate how the delivery of quality health services will be maintained under self-governance?

Appendix Items:

- Work plan for proposed objectives.
- Position descriptions for key staff.
- Resumes of key staff that reflect current duties.
- Consultant proposed scope of work (if applicable).
- Indirect Cost Agreement.
- Organizational chart (optional).

2. Review Selection Process

In addition to the above criteria/requirements, applications are considered according to the following:

A. Application Submission (Application Deadline: August 2, 2004). Applications submitted in advance of or by the deadline and verified by the postmark will undergo a preliminary review to determine that:

(1) The applicant and proposed project type is eligible in accordance with this grant announcement.

(2) The application is not a duplication of a previously funded project.

(3) The application narrative, forms, and materials submitted meet the requirements of the announcement allowing the review panel to undertake an in-depth evaluation; otherwise, it may be returned.

B. Competitive Review of Eligible Applications (Objective Review: August 19–20, 2004). Applications meeting eligibility requirements that are complete, responsive, and conform to this program announcement will be reviewed for merit by the Ad Hoc Objective Review Committee (ORC) appointed by the IHS to review and make recommendations on these applications. The review will be conducted in accordance with the IHS Objective Review Guidelines. The technical review process ensures selection of quality projects in a national competition for limited funding. Applications will be evaluated and rated on the basis of the evaluation criteria listed in Section V.1. The criteria are used to evaluate the quality of a proposed project, determine the likelihood of success, and assign a numerical score to each application. The scoring of approved applications will assist the IHS in determining which proposals will be funded if the amount of TSGP funding is not sufficient to support all approved applications. Applications recommended for approval, having a score of 60 or above by the ORC and scored high enough to be considered for funding, are forwarded by the Division of Grants Management for cost analysis and further recommendation. The program official forwards the final approved list to the IHS Director for final review and approval. Applications scoring below 60 points will be disapproved and returned to the applicant.

Note: In making final selections, the IHS Director will consider the ranking factor and

the status of the applicant's single audit reports. The comments from the ORC will be advisory only. The IHS Director will make the final decision on awards.

VI. Award Administration Information

1. Award Notices

Notification: September 15, 2004.

Applicants who are approved but unfunded and disapproved will receive a copy of the Executive Summary which identifies the weaknesses and strengths of the application submitted. Applicants which are approved and funded will be notified through the official Notice of Grant Award (NGA) document. The NGA will serve as the official notification of a grant award and will state the amount of Federal funds awarded, the purpose of the grant, the terms and conditions of the grant award, the effective date of the award, the project period, and the budget period. Any other correspondence announcing to the Project Director that an application was selected is not an authorization to begin performance. Any costs incurred before receipt of the NGA are at the recipient's risk and may be reimbursed only to the extent considered allowable pre-award costs.

2. Administrative and National Policy Requirements

Grants are administered in accordance with the following documents:

- This grant announcement.
- Health and Human Services regulations governing Pub. L. 93–638 grants at 42 CFR 36.101 *et seq.*
- 45 CFR part 92, ''Department of Health and Human Services, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments Including Indian Tribes,'' or 45 CFR part 74, ''Administration of Grants to Non-Profit Recipients.''
- Public Health Service Grants Policy Statement.
- Grants Policy Directives.
- Appropriate Cost Principles: OMB Circular A–87, ''State and Local Governments,'' or OMB Circular A–122, ''Non-Profit Organization.''
- OMB Circular A–133, ''Audits of States, Local Governments, and Non-Profit Organization.''
- Other Applicable OMB Circulars.

3. Reporting

A. *Progress Report.* Program progress reports are required semi-annually. These reports will include a brief comparison of actual accomplishments to the goals established for the period, reasons for slippage (if applicable), and other pertinent information as required. A final report must be submitted within 90 days of expiration of the budget/project period.

B. *Financial Status Report.* Semi-annual financial status reports must be submitted within 30 days of the end of the half year. Final financial status reports are due within 90 days of expiration of the budget/project period. Standard Form 269 (long form) will be used for financial reporting.

VII. Agency Contact(s)

Interested parties may obtain TSGP programmatic information from Ms. Mary E. Trujillo through the information listed on page 6 of this application kit. Grant related and business management information may be obtained from Ms. Patricia Spotted Horse through the information listed on page 6 of this application kit. Please note that the telephone numbers provided are not toll free.

VIII. Other Information

The Public Health Service (PHS) strongly encourages all grant and contract recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Pub. L. 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of the facility) in which regular or routine education, library, day care, health care or early childhood development services are provided to children. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

Dated: June 17, 2004.

Eugenia Tyner-Dawson,

Acting Deputy Director, Indian Health Service.

[FR Doc. 04–14191 Filed 6–22–04; 8:45 am]

BILLING CODE 4160–16–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Tribal Self-Governance Program Negotiation Cooperative Agreement; New Discretionary Funding Cycle for Fiscal Year 2004; Funding Opportunity Number: HHS–IHS–TSGP–2004–002; CFDA Number: 93.210

KEY DATES: Application Kits sent out—June 28, 2004; Applications Due—August 2, 2004; Cost Analysis/Audit Reviews to Determine Eligibility—August 13, 2004; Objective Review Committee to Evaluate Applications—August 19–20, 2004; Project Start Date—September 15, 2004.

I. Funding Opportunity Description

The purpose of the program is to award cooperative agreements that provide negotiation resources to Tribes interested in participating in the Tribal Self-Governance Program (TSGP) as authorized by Title V, Tribal Self-Governance Amendments of 2000 of the Indian Self-Determination and Education Assistance Act of P.L. 93–638, as amended, The TSGP is designed to promote self-determination by allowing Tribes to assume more control of Indian Health Service (IHS) programs and services through compacts negotiated with the IHS. The negotiation cooperative agreement provides Tribes with funds to help cover the expenses involved in preparing for and negotiating with the IHS and assists eligible Indian Tribes to prepare for Compacts and Funding Agreements (FAs) with an effective date of October 1, 2005, or January 1, 2006.

The Negotiation Cooperative Agreement provides resources to assist Indian Tribes to conduct negotiation activities that include but not limited to:

1. Analysis of the complex IHS budget to determine what PSFAs will be negotiated.
2. Development of the terms and conditions that will be set forth in a Compact and Funding Agreement (FA).
3. Consultant costs such as Attorney or Financial Advisors.
4. Communication Costs.
5. Identification of tribal shares that will be included in the FA.

The award of a negotiation cooperative agreement is not required as a prerequisite to enter the TSGP. Indian Tribes that have completed comparable health planning activities in previous years using tribal resources but have not received a Tribal self-governance planning award are also eligible to apply. A report of the applicant's health planning activity must accompany the application.

II. Award Information

Type of Award: Cooperative Agreement.

Estimated Funds Available: The total amount identified for fiscal year (FY) 2004 is $200,000 for approximately ten (10) Tribes to enter the TSGP negotiation process for compacts beginning in FY or calendar year 2005. Awards under this announcement are subject to the availability of funds.

Anticipated Number of Awards: The estimated number of awards to be funded is 1–10.

Project Period: 12 months.

Award Amount: $20,000 per year.

Substantial Programmatic Involvement: IHS TSGP funds will be awarded as cooperative agreements and will have substantial programmatic involvement as follows:

1. Research and analysis of the complex IHS budget, at the Service Unit, Area, and Headquarters levels.
2. Establishment of a basic understanding of IHS PSFAs operations at the Service Unit, Area, and Headquarters levels.
3. Establishment of a process through which Tribes can effectively approach IHS to identify programs and associated funding which could be incorporated into programs.
4. Identification of IHS staff that will consult with applicants on methods used by IHS to manage and deliver health care.
5. applicants with a list of laws and regulations that provide authority for the various IHS programs.

III. Eligibility Information

1. Eligible Applicants. To be eligible for negotiation cooperative agreement under this announcement, an applicant must meet all of the following criteria:

A. Be a Federally-recognized Tribe as defined in Title V, Pub. L. 106–260, Tribal Self-Governance Amendments of 2000, of the Indian Self-Determination and Education Assistance Act (the Act), Pub. L. 93–638, as amended. However, Alaska Native Villages or Alaska Native village corporations, who are located within the area served by an Alaska Native regional health entity already participating in compact status, are not eligible (Pub. L. 106–260, Title V, Section 12(a)(2)). Those Tribes not represented by a self-governance Tribal consortium compact that have previously received negotiation funds may still be considered to participate in the TSGP, subject to the provisions in this announcement, however, with the following exception cited in Section 351, Pub. L. 105–277, the FY 1999 Omnibus Appropriations Bill: ''Notwithstanding any other provision of law, prior to September 1, 2001, the IHS may not disburse funds for the provision of health care services pursuant to Pub. L. 93–638 (25 U.S.C. 450, *et seq.*) with any Alaska Native Village or Alaska Native Village Corporation that is located within the area served by an Alaska Native regional health entity.''

B. Request participation in self-governance by resolution or other official action by the governing body of the Indian Tribe. An Indian Tribe that is proposing a cooperative agreement affecting another Indian Tribe must include resolutions from all affected Tribes to be served.

C. Demonstrate, for three FY's, financial stability and financial management capability, which is defined as no uncorrected significant and material audit exceptions in the required annual audit of the Indian Tribe's self-determination contracts or self-governance funding agreements with any Federal agency.

D. Applicants must submit copies of audits prescribed by Pub. L. 98–502, the Single Audit Act, as amended (see OMB Circular A–133, revised June 24, 1997, Audits of States, Local Governments, and Non-Profit Organizations), for the three previous FY's (2000, 2001, 2002 or 2001, 2002, 2003).*

2. Cost Sharing or Matching Funds

The Self-Governance Negotiation Cooperative Agreement Announcement does not require matching funds or cost sharing to participate in the competitive grant process.

3. Other Requirements

The following documentation is required (if applicable):

A. This program is described at 93.210 in the *Catalog of Federal Domestic Assistance.* There is limited competition under this announcement because the authorizing legislation restricts eligibility to Tribes that meet specific criteria. (Refer to Section III, ELIGIBILITY CRITERIA in this announcement.)

B. Tribal Resolution—A resolution of the Indian Tribe served by the project must accompany the application submission. An Indian Tribe that is proposing a project affecting another Indian Tribe must include resolutions from all affected Tribes to be served. Draft resolutions are acceptable in lieu of an official resolution. However, an official signed Tribal resolution must be received by the Grants Management Branch prior to the beginning of the Objective Review (August 19–20, 2004). If an official signed resolution is not submitted by the date referenced, the application will be considered incomplete and will be returned without consideration.

IV. Application and Submission Information

1. Address to request application package:

Interested parties may request a copy of the application kit from either of the following persons:

Ms. Mary E. Trujillo, Office of Tribal Self-Governance, Indian Health Service, 801 Thompson Avenue, Suite 240, Rockville, Maryland 20852, (301) 443–7821

Ms. Patricia Spotted Horse, Grants Management Branch, Indian Health Service, 801 Thompson Avenue, TMP 100, Rockville, Maryland 20852, (301) 443–5204

2. Content and Form of Application Submission:

A. All applications should:

(1) Be single spaced.

(2) Be typewritten.

(3) Have consecutively numbered pages.

(4) Use black type not smaller than 12 characters per one inch.

(5) Be printed on one side only of standard size 8½″ × 11″ paper.

(6) Not be tabbed, glued, or placed in a plastic holder.

(7) Contain a narrative that does not exceed 7 typed pages that includes the sections listed below. (The 7 page narrative does not include the work plan, standard forms, Tribal resolution(s), table of contents, budget, budget justifications, narratives, and/or other appendix items.)

B. Include in the application the following documents in the order presented. The Application Receipt Record, Checklists, General Information Page, Standard Forms, Certifications, and Disclosure of Lobbying Activities documents will be available in the appendix of application kit.

(1) Application Receipt Record, IHS–815–1A (Rev. 2/04).

(2) FY 2005 Application Checklist.

(3) Tribal Resolution (final signed or draft unsigned).

(4) Standard Form 424A, Application for Federal Assistance.

(5) Standard Form 424A, Budget Information—Non-Construction Programs (pages 1–2).

(6) Standard Form 424B, Assurance—Non-Construction Programs (front and back). The application shall contain assurances to the Secretary that the applicant will comply with program regulations, 42 CFR Part 36, Subpart H.

(7) Certifications (pages 17–19).

(8) PHS–5161 Checklist (pages 25–26).

(9) Disclosure of Lobbying Activities

(10) Table of Contents with corresponding numbered pages.

(11) Project Narrative not to exceed 7 typewritten pages.

(12) Categorical Budget and Budget Justification.

(13) Appendix Items.

3. Submission Dates and Times:

Applications must be postmarked on or before Monday, August 2, 2004. The IHS is accepting only paper applications at this time. Include one original and

* If this documentation is not submitted, the application will be considered as unresponsive and will not be considered.

two complete copies of the final proposal with all required signatures and documentation. Mark the original application with a cover sheet that states, ''Original Grant Application.'' Mail or hand-deliver applications to the Division of Grants Management, Indian Health Service, 801 Thompson Avenue, Suite 100, Rockville, Maryland 20852. Please note: All mailed applications must be postmarked on or before August 2, 2004.

Hand Delivered Proposals: Hand-delivered proposals will be accepted from 8 a.m. to 5 p.m. Eastern Standard time, Monday through Friday. Applications will be considered to meet the deadline if they are received on or before the deadline, with hand-carried applications received by close of business 5 p.m. For mailed applications, a dated, legible receipt from a commercial carrier or the U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks will not be accepted as proof of timely mailing. Late applications not accepted for processing will be returned to the applicant and will not be considered for funding. Receipt of applications will be acknowledged via the IHS–815–1A (Rev. 2/04) Application Receipt Record.

4. Intergovernmental Review:

Executive Order 12372 requiring intergovernmental review is not applicable to this program.

5. Funding Restrictions:

1. Only one negotiation cooperative agreement will be awarded per applicant.

2. Each negotiation cooperative agreement shall not exceed $20,000. The available funds are inclusive of direct and indirect costs.

3. Negotiation awards shall not exceed a maximum period of one year, unless a written request for extension is submitted and approved on a case-by-case basis.

6. Other Submission Requirements:

The application must comply with the following:

A. Abstract (one page)—Summarizes the project.

B. Application for Federal Assistance (SF–424, Rev. 09/03)

C. Narrative (no more than 7 pages) with time frame chart (one page); pages numbered consecutively, including appendices, and Table of Contents, and should include the following:

(1) Background information on the Tribe.

(2) Objectives and activities that provide a description of what will be accomplished.

(3) A line-item budget and narrative justification.

(4) Appendix to include:

a. Resumes or position descriptions of key staff.

b. Contractors/Consultants resumes or qualifications.

c. Proposed Scope of Work.

d. Application Receipt Card (IHS 814–1A, Rev. 2/04).

e. Two copies of a report of health activities that have been performed either through an IHS Self-Governance Health Cooperative Agreement or a comparable health-project.

D. ''DUNS'' Number. As of October 1, 2003, applicants must have a Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS) number as the Universal identifier when applying for Federal grants or cooperative agreements.

The DUNS number is a nine-digit identification number, which uniquely identifies business entities. There is no charge for applying.

The DUNS number can be obtained by calling (866) 705–5711 or through the Web site at *http://www.dunandbradstreet.com.* Internet applications for a DUNS number can take up to 30 days to process. It is quicker to obtain one by phone. The following information is needed when requesting a DUNS number:

(1) Organization.

(2) Organization address and telephone number.

(3) Name of CEO, Executive Director, President, etc. (the person in change).

(4) Legal structure of the organization.

(5) Year organization started.

(6) Primary business (activity) line.

(7) Total number of employees.

V. Application Review Information

The instructions for preparing the application narrative also constitute the evaluation criteria for reviewing and scoring the application. Weights assigned to each section are noted in parentheses.

1. Criteria

Demonstration of Previous Planning Activities (30) points)

Thoroughness and appropriateness of planning activity to proposed scope of compact is demonstrated, *i.e.,* has the Indian Tribe determined the PSFAs to be assumed? Has the Indian Tribe determined it has the administrative infrastructure to support the assumption of the PSFAs? Are the results of what was learned or is being learned during the planning process clearly stated?

Thoroughness of Approach (25 points)

Is a specific narrative provided of the direction the Indian Tribe plans to take in the TSGP? How will the Tribe demonstrate improved health and services? Is the Indian Tribe ready to negotiate a compact to begin October 1, 2005 or January 1, 2006? Are proposed time lines for negotiations indicated?

Project Outcome (20 points)

What beneficial contributions are expected or anticipated to the TSGP projected? Is information provided on the services that will be assumed? How will any improvements be made to managing the health program under the TSGP to better serve its tribal members? Are tribal needs discussed in relation to programmatic alternatives and outcomes?

Administrative Capabilities (20 points)

Does the Indian Tribe clearly demonstrate knowledge and experience in the operation and management of other health programs? Is the internal management and administrative infrastructure of the applicant described and its relationship to the successful implementation of self-governance operation of health programs explained?

Appendix Items

- Work plan for proposed objectives.
- Position descriptions for key staff.
- Resumes of key staff that reflect current duties.
- Consultant proposed scope of work (if applicable).
- Indirect Cost Agreement.
- Organizational chart (optional).

2. Review Selection Process

In addition to the above criteria/requirements, applications are considered according to the following:

A. Application Submission (application Deadline: August 2, 2004). Applications submitted in advance of or by the deadline and verified by the postmark will undergo a preliminary review to determine that:

- The applicant and proposed project type is eligible in accordance with this grant announcement.
- The application is not a duplication of a previously funded project.
- The application narrative, forms, and materials submitted meet the requirements of the announcement allowing the review panel to undertake an in-depth evaluation; otherwise, it maybe returned.

B. Competitive Review of Eligible Applications (Objective Review: August 19–20, 2004).

Applications meeting eligibility requirements that are complete, responsible, and conform to this program announcement will be reviewed for merit by the Ad Hoc Objective Review Committee (ORC)

appointed by the IHS to review and make recommendations on these applications. The review will be conducted in accordance with the IHS Objective Review Guidelines. The technical review process ensures selection of quality projects in a national competition for limited funding. Applications will be evaluated and rated on the basis of the evaluation criteria listed in Section V.1. The criteria are used to evaluate the quality of a proposed project, determine the likelihood of success, and assign a numerical score to each application. The scoring of approved applications will assist the IHS in determining which proposals will be funded if the amount of TSGP funding is not sufficient to support all approved applications. Applications recommended for approval, having a score of 60 or above by the ORC and scored high enough to be considered for funding, are forwarded by the Division of Grants Management for cost analysis and further recommendation. The program official forwards the final approved list to the IHS Director for final review and approval. Applications scoring below 60 points will be disapproved and returned to the applicant.

Note: In making final selections, the IHS Director will consider the ranking factor and the status of the applicant's single audit reports. The comments from the ORC will be advisory only. The IHS Director will make a final decision on awards.

VI. Award Administration Information

1. Award Notices

Notification: September 15, 2004

Applicants who are approved but unfunded and disapproved will receive a copy of the Executive Summary which identifies the weaknesses and strengths of the application submitted. Applicants which are approved and funded will be notified through the official Notice of Grant Award (NGA) document. The NGA will serve as the official notification of a grant award and will state the amount of Federal funds awarded, the purpose of the grant, the terms and conditions of the grant award, the effective date of the award, the project period, and the budget period. Any other correspondence announcing to the Project Director that an application was selected is not an authorization to begin performance. Any costs incurred before receipt of the NGA are at the recipient's risk and may be reimbursed only to the extent considered allowable pre-award costs.

2. Administrative and National Policy Requirements

Grants are administered in accordance with the following documents:

- This grant announcement.
- Health and Human Services regulations governing Pub. L. 93–638 grants at 42 CFR 36.101 *et seq.*
- 45 CFR part 92, ''Department of Health and Human Services, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments Including Indian Tribes,'' or 45 CFR part 74, ''Administration of Grants to Non-Profit Recipients.''
- Public Health Service Grants Policy Statement.
- Grants Policy Directives.
- Appropriate Cost Principles: OMB Circular A–87, ''State and Local Governments,'' or OMB Circular A–122, ''Non-profit Organizations.''
- OMB Circular A–133, ''Audits of States, Local Governments, and Non-Profit Organizations.''
- Other Applicable OMB Circulars.

3. Reporting

A. Progress Report. Program progress reports are required semi-annually. These reports will include a brief comparison of actual accomplishments to the goals established for the period, reasons for slippage (if applicable), and other pertinent information as required. A final report must be submitted within 90 days of expiration of the budget/project period.

B. Financial Status Report. Semi-annual financial status reports must be submitted within 30 days of the end of the half year. Final financial status reports are due within 90 days of expiration of the budget/project period. Standard Form 269 (long form) will be used for financial reporting.

VII. Agency Contact(s)

Interested parties may obtain TSGP programmatic information from Ms. Mary E. Trujillo through the information listed on page seven of this application kit. Grant related and business management information may be obtained from Ms. Patricia Spotted Horse through the information listed on page seven of this application kit. Please note that the telephone numbers provided are not toll free.

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Dated: June 17, 2004.

Eugenia Tyner-Dawson,

Acting Deputy Director, Indian Health Service.

[FR Doc. 04–14192 Filed 6–22–04; 8:45 am]

BILLING CODE 4160–16–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Epidemiological Studies of the Mayak & Techa River Cohort.

Date: June 25, 2004.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6116 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Gerald G. Lovinger, PHD, Scientific Review Administrator, Special Review and Resources Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8101, Rockville, MD 20892–7405, 301/496–7987.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology

Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: June 17, 2004.

Anna P. Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–14150 Filed 6–22–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel Special Emphasis Panel for one K07 Grant Application.

Date: July 14, 2004.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6116 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: David E. Maslow, PhD, Chief, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard—Room 8117, Bethesda, MD 20892–7405, (301) 496–2330.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: June 17, 2004.

Anna P. Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–14152 Filed 6–22–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental and Cranofacial Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel 04–66, Review of Apps. in Response to RFA DE04–008, Dental School Infrastructure.

Date: June 22, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Westin St. Francis, 335 Powell St., San Francisco, CA 94102.

Contact Person: H. George Hausch, PhD, Acting Director, 45 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2904, *george__hausch@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: June 17, 2004.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–14149 Filed 6–22–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel Chromatin Structure of ES Cells during Differentiation.

Date: July 13, 2004.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Room 5B01, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Jon M. Ranhand, PhD, Scientist Review Administrator, Division of Scientific Review, National Institute of Child Health, and Human Development, NIH, 6100 Executive Boulevard, Room 5B01, Bethesda, MD 20892, (301) 435–6884, *ranhandj@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: June 17, 2004.

Anna P. Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–14151 Filed 6–22–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 522b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; IP–RISP Applications.

Date: July 16, 2004.

Time: 8 a.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Martha Ann Carey, PhD, RN, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6151, MSC 9608, Bethesda, MD 20892–9608, 301–443–1606, *Mcarey@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel; Career Development and Dissertations Award.

Date: July 20, 2004.

Time: 9 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Martha Ann Carey, PhD, RN, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6151, MSC 9608, Bethesda, MD 20892–9608, 301–443–1606, *Mcarey@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel; Interdisciplinary Health Research Training: Behavior, Environment & Biology (Roadmap Initiative).

Date: July 22, 2004.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Deborah H. Olster, PhD, RN, Scientific Review Administrator, Senior Advisory, Office of Behavioral and Social Sciences Research, NIH, Building 1, Room 256, One Center Drive, Bethesda, MD 20892–0183, 301–451–4286, *olsterd@od.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel; Services Conflicts.

Date: July 26, 2004.

Time: 9 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Aileen Schulte, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6601 Executive Blvd, Room 6140, MSC 9608, Bethesda, MD 20892–9608, 301–443–1226, *aschulte@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel; Mental Health Research.

Date: August 2, 2004.

Time: 10 a.m. to 11:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Benjamin Xu, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6601 Executive Blvd, Room 6143, MSC 9608, Bethesda, MD 20892–9608, 301–443–1178, *benxu1@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel; Building Translational Research.

Date: August 4, 2004.

Time: 12 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Benjamin Xu, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6601 Executive Boulevard, Room 6143, MSC 9608, Bethesda, MD 20892–9608, 301–443–1178, *benxu1@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research, Training, National Institutes of Health, HHS)

Dated: June 17, 2004.

Anna P. Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–14153 Filed 6–22–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; SRV Conflicts 1.

Date: July 14, 2004.

Time: 1 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Health; Neuroscience Center; 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Aileen Schulte, PHD; Scientific Review Administrator; Division of Extramural Activities; National Institute of Mental Health, NIH; Neuroscience Center; 6001 Executive Blvd, Room 6140, MSC 9608; Bethesda, MD 20892–9608; 301–443–1225; *aschulte@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientists Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS).

Dated: June 17, 2004.

Anna P. Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–14154 Filed 6–22–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice

is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 542b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel; Review of U18 Application.

Date: July 12, 2004.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Fishers Building—NIAAA, 5635 Fishers Lane, Room 3033, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Jeffrey, I. Toward, PhD, Scientific Review Administrator, National Institutes of Health, National Institute on Alcohol Abuse and Alcoholism, Extramural Project Review Branch, OSA, 5636 Fishers Lane, Bethesda, MD 20892–9304, (301) 435–5337, *jtoward@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: June 17, 2004.

Anna P. Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–14155 Filed 6–22–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552(b)(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Research on Interventions for Anorexia Nervosa.

Date: July 14, 2004.

Time: 10 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Marina Broitman, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6153, MSC 9608, Bethesda, MD 20892–9605, (301) 402–8152. *mbroitma@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: June 17, 2004.

Anna P. Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–14156 Filed 6–22–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, LIRR and RIBT Member Conflicts.

Date: June 24, 2004.

Time: 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone conference call).

Contact Person: George M Barnas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2180, MSC 7818, Bethesda, MD 20892, 301–435–0696, *barnasg@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, RIBT Member Conflicts.

Date: June 24, 2004.

Time: 12 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone conference call).

Contact Person: George M Barnas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2180, MSC 7818, Bethesda, MD 20892, 301–435–0696, *barnasg@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Oncological Sciences Integrated Review Group, Clinical Oncology, Study Section.

Date: June 27–29, 2004.

Time: 5:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Ritz-Carlton Hotel, 1700 Tysons Boulevard, McLean, VA 22102.

Contact Person: John L. Meyer, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6198, MSC 7804, Bethesda, MD 20892, 301–435–1213, *meyerjl@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Cancer and Depressive Symptons.

Date: June 28, 2004.

Time: 10 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone conference call).

Contact Person: Michael Micklin, PhD, Chief, RPHB IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3136, MSC 7759,

Bethesda, MD 20892, (301) 435–1258, *micklinm@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Children, Diabetes and Parental Drug Abuse.

Date: June 28, 2004.

Time: 12 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone conference call.)

Contact Person: Michael Micklin, PhD, Chief, RPHB IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3136, MSC 7759, Bethesda, MD 20892, (301) 435–1258, *micklinm@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Human Research Ethics Study Section.

Date: June 29, 2004.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Karin F. Helmers, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3166, MSC 7770, Bethesda, MD 20892, (301) 435–1017, *helmersk@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Computational Biology.

Date: June 29, 2004.

Time: 9 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone conference call.)

Contact Person: Marc Rigas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4194, MSC 7826, Bethesda, MD 20892, 301–402–1074, *rigasm@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 EMNR–E (10) B Small Business Activities Special Emphasis Panel.

Date: June 30–July 1, 2004.

Time: 7 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Krish Krishnan, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6164, MSC 7892, Bethesda, MD 20892, (301) 435–1041, *krishnak@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Stress and Substance Abuse.

Date: July 1, 2004.

Time: 10 a.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone conference call).

Contact Person: Michael Micklin, PhD, Chief, RPHB IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3136, MSC 7759, Bethesda, MD 20892, *micklinm@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Panel, Religion in Lives of Older Americans.

Date: July 1, 2004.

Time: 2 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone conference call).

Contact Person: Victoria S. Levin, MSW, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3172, MSC 7848, Bethesda, MD 20892, 301–435–2507, *levin@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Panel, Neuropathology and Neurodegeneration.

Date: July 2, 2004.

Time: 1 p.m. to 1:45 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone conference call).

Contact Person: Jerome R. Wujek, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5194, MSC 7846, Bethesda, MD 20892, 301–435–2507, *wujekjer@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Panel, Disorders of Brain Development.

Date: July 2, 2004.

Time: 2 p.m. to 2:45 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone conference call).

Contact Person: Jerome R. Wujek, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5194, MSC 7846, Bethesda, MD 20892, (301) 435–2507, *wujekjer@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel Hyperaccelerated Award / Mechanisms in Immunomodulation Trials.

Date: July 6, 2004.

Time: 1 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone conference call).

Contact Person: Samuel C. Edwards, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4200, MSC 7812, Bethesda, MD 20892, (301) 435–1152, *edwardss@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Anterior Eye Special Emphasis Panel.

Date: July 6, 2004.

Time: 4 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone conference call).

Contact Person: Christine A. Livingston, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5202, MSC 7846, Bethesda, MD 20892, (301) 435–1172, *livingsc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Children and Behavioral Problems.

Date: July 7, 2004.

Time: 9:30 a.m. to 10:30 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone conference call).

Contact Person: Michael Micklin, PhD, Chief, RPHBA IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3136, MSC 7759, Bethesda, MD 20892, (301) 435–1258, *micklinm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Bacterial Diseases, Food Safety and General microbiology.

Date: July 8–9, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Mayflower Hotel, 1127 Connecticut Avenue, NW., Washington, DC 20036.

Contact Person: Marian Wachtel, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of

Health, 6701 Rockledge Drive, Room 3208, MSC 7858, Bethesda, MD 20892, 301–435–1148, *wachtelm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Adolescent Adjustment.
Date: July 8, 2004.
Time: 11 a.m. to 1 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone conference call).
Contact Person: Michael Micklin, PhD, Chief, RPHB IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3136, MSC 7759, Bethesda, MD 20892, (301) 435–1258, *micklinm@csr.nih.gov.*

Name of Committee: Center for Scientic Review Special Emphasis Panel, Risk and Resilience: Rural Youth Adults.
Date: July 8, 2004.
Time: 1 p.m. to 2 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone conference call).
Contact Person: Anna L. Riley, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3114, MSC 7759, Bethesda, MD 20892, 301–435–2889, *rileyann@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Hematology Small Business Activities Special Emphasis Panel.
Date: July 9, 2004.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.
Contact Person: Lawrence E. Boerboom, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5156, MSC 7814, Bethesda, MD 20892, (301) 435–8367, *boerboom@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, RFA Review: Prevention Research in the Transition to Adulthood.
Date: July 9, 2004.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: The Melrose Hotel, 2430 Pennsylvania Avenue, NW., Washington, DC 20037.
Contact Person: Valerie Durrant, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3148, MSC 7770, Bethesda, MD 20892, (301) 435–3554, *durrantv@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 HOP N (02) Member Applications.
Date: July 9, 2004.
Time: 9 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Embassy Suites Hotel, 4300 Military Road, Washington, DC 20015.
Contact Person: Christopher Sempos, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3146, MSC 7770, Bethesda, MD 20892, (301) 451–1329, *semposch@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Small Business Occupational Health.
Date: July 9, 2004.
Time: 10:30 a.m. to 2 p.m.
Agenda: To review and evaluate grant applications.
Place: Melrose Hotel, 2430 Pennsylvania Ave., NW., Washington, DC 20037.
Contact Person: Charles N. Rafferty, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3172, MSC 7816, Bethesda, MD 20892, 301–435–3562, *raffertc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Atrial Remodeling.
Date: July 9, 2004.
Time: 1 p.m. to 2 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone conference call).
Contact Person: Ai-Ping Zou, PhD, MD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118, MSC 7814, Bethesda, MD 20892, 301–435–1777, *zouai@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Lung Carcinogenesis,
Date: July 9, 2004.
Time: 1 p.m. to 2 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone conference call).
Contact Person: Zhiqiang Zou, MD, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6190, MSC 7804, Bethesda, MD 20892, 301–451–0132, *zouzhiq@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Reviews in Psychopathology.
Date: July 9, 2004.
Time: 2 p.m. to 4:30 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone conference call).
Contact Person: Karen Sirocco, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3176, MSC 7848, Bethesda, MD 20892, 301–435–0676, *siroccok@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Bridges to the Future.
Date: July 11, 2004.
Time: 12 p.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: Renaissance Denver Hotel, 3801 Quebec Street, Denver, CO 80207.
Contact Person: Cathleen L. Cooper, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4208, MSC 7812, Bethesda, MD 20892, 301–435–3566, *cooperc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Metabolism and Reproductive Sciences.
Date: July 12, 2004.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Sooja K. Kim, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6182, MSC 7892, Bethesda, MD 20892, (301) 435–1780, *kims@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SBIB–J11B RFA 04–063: Cancer Imaging.
Date: July 12, 2004.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Maggiano's Restaurant, 5333 Wisconsin Avenue, Washington, DC 20015.
Contact Person: Bethrouz Shabestari, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5106, MSC 7854, Bethesda, MD 20892, 301–435–2409, *shabestb@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SSMI 10B: Small Business: Bioengineering and Physiology.
Date: July 12–13, 2004.
Time: 8 a.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: Maggiano's Restaurant, 5333 Wisconsin Avenue, Washington, DC 20015.
Contact Person: Pushpa Tandon, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5104, MSC 7854, Bethesda, MD 20892, 301–435–2397, *tandonp@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Social Psychology.
Date: July 12, 2004.
Time: 8 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036.
Contact Person: Michael Micklin, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of health, 6701 Rockledge Drive, Room 3178, MSC 7848, Bethesda, MD 20892, (301) 435–1258, *micklinm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Radiation

Therapeutics and Biology Special Emphasis Panel.

Date: July 12, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Churchill Hotel, 1914 Conneticut Avenue, NW., Washington, DC 20009.

Contact Person: Elaine Sierra-Rivera, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6184, MSC 7804, Bethesda, MD 20892, 301–435–1779, *riverase@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Behavioral and Developmental Neuroscience Fellowships.

Date: July 12–13, 2004.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Fairmont Washington, DC, 2401 M Street, NW., Washington, DC 20037.

Contact Person: Sherry L. Stuesse, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5188, MSC 7846, Bethesda, MD 20892, 301–435–1785, *stuesses@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 MOSS–G 53R: Neuroprosthesis Bioengineering Research Partnerships.

Date: July 12, 2004.

Time: 10 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Ritz-Carlton Hotel at Pentagon City, 1250 South Hayes Street, Arlington, VA 22202.

Contact Person: Jean D. Sipe, PhD, Scientific Review Administrator, Center for Scientific Review, National Insititues of Health, 6701 Rockledge Drive, Room 4106, MSC 7814, Bethesda, MD 20892, 301/435–1743, *sipej@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel ZRG1 MOSS–G 52R: Tissue Engineering Bioengineering Research Partnerships.

Date: July 12, 2004.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Ritz-Carlton Hotel at Pentagon City, 1250 South Hayes Street, Arlington, VA 22202.

Contact Person: Jean D. Sipe, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4106, MSC 7814, Bethesda, MD 10892, 301/435–1743, *sipej@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Cardiac Hypertrophy and SERCA.

Date: July 12, 2004.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone conference call).

Contact Person: Rajiv Kumar, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4122, MSC 7802, Bethesda, MD 20892, 301–435–1212, *kumarra@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, EMNR Fellowship Review Special Emphasis Panel.

Date: July 12–13, 2004.

Time: 7 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Krish Krishnan, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6164, MSC 7892, Bethesda, MD 20892, 301–435–1041, *krishnak@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Pain Mechanisms.

Date: July 12, 2004.

Time: 12 p.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone conference call).

Contact Person: Daniel R. Kenshalo, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5176, MSC 7844, Bethesda, MD 20892, 301–435–1255, *kenshalod@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS.)

Dated: June 16, 2004.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–14157 Filed 6–22–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2004–18077]

Loran-C Transmitting Station Port Clarence Proposed Relocation

AGENCY: Coast Guard, DHS.

ACTION: Notice; request for comments.

SUMMARY: The United States Coast Guard is considering relocating its Loran-C operations from Port Clarence, Alaska (7960–Z/9990–Y) to Nome, Alaska. This proposal could alter the operations and coverage provided by the North Pacific (9990) and Gulf of Alaska (7960) Loran-C chains. The Coast Guard requests input on any concerns that the public may have related to the possible impact on Loran-C usage.

DATES: Comments and related material must reach the Docket Management Facility on or before September 21, 2004.

ADDRESSES: To make sure your comments and related material are not entered more than once in the docket, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility, (USCG–2004–18077), U.S. Department of Transportation, Room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at *http://dms.dot.gov*.

The Docket Management Facility maintains the public docket for this notice. Comments and material received from the public, as well as documents mentioned in this notice as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, contact LTJG Mark E. Moriarty, Project Manager, Office of Aids to Navigation, telephone (202) 267–6538, e-mail *MMoriarty@comdt.uscg.mil*. If you have questions on viewing or submitting material to the docket, call Andrea M. Jenkins, Program Manager, Docket Operations, telephone 202–366–0271.

You may obtain a copy of this notice by calling the U.S. Coast Guard Infoline at 1–800–368–5647 or read it on the Internet on the Coast Guard Navigation Center Web Site at *http://www.navcen.uscg.gov* or at *http://dms.dot.gov*.

SUPPLEMENTARY INFORMATION:

Background

The Coast Guard Loran-C system is a low frequency hyperbolic radionavigation system. A Loran-C receiver measures the slight difference in time it takes for pulsed signals to reach a ship or aircraft from the

transmitting stations within a Loran-C chain to develop a navigational position. Port Clarence is a USCG Loran-C Station, whose sole purpose is to maintain and operate the Loran-C equipment providing electronic navigation signals supporting maritime and aviation uses in Alaska. Port Clarence was constructed in the early 1960's as one of the first generation of Loran-C stations. The station is located on 2,646 acres of land on Point Spencer, a 12-mile long gravel spit extending into the Bering Sea at the west end of Alaska's Seaward Peninsula. Loran-C station Port Clarence's remote location requires the Coast Guard to generate their own electrical power, maintain large fuel tanks, maintain aging buildings and equipment, and fly in provisions for station equipment and personnel. In an effort to reduce operating costs, the Coast Guard is considering relocating the Loran-C Station to Nome, Alaska where commercial power and daily commercial flights are available. If the Loran-C station is built in Nome it will be equipped with the latest Loran-C technology and optimized for minimal staffing.

Impact to 9990 and 7960 Loran-C Coverage

Disestablishing Loran-C Station Port Clarence and establishing a new Loran-C Station in the Nome, Alaska area will likely affect the public's usage of Loran-C. While the coverage area provided by the 9990 and 7960 Loran-C chains will vary only slightly, users will no longer be able to use the 9990-Y or 7960-Z baselines without having their receivers reprogrammed to reflect the changes in latitude and longitude. It is possible that receivers that are not reprogrammed could provide hazardously misleading information to the user. In addition, timing users will need to determine a new reference value due to the new geographic location of the station.

Diagrams of the proposed change in coverage can be viewed at *http://www.navcen.uscg.gov* as well as in the docket for this notice at *http://dms.dot.gov.*

Request for Comments

We encourage you to participate in this request for comments by submitting comments and related material on the impact that this proposal may have on the use of Loran-C by the public. If you do so, please include your name and address and identify the docket number for this notice (USCG–2004–18077). You may submit your comments and material by mail, hand-delivery, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or hand-delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period.

All comments received will be posted without change, to *http://dms.dot.gov* and will include any personal information you have provided. We have an agreement with the Department of Transportation (DOT) to use the Docket Management Facility. Please see DOT's ''Privacy Act'' paragraph below.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://dms.dot.gov* at any time and conduct a simple search using the docket number USCG–2004–18077. You may also visit the Docket Management Facility in room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act

Anyone can 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 the Department of Transportation's Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit *http://dms.dot.gov.*

Public Meeting

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

Next Steps for This Project

At this time, the Coast Guard is seeking comments only with respect to the impact on Loran-C changes. After this has been considered, should the Coast Guard choose to continue with this proposed action, we would prepare an Environmental Assessment. If an Environmental Assessment is prepared, we will publish notice of its availability in the **Federal Register**.

Dated: June 17, 2004.

J.W. Underwood,

Rear Admiral, U.S. Coast Guard, Director of Operations Policy.

[FR Doc. 04–14200 Filed 6–22–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR 4905–N–02

Notice of Proposed Information Collection: Comment Request; Housing Discrimination Information Form HUD–903.1, HUD 903.1A, HUD–903–1B, HUD–903.1F, HUD–903.1K

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Action.

SUMMARY: The proposed information collection requirement concerning the Housing Discrimination Information Form HUD–903.1, HUD 903.1A, HUD–903–1B, HUD–903.1F, and HUD–903.1K will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. HUD is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* August 23, 2004.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number, and should be sent to Surrell S. Silverman, Reports Liaison Officer, U.S. Department of Housing and Urban Development, 451–7th Street, SW., Room 5124, Washington, DC 20410. Telephone number: (202) 708–4150.

FOR FURTHER INFORMATION CONTACT: Elizabeth Frank, U.S. Department of Housing and Urban Development, 451—7th Street, SW., Washington, DC 20410, Room 5206, telephone: (202) 619–8041. (This is not a toll-free number). Hearing or speech-impaired individuals may access this number TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8399.

SUPPLEMENTARY INFORMATION: HUD is submitting the proposed information collection to the OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended).

This notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information for: (1) the collection of information relative to the Fair Housing Act (Act). The Act prohibits discrimination in the sale, rental, advertising, and insuring of residential dwellings, and in residential real estate-related transactions, based on race, color, religion, sex, handicap [disability], familial status, or national origin.

Any person who claims to have been injured by a discriminary housing practice, or who believes that he or she will be injured by a discriminatory housing practice that is about to occur, may file a complaint with HUD not later than one year after the alleged discriminatory housing practice occurred or terminated. (2) Form HUD–903.1 was developed in order to promote consistency in the documents that, by statute, must be provided to persons against whom complaints are filed, as well as for the convenience of the general public. Section 103.25 of HUD's Fair Housing Act regulation describes the information that must be included in each complaint filed with HUD. For purposes of meeting the Act's one-year time limitation for filing complaints with HUD, complaints need not initially be submitted on the Form that HUD provides. (3) Housing Discrimination Complaint Form HUD–903.1 (English language), HUD–903.1A (Spanish language), HUD–903–1B (Chinese language), HUD–903.1F (Vietnamese language), and HUD.903.1K (Korean language) may be filed by mail, in person, by telephone, or via the Internet with HUD's Office of Fair Housing and Equal Opportunity (FHEO). FHEO staff uses the information provided on the Form to verify HUD's authority [jurisdiction] to investigate the complainant's allegations under the Act.

Notice of Submission of Proposed Information Collection to OMB

Title of Proposal: Housing Discrimination Information Form.

Office: Fair Housing and Equal Opportunity, HUD.

OMB Control Number: 2529–0011.

Description of the need for the information and proposed use: The Housing Discrimination Information Form (Form) is used for the collection of pertinent information from persons who wish to file housing discrimination complaints with HUD under the Fair Housing Act (Act). The Act makes it unlawful to discriminate in the sale, rental, advertising, or insuring of residential dwellings, or to discriminate in residential real estate-related transactions, based on race, color, religion, sex, handicap [disability], familial status, or national origin.

Any person who claims to have been injured by a discriminatory housing practice, or any person who believes that he or she will be injured by a discriminatory housing practice that is about to occur, may file a complaint with HUD not later than one year after the alleged discriminatory housing practice occurs or terminates. The Form promotes consistency in the collection of information necessary to contact persons who file housing discrimination complaints with HUD, and in the collection of information necessary for making initial assessments of HUD's authority [jurisdiction] to investigate under the Act.

This information may subsequently be provided to persons against whom complaints are filed [''respondents''], as required under the Act.

Agency form numbers, if applicable: Form HUD–903.1 (English), HUD–903.1A (Spanish), HUD–903–1B (Chinese), HUD–903.1F (Vietnamese), and HUD–903.1K (Korean).

Members of affected public: Individuals or households, businesses or other for-profit, not-for-profit institutions, State, Local, or Tribal Governments.

Estimation of the total number of hours needed to prepare the information collection, including the number of respondents, frequency of response, and hours of responses:

HUD estimates that during the course of a year, approximately 10,750 housing discrimination complaints are submitted to HUD. HUD further estimates that a complainant takes approximately 20 minutes to complete the Form. The Form is completed once by each complainant. Therefore, the total number of annual burden hours for this Form is 3583 hours.

$10{,}750 \times 1$ (frequency) $\times 20$ minutes = 3583 hours.

There is no annualized cost to complainants. Complainants submit the Form to HUD by mail, using a postage-paid mailer at no cost to the complainant. Complainants also may submit the Form to HUD electronically via the Internet.

Status of the proposed information collection: Reinstatement of a currently approved revised collection to reflect the collection of information from persons wishing to file Fair Housing Act complaints with HUD.

Authority: The Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended).

Dated: June 16, 2004.

Turner Russell,

Director, Enforcement Division.

[FR Doc. 04–14130 Filed 6–22–04; 8:45 am]

BILLING CODE 4210–28–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No.FR–4903–N–40]

Notice of Submission of Proposed Information Collection to OMB; Evaluation of the Welfare to Work Voucher Program

AGENCY: Office of the Chief Information Officer.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

Information will be used to evaluate and assess the impact from the provision of housing assistance on the employment income, residential choices and well being of welfare-eligible families. This follow-up survey is gathered from sub-sample participants who completed a baseline survey.

DATES: Comments Due Date: July 23, 2004.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2528–XXXX) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* telephone (202) 708–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Mr. Eddins and at HUD's Web site at *http://www5.hud.gov:63001/po/i/icbts/collectionsearch.cfm.*

SUPPLEMENTARY INFORMATION: This Notice informs the public that the U.S. Department of Housing and Urban Development (HUD) has submitted to OMB, for emergency processing, a survey instrument to obtain information from faith based and community organizations on their likelihood and success at applying for various funding

programs. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Evaluation of the Welfare to Work Voucher Program.

OMB Approval Number: 2528–Pending.

Form Numbers: None.

Description of the Need for the Information and Its Proposed Use: Information will be used to evaluate and assess the impact from the provision of housing assistance on the employment, income, residential choices and well being of welfare-eligible families. This follow-up survey is gathered from sub-sample participants who completed a baseline survey.

Frequency of Submission: Annually.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	3,900	1		0.69		2,697

Total Estimated Burden Hours: 2,697.

Status: New Collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: June 17, 2004.

Donna L. Eden,

Director, Office of Investment Strategies, Policy, and Management, Office of the Chief Information Officer.

[FR Doc. 04–14184 Filed 6–22–04; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4903–N–41]

Notice of Submission of Proposed Information Collection to OMB; Insurance Information

AGENCY: Office of the Chief Information Officer.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

The Annual Contributions Contract between HUD and PHAs require PHAs insure their property for an amount sufficient to protect against financial loss. When new projects are considered HUD–5460 is used to establish an insurable value at the time the project is built. Insurance amounts can be adjusted yearly as inflation and increased costs of construction create an upward trend on insurable values.

DATES: Comments Due Date: July 23, 2004.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2577–0045) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov*; telephone (202) 708–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Mr. Eddins and at HUD's Web site at *http://www5.hud.gov:63001/po/i/icbts/collectionsearch.cfm*.

SUPPLEMENTARY INFORMATION: This Notice informs the public that the U.S. Department of Housing and Urban Development (HUD) has submitted to OMB, for emergency processing, a survey instrument to obtain information from faith based and community organizations on their likelihood and success at applying for various funding programs. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Insurance Information.

OMB Approval Number: 2577–0045.

Form Numbers: HUD–5460.

Description of the Need for the Information and Its Proposed Use: The Annual Contributions Contract between HUD and PHAs require PHAs insure their property for an amount sufficient to protect against financial loss. When new projects are considered HUD–5460 is used to establish an insurable value at the time the project is built. Insurance amounts can be adjusted yearly as inflation and increased costs of construction create an upward trend on insurable values.

Frequency of Submission: On occasion, Other Once per project at time of completion.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	40	1		1		40

Total Estimated Burden Hours: 40.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: June 17, 2004.

Donna L. Eden,

Director, Office of Investment Strategies, Policy, and Management, Office of the Chief Information Officer.

[FR Doc. 04–14185 Filed 6–22–04; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF THE INTERIOR

Geological Survey

Federal Geographic Data Committee (FGDC); Public Review of Framework Data Standards

ACTION: Notice.

SUMMARY: The FGDC will conduct a public review of draft framework data standards developed through the Geospatial One-Stop initiative. The public review is scheduled to begin in July 2004. Framework data standards establish common requirements to facilitate data exchange for seven themes of geospatial data fundamental to many different Geographic Information Systems (GIS) applications. The seven geospatial data themes are: geodetic control, elevation, orthoimagery, hydrography, transportation, cadastral, and governmental unit boundaries. The standard for each of the seven framework themes specifies a minimal level of data content that data producers, consumers, and vendors should use for the interchange of data.

The intended users of the framework data standards are data producers and collectors, system architects, database designers, and software developers who will implement these standards in different GIS applications. The FGDC will solicit comment on the draft standards from the geospatial community in public and private sectors to ensure that the broadset set of needs are met. Comments that address specific issues/changes/additions may result in revisions to the draft framework data standards.

After the end of the FGDC public review period, the comments will be evaluated and reviewers will receive notification of how their comments were addressed. Revised draft framework data standards will be submitted for further processing for approval by the American National Standards Institute (ANSI), including a second public review that will be announced in ANSI's Standards Action bulletin. After ANSI approval and formal endorsement by the FGDC, which is expected in the second half of calendar year 2005, the published framework data standards and a summary analysis of the changes will be made available to the public.

DATES: FGDC public review is scheduled to begin in July 2004. The actual start date will be published on the FGDC and Geospatial One-Stop web sites.

CONTACT AND ADDRESSES: Inquiries about the framework data standards and the FGDC public review should be addressed to Ms. Julie Binder Maitra, FGDC Standards Coordinator c/o U.S. Geological Survey, 590 National Center, 12201 Sunrise Valley Drive, Reston, Virginia 20192 or by phone 703–648–4627 or by facsimile 703–648–5755 or Internet at *jmaitra@usgs.gov.*

SUPPLEMENTARY INFORMATION: Following is information about the framework data standards:

The standard for each framework theme will specify a minimal level of data content that data producers, consumers, and vendors should use for the interchange of data by various means, including Web services. The standards do not specify a particular structure for the interchange of data. Data producers and users may structure thematic data in any format for their own internal use. The standards do not modify business processes or modify how organizations hold data.

The framework data standards establish the content requirements for the collection and interchange of data pertaining to the seven framework themes. The standards identify terminology, encoding schema, data components, and metadata needed for data exchange.

The seven framework themes covered by these standards are described below:

1. *Geodetic Control:* Geodetic control provides a common consistent, and accurate reference system for establishing coordinates for all geographic data. All framework data and users' applications data require geodetic control to accurately register spatial data. The fundamental geodetic control for the United States is provided through the National Spatial Reference System (NSRS) managed by the National Oceanic and Atmospheric Administration (NOAA).

2. *Elevation Bathymetric:* The bathymetric data for near coastal marine, Inland, and inter-coastal waterways is highly accurate bathymetric information collected to ensure that Federal navigation channels are maintained to their authorized depths. Bathymetric survey activities support the Nation's critical nautical charting program. This data is also used to create Electronic Navigational Charts. The bathymetric data supports the elevation layer of the geospatial data framework.

3. *Elevation Terrestrial:* Land elevation data contains georeferenced digital representations of terrestrial surfaces, natural or manmade, which describe vertical position above or below a datum. As with bathymetric data, terrestrial data may be modeled in various forms, such as in an evenly spaced grid or as irregularly spaced points (triangulated irregular network, contour lines, mass points). The terrestrial data, in its various forms, can contribute to the elevation layer of the geospatial data framework.

4. *Orthoimagery:* This dataset contains georeferenced images of the Earth's surface, collected by a sensor in which image object displacement has been removed for sensor distortions and orientation and for terrain relief. For very large surface areas, an Earth curvature correction may be applied. Digital orthoimages encode the visible and near visible portions of the electromagnetic spectrum as discrete values modeled in an array of georeferenced pixels. Digital orthoimages have the geometric characteristics of a map and image qualities of a photograph.

5. *Hydrography:* This data theme includes surface water features such as lakes, ponds, streams and rivers, canals, oceans, and coastlines. Each hydrography feature is assigned a permanent feature identification code and may also be identified by a feature name. Spatial positions of features are encoded as flowlines and polygons. Network connectivity, direction of flow, and a linear referencing system are also encoded.

6. *Transportation:* Transportation data are used to model the geographic locations, interconnectedness, and characteristics of the transportation system within the United States. The transportation system includes both physical and non-physical components representing all modes of travel that allow the movement of goods and people between locations.

Sub-themes representing the physical components of the transportation infrastructure include the road, railroad, transit, and waterway networks and airport facilities.

7. *Cadastral:* Cadastral data describe the geographic extent of past, current, and future right, title, and interest in

real property, including above, surface, and below ground and water, and the foundation to support the description of that geographic extent.

8. *Cadastral (Marine):* The marine cadastre includes, but is not limited to: Marine Managed Areas and their boundaries; parcels of ocean uses and their boundaries, including the submerged land management system used by the United States; and the rights, restrictions, responsibilities, and legal authority applied to marine spaces.

9. *Governmental Unit Boundaries:* Governmental units are legally bounded geographic entities that have the authority of a government. A legal government is one established under Federal, Tribal, State or local law with the authority to elect or appoint officials and raise revenues through taxes.

The Governmental Unit Boundary standard accommodates other legal entities and adopts the ANSI X3.31 (FIPS Publication 55–3) description for such entities and also applies to entities that are statistically equivalent to a legal entity for data reporting purposes, e.g., incorporated places that are independent of counties and serve as equivalent to a county.

The framework data standards were initially developed through the Geospatial One-Stop e-government initiative (*see http://www.geo-one-stop.gov*); however, the Federal Geographic Data Committee (FGDC) organization will complete this intergovernmental geospatial standards development on behalf of Geospatial One-Stop and subsequently maintain the standards.

Framework data standards will be submitted for approval by the American National Standards Institute (ANSI). ANSI is a private, non-profit organization (501(c)3) that administers and coordinates the U.S. voluntary standardization and conformity assessment system. ANSI has accredited the InterNational Committee for Information Technology Standards (INCITS) to develop standards for information and Communications Technologies (ICT). The INCITS Secretariat is administered by the Information Technology Industry (ITI) Council, a trade association representing leading U.S. providers of information technology products and services. The project for development of framework data standards is registered as INCITS 1574–D, Geographic Information Framework Data Content Standard.

As the framework data standards were developed using public funds, Geospatial One-Stop and the FGDC shall be able to freely publish and distribute the contents, including the framework models to the public, as provided through the Freedom of Information Act (FOIA). Upon adoption of the framework data standards as American National Standards, the Information Technology Information (ITI) Council will copyright the American National Standards version of these standards on behalf of INCITS and provide free of charge to the FGDC a non-exclusive license to these standards.

Dated: June 17, 2004.

Ivan DeLoatch,

FGDC Staff Director.

[FR Doc. 04–14128 Filed 6–22–04; 8:45 am]

BILLING CODE 4310–47–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Menominee Nation Casino and Hotel Project, Kenosha, WI

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the Bureau of Indian Affairs (BIA) as lead agency, with the Menominee Nation as a cooperating agency, intends to gather information necessary for preparing an Environmental Impact Statement (EIS) for a proposed casino and hotel project to be located in Kenosha, Wisconsin. The purpose of the proposed action is to help address the socio-economic needs of the Menominee Nation. This notice also announces a public scoping meeting to identify public and agency concerns and alternatives to be considered in the EIS.

DATES: Written comments on the scope and implementation of this proposal must arrive by August 20, 2004. The public hearing will be held August 3, 2004, starting at 7 p.m.

ADDRESSES: You may mail or hand carry written comments to the Bureau of Indian Affairs, Attn: Herb Nelson, One Federal Drive, Rm. 550, Ft. Snelling, Minnesota 55111. Please include your name, return address and the caption: ''DEIS Scoping Comments, Kenosha Casino Project,'' on the first page of your written comments.

The public scoping meeting will be held at Gateway Technical College Conference Center-Madrigrano Auditorium, 3320 30th Avenue, Kenosha, Wisconsin. It will be co-hosted by the BIA and the Menominee Nation.

FOR FURTHER INFORMATION CONTACT: Herb Nelson, (612) 713–4400, extension 1143.

SUPPLEMENTARY INFORMATION: The proposed project is located at the site of the existing Dairlyland Greyhound Park at 5522–104th Avenue, Kenosha, Wisconsin 53144. As part of the project, the site would be taken into federal trust by the U.S. Department of the Interior on behalf of the Menominee Nation. The site consists of 1 parcel totaling approximately 223 acres. The proposed project site is approximately one-half mile east from Interstate 94 and approximately 35 miles south of Milwaukee, Wisconsin. In addition to the proposed action, a reasonable range of alternatives, including a no-action alternative, will be analyzed in the EIS.

The Menominee Nation consists of approximately eight thousand one hundred twenty (8120) members. It is governed by a tribal council, consisting of 9 members, under a federally approved constitution. The Menominee Nation presently has approximately 228,000 acres of land in trust with the U.S. Government and is eligible to acquire additional land to be placed in trust.

Public Comment Availability

Comments, including names and addresses of respondents, will be available for public review at the mailing address shown in the **ADDRESSES** section, during regular business hours, 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. Individual respondents may request confidentiality. If you wish us to withhold your name and/or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. We will not, however, consider anonymous comments. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

Authority

This notice is published in accordance with section 1503.1 of the Council on Environmental Quality Regulations (40 CFR Parts 1500 through 1508) implementing the procedural requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), and the Department of the Interior Manual (516 DM 1–6), and is in the exercise of

authority delegated to the Assistant Secretary—Indian Affairs by 209 DM 8.

Dated: June 14, 2004.

Woodrow W. Hopper,

Deputy Assistant Secretary—Management.

[FR Doc. 04–14240 Filed 6–22–04; 8:45 am]

BILLING CODE 4310–W7–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of approved Class III Gaming Compact Amendment.

SUMMARY: This notice publishes an Amendment to an approved Class III Gaming Compact between the Port Gamble S'Klallam Tribe and the State of Washington. Under the Indian Gaming Regulatory Act of 1988, the Secretary of the Interior is required to publish notice in the **Federal Register** approved Tribal-State compacts for the purpose of engaging in Class III gaming activities on Indian lands.

EFFECTIVE DATE: June 23, 2004.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Office of Indian Gaming Management, Office of the Deputy Assistant Secretary—Policy and Economic Development, Washington, DC 20240, (202) 219–4066.

SUPPLEMENTARY INFORMATION: Under Section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA) Pub. L. 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish in the **Federal Register** notice of approved Tribal-State compacts for the purpose of engaging in Class III gaming activities on Indian lands.

The Port Gamble S'Klallam Tribe and the State of Washington have agreed to amend the following Sections; Licensing and State Certification Procedures, Community Impact Contribution, Renegotiation, Hours of Operation, and Age Limitations, as well as, add the game Let it Ride to the existing compact. The Principal Deputy Assistant Secretary—Indian Affairs, Department of the Interior, through her delegated authority, is publishing notice that the Tribal—State Compact Amendment for Class III gaming between the Port Gamble S'Klallam Tribe and the State of Washington is now in effect.

Dated: May 21, 2004.

Aurene M. Martin,

Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 04–14260 Filed 6–22–04; 8:45 am]

BILLING CODE 4310–4N–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–924–04–1320–00]

Notice of Coal Lease Offering By Sealed Bid, Summit Creek Tract Coal Lease Application UTU–79975

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given that at 1 p.m., June 24, 2004, certain coal resources in lands hereinafter described in Carbon County, Utah will be offered for competitive lease by sealed bid of $100.00 per acre or more to the qualified bidder submitting the highest bonus bid in accordance with the provisions of the Mineral Leasing Act of 1920, as amended (41 Stat. 437). A company or individual is limited to one sealed bid. If a company or individual submits two or more sealed bids for this tract all of the company's or individual's bids will be rejected.

Rental and Royalty: A lease issued as a result of this offering will provide for payment of an annual rental of $3 per acre or fraction thereof and a royalty payable to the United States of 12.5 percent of the value of coal mined by surface methods, and 8 percent of the value of coal mined by underground methods. The value of coal shall be determined in accordance with BLM Manual 3070.

SUPPLEMENTARY INFORMATION: This lease is being offered for sale under the provisions set forth in the regulations for Leasing on Application at 43 CFR part 3425.

The lease sale will be held in the Bureau of Land Management (BLM) Third Floor Conference Room, 324 South State Street, Salt Lake City, Utah, at 1 p.m. on June 24, 2004. At that time, the sealed bids will be opened and read. Any bid received after 10 a.m., June 24, 2004, will not be considered.

No decision will be made during the lease sale to accept or reject any bid. The BLM reserves the right to reject any and all bids regardless of the amount offered. Any bid that is less than fair market value, as determined by the authorized officer, will not be accepted. The successful bidder for the tract will be notified after the BLM has completed analysis of all the bids received consistent with regulations at 43 CFR 3422.3–2(b).

Coal Offered: The coal resources to be offered consist of all recoverable reserves available in the following described lands located in Carbon County, Utah approximately eight miles northeast of Helper, Utah on private lands with federally administered minerals:

T. 12 S., R. 11 E., SLM, Carbon County, Utah
Sec. 29, SWSW, SWSE;
Sec. 30, Lots 4, 12, 14–16;
Sec. 31, Lots 1, 2, 7–11;
Sec. 32, W2NE, E2NW, NWNW, NESW.

Containing 702.73 acres.

The Summit Creek coal tract has one potentially minable coal bed, the Aberdeen bed. The minable portions of the coal bed in this area are around six feet in thickness. The tract contains more than 3.04 million tons of recoverable high-volatile B bituminous coal.

The estimated coal quality in the seam on an ''as received basis'' is as follows:

12,756—Btu/lb.,

5.95—Percent moisture,

4.63—Percent ash,

44.73—Percent volatile matter,

44.69—Percent fixed carbon,

0.44—Percent sulfur.

Bidding instructions are included in the Detailed Statement of the Lease Sale. A copy of the detailed statement and the proposed coal lease are available by mail at the BLM, Utah State Office, P.O. Box 45155, Salt Lake City, Utah 84145–0155 or in the BLM Public Room (Room 400), 324 South State Street, Salt Lake City, Utah 84111. All case file documents and written comments submitted by the public on Fair Market Value or royalty rates except those portions identified as proprietary by the commentator and meeting exemptions stated in the Freedom of Information Act, are available for public inspection in the Public Room (Room 400) of the Bureau of Land Management.

Authority: 43 CFR part 342.

Dated: June 2, 2004.

Joe Incardine,

Acting Deputy State Director, Lands and Minerals.

[FR Doc. 04–14211 Filed 6–22–04; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Under 42 U.S.C. 9622(d)(2) and 28 CFR 50.7, notice is hereby given that on June 15, 2004, a proposed Consent Decree in *United States* v. *Industrial Excess Landfill, Inc.,* Civil Action Number 5:89–CV–1988 (consolidated with *State of Ohio* v. *Industrial Excess Landfill, Inc.,* Civil Action Number 5:91–CV–2559), was lodged with the United States District Court for the Northern District of Ohio.

The consent decree resolves claims against five defendants brought by the United States on behalf of the Environmental Protection Agency (''EPA'') under sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. 9606 and 9607, for response costs incurred and to be incurred by the United States in responding to the release and threatened release of hazardous substances at the Industrial Excess Landfill Superfund Site in Uniontown, Ohio. Under the Consent Decree, the Settling Defendants will perform the remedy for the Site as set forth in the completed Remedial Design for the Site, pay $17,925,000 (plus interest on this amount running from October 1, 2003) for past costs, and pay all interim and future response costs as defined in the Consent Decree that have been or will be incurred by the United States (subject to a limit of $700,000 for the portion of future response costs incurred in monitoring and overseeing Settling Defendants' performance of the remedy). The United States covenants not to sue the Settling Defendants regarding the Site, subject to reservations of rights for unknown conditions and information, and other reservations commonly included in CERCLA settlements.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Industrial Excess Landfill, Inc.,* DOJ Ref. #90–11–3–247A.

The Consent Decree (including all its Appendices A through F) may be examined at the Office of the United States Attorney, Northern District of Ohio, 801 West Superior Avenue, Suite 400, Cleveland, Ohio 44113, and the Region 5 Office of the Environmental Protection Agency, 77 W. Jackson Blvd., Chicago, Illinois 60604. During the public comment period, the Consent Decree and all Appendices may also be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/open.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, PO Box 7611, U.S. Department of Justice, Washington, DC 2004–7611, or by faxing or e-mailing a request to Tonia Fleetwood, *tonia.fleetwood@usdoj.gov,* Fax No. (202) 514–0097, phone confirmation number (202) 514–1547.

The Department of Justice requires payment of reproduction costs (25 cents per page for standard paper sizes) for copies requested from the Consent Decree Library. In requesting a copy of the Consent Decree text only from the Consent Decree Library, please enclose a check in the amount of $23.75 payable to the U.S. Treasury. To obtain a copy of the text of the Consent Decree and Appendices A through E, which are on standard 8½ by 11 inch paper enclose a check in the amount of $58.25 payable to the U.S. Treasury. Appendix F to the Consent Decree is the Remedial Design submitted by the Settling Defendants pursuant to a prior Administrative Order. Appendix F includes numerous color and oversize pages that require special services to reproduce. To obtain a paper or CD–ROM copy of Appendix F, please call Ms. Tonia Fleetwood at (202) 514–1547 to discuss reproduction costs and delivery arrangements. Note that in addition to the locations identified above where the Consent Decree is available, the Remedial Design (Appendix F) may also be examined at the Site information repositories located at: (1) Lake Township Clerk's Office, 12360 Market North, Hartville, Ohio 44632, and (2) Hartville Branch Library, 411 East Maple Street, Hartville, Ohio 44632.

W. Benjamin Fisherow,

Deputy Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 04–14261 Filed 6–22–04; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to The Clean Water Act

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *City of Lebanon, Missouri*, Civil Action No. 04–3125–CV–S–RED was lodged on April 12, 2004, with the United States District Court for the Western District of Missouri, Southern Division. This consent decree requires the defendants to pay a civil penalty of $72,000 and to perform injunctive relief to address permit violations at the City's wastewater treatment plant as well as to address sewage overflows from the City's sewage collection system.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Environmental and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *City of Lebanon, Missouri*, DOJ Ref. 90–5–1–1–06400.

The proposed consent decree may be examined at the office of the United States Attorney, Charles Evans Whittaker Courthouse 400 E. 9th Street, 5th Floor, Kansas City, MO 64106 and at U.S. EPA Region 7, 901 N. 5th Street, Kansas City, Kansas 66101.

During the comment period, the consent decree may be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html.* Copies of the consent decree also may be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (tonia.fleetwood@usdoj.gov), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy, please enclose a check in the amount of $12.50 for *United States* v. *city of Lebanon, Missouri*, (25 cents per page reproduction cost) payable to the U.S. Treasury.

Robert Maher,

Assistant Section Chief, Environmental Enforcement Section.

[FR Doc. 04–14262 Filed 6–22–04; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF LABOR

Office of the Secretary

Bureau of International Labor Affairs; Request for Information Concerning Labor Rights in Panama and Its Laws Governing Exploitative Child Labor

AGENCIES: Office of the Secretary, Labor; Office of the United States Trade Representative and Department of State.

ACTION: Request for comments from the public.

SUMMARY: This notice is a request for comments from the public to assist the Secretary of Labor, the United States Trade Representative, and the Secretary of State in preparing reports regarding labor rights in Panama and describing the extent to which it has in effect laws governing exploitative child labor. The Trade Act of 2002 requires reports on these issues and others when the President intends to use trade promotion authority procedures in connection with legislation approving and implementing a trade agreement. The President assigned the functions of preparing reports regarding labor rights and the existence of laws governing exploitative child labor to the Secretary of Labor, in consultation with the Secretary of State and the United States Trade Representative. The Secretary of Labor further assigned these functions to the Secretary of State and the United States Trade Representative, to be carried out by the Secretary of Labor, the Secretary of State and the United States Trade Representative.

DATES: Public comments should be received no later than 5 p.m. August 9, 2004.

ADDRESSES: Persons submitting comments are strongly advised to make such submissions by electronic mail to the following address: *FRFTAPanama@dol.gov*. Submissions by facsimile may be sent to: Betsy White, Office of International Economic Affairs, Bureau of International Labor Affairs, U.S. Department of Labor, at (202) 693–4851.

FOR FURTHER INFORMATION CONTACT: For procedural questions regarding the submissions, please contact Betsy White, Office of International Economic Affairs, Bureau of International Labor Affairs, U.S. Department of Labor, at (202) 693–4919, facsimile (202) 693–4851. These are not toll-free numbers. Substantive questions concerning the labor rights report and/or the report on Panama's laws governing exploitative child labor should be addressed to Jorge Perez-Lopez, Office of International Economic Affairs, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, telephone (202) 693–4883, facsimile (202) 693–4851.

SUPPLEMENTARY INFORMATION:

I. Background

On November 18, 2003, in accordance with section 2104(a)(1) of the Trade Act of 2002, the United States Trade Representative (USTR) notified the Congress of the President's intent to enter into free trade negotiations with Panama. The notification letter to the Congress can be found on the USTR Web site at *http://www.ustr.gov/new/fta/Panama/2003–11–18-notification_letter.pdf*. At a public hearing conducted on March 23, 2004, the interagency Trade Policy Staff Committee (TPSC) received written comments and oral testimony from the public to assist USTR in formulating positions and proposals with respect to all aspects of the negotiations (69 FR 8518) (Feb. 24, 2004). Negotiations were launched on April 26, 2004.

The Trade Act of 2002 (Pub. L. 107–210) (the Trade Act) sets forth special procedures (Trade Promotion Authority) for approval and implementation of Agreements subject to meeting conditions and requirements in Division B of the Trade Act, ''Bipartisan Trade Promotion Authority.'' Section 2102(a)–(c) of the Trade Act includes negotiating objectives and a listing of priorities for the President to promote in order to ''address and maintain United States competitiveness in the global economy'' in pursuing future trade agreements. The President assigned several of the functions in section 2102(c) to the Secretary of Labor. (E.O. 13277). These include the functions set forth in section 2102(c)(8), which requires that the President ''in connection with any trade negotiations entered into under this Act, submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a meaningful labor rights report of the country, or countries, with respect to which the President is negotiating,'' and the function in section 2102(c)(9), which requires that the President ''with respect to any trade agreement which the President seeks to implement under trade authorities procedures, submit to the Congress a report describing the extent to which the country or countries that are parties to the agreement have in effect laws governing exploitative child labor.''

II. Information Sought

Interested parties are invited to submit written information as specified below to be taken into account in drafting the required reports. Materials submitted should be confined to the specific topics of the reports. In particular, agencies are seeking written submissions on the following topics:

1. Labor laws of Panama, including laws governing exploitative child labor, and that country's implementation and enforcement of its labor laws and regulations;

2. The situation in Panama with respect to core labor standards;

3. Steps taken by Panama to comply with International Labor Organization Convention No. 182 on the worst forms of child labor; and

4. The nature and extent, if any, of exploitative child labor in Panama.

Section 2113(6) of the Trade Act defines ''core labor standards'' as:

(A) The right of association;

(B) The right to organize and bargain collectively;

(C) A prohibition on the use of any form of forced or compulsory labor;

(D) A minimum age for the employment of children; and

(E) Acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.

III. Requirements for Submissions

This document is a request for facts or opinions submitted in response to a general solicitation of comments from the public. To ensure prompt and full consideration of submissions, we strongly recommend that interested persons submit comments by electronic mail to the following e-mail address: *FRFTAPanama@dol.gov*. Persons making submissions by e-mail should use the following subject line: ''Panama: Labor Rights and Child Labor Reports.'' Documents should be submitted in WordPerfect, MSWord, or text (.TXT) format. Supporting documentation submitted as spreadsheets is acceptable in Quattro Pro or Excel format. 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. Similarly, 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 will be placed in a file open to public inspection at the Department of Labor, Room S–5317, 200 Constitution Avenue, NW., Washington, DC 20210, and in the USTR Reading Room in Room 3 of the annex of the Office of the USTR, 1724 F Street, NW., Washington, DC 20508. An appointment to review the file at the Department of Labor may be made by contacting Betsy White at (202) 693–4919. An appointment to review the file at USTR may be made by calling (202) 395–6186. The USTR Reading Room is generally open to the public from 10 a.m.–12 noon and 1–4 p.m., Monday through Friday. Appointments must be scheduled at least 48 hours in advance.

Signed at Washington, DC, this 16 of June 2004.

Martha Newton,

Associate Deputy Under Secretary for International Affairs.

[FR Doc. 04–14165 Filed 6–22–04; 8:45 am]

BILLING CODE 4510–28–P

DEPARTMENT OF LABOR

Office of the Secretary

Bureau of International Labor Affairs; Request for Information Concerning Labor Rights in Thailand and Its Laws Governing Exploitative Child Labor

AGENCIES: Office of the Secretary, Labor; Office of the United States Trade Representative and Department of State.

ACTION: Request for comments from the public.

SUMMARY: This notice is a request for comments from the public to assist the Secretary of Labor, the United States Trade Representative, and the Secretary of State in preparing reports regarding labor rights in Thailand and describing the extent to which it has in effect laws governing exploitative child labor. The Trade Act of 2002 requires reports on these issues and others when the President intends to use trade promotion authority procedures in connection with legislation approving and implementing a trade agreement. The President assigned the functions of preparing reports regarding labor rights and the existence of laws governing exploitative child labor to the Secretary of Labor, in consultation with the Secretary of State and the United States Trade Representative. The Secretary of Labor further assigned these functions to the Secretary of State and the United States Trade Representative, to be carried out by the Secretary of Labor, the Secretary of State and the United States Trade Representative.

DATES: Public comments should be received no later than 5 p.m. August 9, 2004.

ADDRESSES: Persons submitting comments are strongly advised to make such submissions by electronic mail to the following address: *FRFTAThailand@dol.gov.* Submissions by facsimile may be sent to: Betsy White, Office of International Economic Affairs, Bureau of International Labor Affairs, U.S. Department of Labor, at (202) 693–4851.

FOR FURTHER INFORMATION CONTACT: For procedural questions regarding the submissions, please contact Betsy White, Office of International Economic Affairs, Bureau of International Labor Affairs, U.S. Department of Labor, at (202) 693–4919, facsimile (202) 693–4851. These are not toll-free numbers. Substantive questions concerning the labor rights report and/or the report on Thailand's laws governing exploitative child labor should be addressed to Jorge Perez-Lopez, Office of International Economic Affairs, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, telephone (202) 693–4883, facsimile (202) 693–4851.

SUPPLEMENTARY INFORMATION:

I. Background

On February 12, 2004, in accordance with section 2104(a)(1) of the Trade Act of 2002, the United States Trade Representative (USTR) notified the Congress of the President's intent to enter into free trade negotiations with Thailand. The notification letters to the Congress can be found on the USTR Web site at *http://www.ustr.gov/releases/2004/02/2004–02–12-letter-thailand-house.pdf* and *http://www.ustr.gov/releases/2004/02/2004–02–12-letter-thailand-senate.pdf,* respectively. At a public hearing conducted on March 30, 2004, the interagency Trade Policy Staff Committee (TPSC) received written comments and oral testimony from the public to assist USTR in formulating positions and proposals with respect to all aspects of the negotiations (69 FR 9419) (Feb. 27, 2004). USTR intends to launch the negotiations in June 2004.

The Trade Act of 2002 (Pub. L. 107–210) (the Trade Act) sets forth special procedures (Trade Promotion Authority) for approval and implementation of Agreements subject to meeting conditions and requirements in Division B of the Trade Act, ''Bipartisan Trade Promotion Authority.'' Section 2102(a)–(c) of the Trade Act includes negotiating objectives and a listing of priorities for the President to promote in order to ''address and maintain United States competitiveness in the global economy'' in pursuing future trade agreements. The President assigned several of the functions in section 2102(c) to the Secretary of Labor. (E.O. 13277). These include the functions set forth in section 2102(c)(8), which requires that the President ''in connection with any trade negotiations entered into under this Act, submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a meaningful labor rights report of the country, or countries, with respect to which the President is negotiating,'' and the function in section 2102(c)(9), which requires that the President ''with respect to any trade agreement which the President seeks to implement under trade authorities procedures, submit to the Congress a report describing the extent to which the country or countries that are parties to the agreement have in effect laws governing exploitative child labor.''

II. Information Sought

Interested parties are invited to submit written information as specified below to be taken into account in drafting the required reports. Materials submitted should be confined to the specific topics of the reports. In particular, agencies are seeking written submissions on the following topics:

1. Labor laws of Thailand, including laws governing exploitative child labor, and that country's implementation and enforcement of its labor laws and regulations;
2. The situation in Thailand with respect to core labor standards;
3. Steps taken by Thailand to comply with International Labor Organization Convention No. 182 on the worst forms of child labor; and
4. The nature and extent, if any, of exploitative child labor in Thailand.

Section 2113(6) of the Trade Act defines ''core labor standards'' as:

(A) The right of association;

(B) The right to organize and bargain collectively;

(C) A prohibition on the use of any form of forced or compulsory labor;

(D) A minimum age for the employment of children; and

(E) Acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.

III. Requirements for Submissions

This document is a request for facts or opinions submitted in response to a general solicitation of comments from the public. To ensure prompt and full consideration of submissions, we strongly recommend that interested persons submit comments by electronic mail to the following e-mail address: *FRFTAThailand@dol.gov.* Persons making submissions by e-mail should use the following subject line: ''Thailand: Labor Rights and Child Labor Reports.'' Documents should be submitted in WordPerfect, MSWord, or text (.TXT) format. Supporting documentation submitted as spreadsheets is acceptable in Quattro Pro or Excel format. 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. Similarly, 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 will be placed in a file open to public inspection at the Department of Labor, Room S–5317, 200 Constitution Avenue, NW., Washington, DC 20210, and in the USTR Reading Room in Room 3 of the annex of the Office of the USTR, 1724 F Street, NW., Washington, DC 20508. An appointment to review the file at the Department of Labor may be made by contacting Betsy White at (202) 693–4919. An appointment to review the file at USTR may be made by calling (202) 395–6186. The USTR Reading Room is generally open to the public from 10 a.m.–12 noon and 1–4 p.m., Monday through Friday. Appointments must be scheduled at least 48 hours in advance.

Signed in Washington, DC, this 16th of June, 2004.

Martha Newton,

Associate Deputy Under Secretary for International Affairs.

[FR Doc. 04–14168 Filed 6–22–04; 8:45 am]

BILLING CODE 4510–28–P

DEPARTMENT OF LABOR

Office of the Secretary

Bureau of International Labor Affairs; Request for Information Concerning Labor Rights in Bolivia, Colombia, Ecuador, and Peru and Their Laws Governing Exploitative Child Labor

AGENCIES: Office of the Secretary, Labor; Office of the United States Trade Representative and Department of State.

ACTION: Request for comments from the public.

SUMMARY: This notice is a request for comments from the public to assist the Secretary of Labor, the United States Trade Representative, and the Secretary of State in preparing reports regarding labor rights in Bolivia, Colombia, Ecuador and Peru (Andean countries) and describing the extent to which they have in effect laws governing exploitative child labor. The Trade Act of 2002 requires reports on these issues and others when the President intends to use trade promotion authority procedures in connection with legislation approving and implementing a trade agreement. The President assigned the functions of preparing reports regarding labor rights and the existence of laws governing exploitative child labor to the Secretary of Labor, in consultation with the Secretary of State and the United States Trade Representative. The Secretary of Labor further assigned these functions to the Secretary of State and the United States Trade Representative, to be carried out by the Secretary of Labor, the Secretary of State and the United States Trade Representative.

DATES: Public comments should be received no later than 5 p.m., August 9, 2004.

ADDRESSES: Persons submitting comments are strongly advised to make such submissions by electronic mail to the following address: *FRFTAAndean@dol.gov.* Submissions by facsimile may be sent to: Betsy White, Office of International Economic Affairs, Bureau of International Labor Affairs, U.S. Department of Labor, at (202) 693–4851.

FOR FURTHER INFORMATION CONTACT: For procedural questions regarding the submissions, please contact Betsy White, Office of International Economic Affairs, Bureau of International Labor Affairs, U.S. Department of Labor, at (202) 693–4919, facsimile (202) 693–4851. These are not toll-free numbers. Substantive questions concerning the labor rights report and/or the report on the Andean countries' laws governing exploitative child labor should be addressed to Jorge Perez-Lopez, Office of International Economic Affairs, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, telephone (202) 693–4883, facsimile (202) 693–4851.

SUPPLEMENTARY INFORMATION:

I. Background

On November 18, 2003, in accordance with section 2104(a)(1) of the Trade Act of 2002, the United States Trade Representative (USTR) notified the Congress of the President's intent to enter into free trade negotiations with the Andean countries. The notification letter to the Congress can be found on the USTR Web site at *http://www.ustr.gov/new/fta/Andean/2003–11–18-notification_letter.pdf.* At a public hearing conducted on March 17, 2004, the interagency Trade Policy Staff Committee (TPSC) received written comments and oral testimony from the public to assist USTR in formulating positions and proposals with respect to all aspects of the negotiations (69 FR 7532) (Feb. 17, 2004). Negotiations were launched in May 2004.

The Trade Act of 2002 (Pub. L.107–210) (the Trade Act) sets forth special procedures (Trade Promotion Authority) for approval and implementation of Agreements subject to meeting conditions and requirements in Division B of the Trade Act, ''Bipartisan Trade Promotion Authority.'' Section 2102(a)–(c) of the Trade Act includes negotiating objectives and a listing of priorities for the President to promote in order to ''address and maintain United States competitiveness in the global economy'' in pursuing future trade agreements. The President assigned several of the functions in section 2102(c) to the Secretary of Labor. (E.O. 13277). These include the functions set forth in section 2102(c)(8), which requires that the President ''in connection with any trade negotiations entered into under this Act, submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a meaningful labor rights report of the country, or countries, with respect to which the President is negotiating,'' and the function in section 2102(c)(9), which requires that the President ''with respect to any trade agreement which the President seeks to implement under trade authorities procedures, submit to the Congress a report describing the extent to which the country or countries that are parties to the agreement have in effect laws governing exploitative child labor.''

II. Information Sought

Interested parties are invited to submit written information as specified below to be taken into account in drafting the required reports. Materials submitted should be confined to the specific topics of the reports. In particular, agencies are seeking written submissions on the following topics:

1. Labor laws, including laws governing exploitative child labor, of the four Andean countries that are participating in the negotiations and each country's implementation and enforcement of its labor laws and regulations;
2. The situation in each of these four Andean countries with respect to core labor standards;
3. Steps taken by each of the four countries to comply with International Labor Organization Convention No. 182 on the worst forms of child labor; and
4. The nature and extent, if any, of exploitative child labor in each of these five Andean countries.

Section 2113(6) of the Trade Act defines ''core labor standards'' as:

(A) The right of association;

(B) The right to organize and bargain collectively;

(C) A prohibition on the use of any form of forced or compulsory labor;

(D) A minimum age for the employment of children; and

(E) Acceptable conditions of work with respect to minimum wages, hours

of work, and occupational safety and health.

III. Requirements for Submissions

This document is a request for facts or opinions submitted in response to a general solicitation of comments from the public. To ensure prompt and full consideration of submissions, we strongly recommend that interested persons submit comments by electronic mail to the following e-mail address: *FRFTAAndean@dol.gov.* Persons making submissions by e-mail should use the following subject line: ''Andean Countries: Labor Rights and Child Labor Reports.'' Documents should be submitted in WordPerfect, MSWord, or text (.TXT) format. Supporting documentation submitted as spreadsheets is acceptable in Quattro Pro or Excel format. 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. Similarly, 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 will be placed in a file open to public inspection at the Department of Labor, Room S–5317, 200 Constitution Avenue, NW., Washington, DC 20210, and in the USTR Reading Room in Room 3 of the annex of the Office of the USTR, 1724 F Street, NW., Washington, DC 20508. An appointment to review the file at the Department of Labor may be made by contacting Betsy White at (202) 693–4919. An appointment to review the file at USTR may be made by calling (202) 395–6186. The USTR Reading Room is generally open to the public from 10 a.m.–12 noon and 1–4 p.m., Monday through Friday. Appointments must be scheduled at least 48 hours in advance.

Signed at Washington, DC, this 16th of June 2004.

Martha Newton,

Associate Deputy Under Secretary for International Affairs.

[FR Doc. 04–14166 Filed 6–22–04; 8:45 am]

BILLING CODE 4510–28–P

DEPARTMENT OF LABOR

Office of the Secretary

Bureau of International Labor Affairs; Request for Information Concerning Labor Rights in Botswana, Lesotho, Namibia, South Africa and Swaziland and Their Laws Governing Exploitative Child Labor

AGENCIES: Office of the Secretary, Labor; Office of the United States Trade Representative and Department of State.

ACTION: Request for comments from the public.

SUMMARY: This notice is a request for comments from the public to assist the Secretary of Labor, the United States Trade Representative, and the Secretary of State in preparing reports regarding labor rights in the five member countries of the Southern African Customs Union (Botswana, Lesotho, Namibia, South Africa and Swaziland) and describing the extent to which they have in effect laws governing exploitative child labor. The Trade Act of 2002 requires reports on these issues and others when the President intends to use trade promotion authority procedures in connection with legislation approving and implementing a trade agreement. The President assigned the functions of preparing reports regarding labor rights and the existence of laws governing exploitative child labor to the Secretary of Labor, in consultation with the Secretary of State and the United States Trade Representative. The Secretary of Labor further assigned these functions to the Secretary of State and the United States Trade Representative, to be carried out by the Secretary of Labor, the Secretary of State and the United States Trade Representative.

DATES: Public comments should be received no later than 5 p.m. August 9, 2004.

ADDRESSES: Persons submitting comments are strongly advised to make such submissions by electronic mail to the following address: *FRFTASACU@dol.gov.* Submissions by facsimile may be sent to: Betsy White, Office of International Economic Affairs, Bureau of International Labor Affairs, U.S. Department of Labor, at (202) 693–4851.

FOR FURTHER INFORMATION CONTACT: For procedural questions regarding the submissions, please contact Betsy White, Office of International Economic Affairs, Bureau of International Labor Affairs, U.S. Department of Labor, at (202) 693–4919, facsimile (202) 693–4851. These are not toll-free numbers. Substantive questions concerning the labor rights report and/or the report on Southern Africa's laws governing exploitative child labor should be addressed to Jorge Perez-Lopez, Office of International Economic Affairs, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, telephone (202) 693–4883, facsimile (202) 693–4851.

SUPPLEMENTARY INFORMATION:

I. Background

On November 4, 2002, in accordance with section 2104(a)(1) of the Trade Act of 2002, the United States Trade Representative (USTR) notified the Congress of the President's intent to enter into free trade negotiations with the Southern African Customs Union. The notification letters to the Congress can be found on the USTR Web site at *http://www.ustr.gov/releases/2002/11/2002-11-04-SACU-byrd.PDF* and *http://www.ustr.gov/releases/2002/11/2002-11-04-SACU-hastert.PDF,* respectively. At a public hearing conducted on December 16, 2002, the interagency Trade Policy Staff Committee (TPSC) received written comments and oral testimony from the public to assist USTR in formulating positions and proposals with respect to all aspects of the negotiations (67 FR 69295) (Nov. 15, 2002). Negotiations were launched in June 2003.

The Trade Act of 2002 (Pub. L. 107–210) (the Trade Act) sets forth special procedures (Trade Promotion Authority) for approval and implementation of Agreements subject to meeting conditions and requirements in Division B of the Trade Act, ''Bipartisan Trade Promotion Authority.'' Section 2102(a)–(c) of the Trade Act includes negotiating objectives and a listing of priorities for the President to promote in order to ''address and maintain United States competitiveness in the global economy'' in pursuing future trade agreements. The President assigned several of the functions in section 2102(c) to the Secretary of Labor. (E.O. 13277). These include the functions set forth in section 2102(c)(8), which requires that the President ''in connection with any trade negotiations entered into under this Act, submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a meaningful labor rights report of the country, or countries, with respect to which the President is negotiating,'' and the function in section 2102(c)(9), which requires that the President ''with respect to any trade agreement which the President seeks to

implement under trade authorities procedures, submit to the Congress a report describing the extent to which the country or countries that are parties to the agreement have in effect laws governing exploitative child labor.''

II. Information Sought

Interested parties are invited to submit written information as specified below to be taken into account in drafting the required reports. Materials submitted should be confined to the specific topics of the reports. In particular, agencies are seeking written submissions on the following topics:

1. Labor laws, including laws governing exploitative child labor, of the five Southern African countries that are participating in the negotiations and each country's implementation and enforcement of its labor laws and regulations;
2. The situation in these five countries of Southern Africa with respect to core labor standards;
3. Steps taken by the five countries to comply with International Labor Organization Convention No. 182 on the worst forms of child labor; and
4. The nature and extent, if any, of exploitative child labor in each of these five countries of Southern Africa.

Section 2113(6) of the Trade Act defines ''core labor standards'' as:

(A) The right of association;
(B) The right to organize and bargain collectively;
(C) A prohibition on the use of any form of forced or compulsory labor;
(D) A minimum age for the employment of children; and
(E) Acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.

III. Requirements for Submissions

This document is a request for facts or opinions submitted in response to a general solicitation of comments from the public. To ensure prompt and full consideration of submissions, we strongly recommend that interested persons submit comments by electronic mail to the following e-mail address: *FRFTASACU@dol.gov.* Persons making submissions by e-mail should use the following subject line: ''Southern Africa: Labor Rights and Child Labor Reports.'' Documents should be submitted in WordPerfect, MSWord, or text (.TXT) format. Supporting documentation submitted as spreadsheets is acceptable in Quattro Pro or Excel format. 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. Similarly, 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 will be placed in a file open to public inspection at the Department of Labor, Room S–5317, 200 Constitution Avenue, NW., Washington, DC 20210, and in the USTR Reading Room in Room 3 of the annex of the Office of the USTR, 1724 F Street, NW., Washington, DC 20508. An appointment to review the file at the Department of Labor may be made by contacting Betsy White at (202) 693–4919. An appointment to review the file at USTR may be made by calling (202) 395–6186. The USTR Reading Room is generally open to the public from 10 a.m.–12 noon and 1–4 p.m., Monday through Friday. Appointments must be scheduled at least 48 hours in advance.

Signed in Washington, DC, this 16th of June, 2004.

Martha Newton,

Associate Deputy Under Secretary for International Affairs.

[FR Doc. 04–14167 Filed 6–22–04; 8:45 am]

BILLING CODE 4510–28–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Combined Arts Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that six meetings of the Combined Arts Advisory Panel to the National Council on the Arts will be held at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 as follows:

Music: July 19–22, 2004, Room 714 (Access to Artistic Excellence category, Panel A). A portion of this meeting, from 3:30 p.m. to 4:30 p.m. on July 22nd, will be open to the public for policy discussion. The remaining portions of this meeting, from 9 a.m. to 6 p.m. on July 19th, from 8:30 a.m. to 5:30 p.m. on July 20th and July 21st, and from 8:30 a.m. to 3:30 p.m. and 4:30 p.m. to 5 p.m. on July 22nd, will be closed.

Theater/Musical Theater: July 19–23, 2004, Room 730 (Access to Artistic Excellence category, Panel B). A portion of this meeting, from 3 p.m. to 4:30 p.m. on July 22nd, will be open to the public for policy discussion. The remaining portions of this meeting, from 9:30 a.m. to 6:30 p.m. on July 19th–21st, from 9:30 a.m. to 3 p.m. and 4:30 p.m. to 6:30 p.m. on July 22nd, and from 9:30 a.m. to 5 p.m. on July 23rd, will be closed.

Museums: July 20–23, 2004, Room 716 (Access to Artistic Excellence category). This meeting, from 9 a.m. to 5:30 p.m. on July 20th—22nd and from 9 a.m. to 2:30 p.m. on July 23rd, will be closed.

Multidisciplinary: July 26–29, 2004, Room 716 (Access to Artistic Excellence category). A portion of this meeting, from 10 a.m. to 11:15 a.m. on July 29th, will be open to the public for policy discussion. The remaining portions of this meeting, from 9 a.m. to 6 p.m. on July 26th, from 9 a.m. to 5:30 p.m. on July 27th and 28th, and from 9 a.m. to 10 a.m. and 11:15 a.m. to 12:30 p.m. on July 29th, will be closed.

Presenting: July 29–30, 2004, Room 716 (Access to Artistic Excellence category). This meeting, from 1:30 p.m. to 5:30 p.m. on July 29th and from 9 a.m. to 12:30 p.m. on July 30th, will be closed.

Dance: August 9–13, 2004, Room 716 (Access to Artistic Excellence category). This meeting, from 9 a.m. to 6 p.m. on August 9th–12th and from 9 a.m. to 3 p.m. on August 13th, will be closed.

The closed portions of meetings are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of April 14, 2004, these sessions will be closed to the public pursuant to subsection (c)(6) of 5 U.S.C. 552b.

Any person may observe meetings, or portions thereof, of advisory panels that are open to the public, and if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, (202) 682–5532, TDY–TDD (202) 682–5496, at least seven (7) days prior to the meeting.

Further information with reference to these meetings can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5691.

Dated: June 16, 2004.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 04–14186 Filed 6–22–04; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

National Endowment for the Arts; National Council on the Arts 152nd Meeting

Pursuant to section 10 (a) (2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the National Council on the Arts will be held from July 14–16, 2004.

The Council will meet in closed session on July 14th, from 6:30 p.m. to 9 p.m. at the St. Regis Hotel, 923 16th St., NW., Washington, DC 20006, and on July 15th from 2 p.m. to 4 p.m. in Room 527 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 for discussion of National Medal of Arts nominations. In accordance with the determination of the Chairman of April 14, 2004, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

The remainder of meeting, from 9 a.m. to 12:30 p.m. on July 16th, will be held in Room M–09 at the Nancy Hanks Center and will be open to the public on a space available basis. Following opening remarks and announcements, there will be a presentation on *Operation Homecoming,* including a presentation by guest author Marilyn Nelson. This will be followed by an NEA Research Report on Public Participation in Literature. A presentation on NEA/State and Regional Partnerships, led by Senior Deputy Chairman Eileen Mason, will feature: ''Tog'' Newman, Chair of the North Carolina Arts Council and past Chair of the National Assembly of State Arts Agencies (NASAA); Robert Booker, Executive Director of the Minnesota State Arts Board and current Chair of NASAA; David Fraher, Executive Director of Arts Midwest; and Jonathan Katz, Executive Director of NASAA. Other topics will include: application review for National Leadership Initiatives, NEA Jazz Masters Fellowships, and Literature Fellowships/Translation; review of guidelines for Literature Translation Projects; and general discussion.

If, in the course of the open session discussion, it becomes necessary for the Council to discuss non-public commercial or financial information of intrinsic value, the Council will go into closed session pursuant to subsection (c)(4) of the Government in the Sunshine Act, 5 U.S.C. 552b. Additionally, discussion concerning purely personal information about individuals, submitted with grant applications, such as personal biographical and salary data or medical information, may be conducted by the Council in closed session in accordance with subsection (c) (6) of 5 U.S.C. 552b.

Any interested persons may attend, as observers, Council discussions and reviews that are open to the public. If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, (202) 682–5532, TTY–TDD (202) 682–5429, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from the Office of Communications, National Endowment for the Arts, Washington, DC 20506, at (202) 682–5570.

Dated: June 16, 2004.

Kathy Plowitz-Worden,

Panel Coordinator, Office of Guidelines and Panel Operations.

[FR Doc. 04–14187 Filed 6–22–04; 8:45 am]

BILLING CODE 7537–01–P

NEIGHBORHOOD REINVESTMENT CORPORATION

Sunshine Act Meeting

TIME AND DATE: 10 a.m.–Friday, June 25, 2004.

PLACE: Neighborhood Reinvestment Corporation, 1325 G Street, NW., Suite 800, Washington, DC 20005.

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: March 15, 2004, Regular Meeting
III. Election of Vice Chairman
IV. Personal Committee Report
V. Election of Officers
VI. Board of Appointments
  a. Internal Audit Director
  b. Assistant Secretary
VII. Committee Appointments
  a. Audit Committee
  b. Finance and Budget Committee
  c. Corporate Administration Committee
VIII. Audit Committee Report
IX. Treasurer's Report
X. NeighborWorks® Marketing and Visibility—''Doing Business As''
XI. Fundraising Policies and Procedures
XII. Executive Directors Quarterly Management Report
XII. Adjournment

Jeffrey T. Bryson,

General Counsel-Secretary.

[FR Doc. 04–14294 Filed 6–18–04; 5:13 pm]

BILLING CODE 7570–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 03033288]

Notice of Availability of Environmental Assessment and Finding of No Significant Impact for License Amendment for Pittsburgh Environmental Research Laboratory, Inc.'s Facility in Pittsburgh, PA

AGENCY: Nuclear Regulatory Application.

ACTION: Notice of availability of environmental assessment and finding of no significant impact.

FOR FURTHER INFORMATION CONTACT: Ronald G. Rolph, Nuclear Materials Safety Branch 2, Division of Nuclear Materials Safety, Region I, 475 Allendale Road, King of Prussia, Pennsylvania, 19406, telephone (610) 337–5347, fax (610) 337–5269; or by e-mail: *rgr@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The Nuclear Regulatory Commission (NRC) is considering the issuance of a license amendment to Pittsburgh Environmental Research Laboratory, Inc. for Materials License No. 37–30070–01, to authorize release of its facility in Pittsburgh, Pennsylvania for unrestricted use. NRC has prepared an Environmental Assessment (EA) in support of this action in accordance with the requirements of 10 CFR part 51. Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate. The amendment will be issued following the publication of this notice.

II. EA Summary

The purpose of the proposed action is to authorize the release of the licensee's Pittsburgh, Pennsylvania facility for unrestricted use. Pittsburgh Environmental Research Laboratory, Inc. was authorized by NRC since 1993 to use radioactive materials for research and development and sample analysis purposes at the site. On April 30, 2004,

Pittsburgh Environmental Research Laboratory, Inc. requested that NRC release the facility for unrestricted use. Pittsburgh Environmental Research Laboratory, Inc. has conducted surveys of the facility and determined that the facility meets the license termination criteria in subpart E of 10 CFR part 20. The NRC staff has prepared an EA in support of the proposed license amendment.

III. Finding of No Significant Impact

The staff has prepared the EA (summarized above) in support of the proposed license amendment to terminate the license and release the facility for unrestricted use. The NRC staff has evaluated Pittsburgh Environmental Research Laboratory, Inc.'s request and the results of the surveys and has concluded that the completed action complies with the criteria in subpart E of 10 CFR part 20. The staff has found that the environmental impacts from the proposed action are bounded by the impacts evaluated by the ''Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Facilities'' (NUREG–1496). The staff has also found that the non-radiological impacts are not significant. On the basis of the EA, the NRC has concluded that the environmental impacts from the proposed action are expected to be insignificant and has determined not to prepare an environmental impact statement for the proposed action.

IV. Further Information

The EA and the documents related to this proposed action, including the application for the license amendment and supporting documentation, are available for inspection at NRC's Public Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html* (ADAMS Accession Nos. ML041320153 and ML041610224). The public document room (PDR) reproduction contractor will copy documents for a fee. These documents are also available for inspection and copying for a fee at the Region I Office, 475 Allendale Road, King of Prussia, Pennsylvania, 19406. Persons who do not have access to ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or (301) 415–4737, of by e-mail to *pdr@nrc.gov.*

Dated at King of Prussia, Pennsylvania, this 16th day of June, 2004.

For the Nuclear Regulatory Commission.

John D. Kinneman,

Chief, Nuclear Materials Safety Branch 2, Division of Nuclear Materials Safety, Region I.

[FR Doc. 04–14163 Filed 6–22–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Notice of Availability of Model Application Concerning Technical Specifications Improvement To Eliminate Requirements to Provide Monthly Operating Reports and Occupational Radiation Exposure Reports Using the Consolidated Line Item Improvement Process

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: Notice is hereby given that the staff of the Nuclear Regulatory Commission (NRC) has prepared a model safety evaluation (SE), a model no significant hazards consideration (NSHC) determination, and a model license amendment application relating to a change in the technical specifications (TS) to eliminate requirements to provide monthly operating reports and occupational radiation exposure reports. The purpose of these models is to permit the NRC to efficiently process amendments that propose to incorporate this change into plant-specific TS. Licensees of nuclear power reactors to which the models apply may request amendments utilizing the model application.

DATES: The NRC staff issued a **Federal Register** notice (69 FR 23542) on April 29, 2004, which proposed a model SE and a model NSHC determination related to changing plant TSs by eliminating requirements to provide monthly operating reports and occupational radiation exposure reports. The NRC staff hereby announces that the enclosed model SE and NSHC determination may be referenced in plant-specific applications. The NRC staff has posted a model application on the NRC web site to assist licensees in using the consolidated line item improvement process (CLIIP) to incorporate this change. The NRC staff can most efficiently consider applications based upon the model application if the application is submitted within a year of this **Federal Register** notice.

FOR FURTHER INFORMATION CONTACT: William Reckley, Mail Stop: O–7D1, Division of Licensing Project Management, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone 301–415–1323.

SUPPLEMENTARY INFORMATION:

Background

Regulatory Issue Summary 2000–06, ''Consolidated Line Item Improvement Process for Adopting Standard Technical Specifications Changes for Power Reactors,'' was issued on March 20, 2000. The CLIIP is intended to improve the efficiency of NRC licensing processes. This is accomplished by processing proposed changes to the standard TSs (STS) in a manner that supports subsequent license amendment applications. The CLIIP includes an opportunity for the public to comment on proposed changes to the STS following a preliminary assessment by the NRC staff and finding that the change will likely be offered for adoption by licensees. The CLIIP directs the NRC staff to evaluate any comments received for a proposed change to the STS and to either reconsider the change or to proceed with announcing the availability of the change for proposed adoption by licensees. Those licensees opting to apply for the subject change to TS are responsible for reviewing the staff's evaluation, referencing the applicable technical justifications, and providing any necessary plant-specific information. Each amendment application made in response to the notice of availability will be processed and noticed in accordance with applicable rules and NRC procedures.

This notice involves changes to plant TS to eliminate requirements to submit monthly operating reports and occupational radiation exposure reports. This proposed change was proposed for incorporation into the STS by the industry's Technical Specification Task Force as TSTF–369, Revision 1.

Applicability

This proposed change to eliminate requirements to submit monthly operating reports and occupational radiation exposure reports is applicable to all nuclear power reactors.

The CLIIP does not prevent licensees from requesting an alternative approach or proposing the changes without referencing the model SE and the NSHC. Variations from the approach recommended in this notice may, however, require additional review by the NRC staff and may increase the time and resources needed for the review.

Public Notices

In a notice in the **Federal Register** dated April 29, 2004 (69 FR 23542), the

NRC staff requested comment on the use of the CLIIP for proposed changes to eliminate the requirements for licensees to submit monthly operating reports and occupational radiation exposure reports.

TSTF–369, as well as the NRC staff's SE and model application, may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records are accessible electronically from the ADAMS Public Library component on the NRC Web site, (the Electronic Reading Room).

The NRC staff received several comments providing general support for the effort to eliminate the subject reporting requirements. In addition, the staff received three comments requesting specific changes or clarifications to the model SE included in the notice for comment. Each of these comments are addressed below:

1. The letters from the Nuclear Energy Institute, Tennessee Valley Authority, and Strategic Teaming and Resource Sharing (STARS) requested that the regulatory commitment to provide operating data by the 21st of the month following each calendar quarter be revised to by the last day of the month following each calendar quarter. The added days were said to be warranted to support the processes associated with consolidated data entry by each licensee and the subsequent submitting of a single report with the operating data collected for all licensees. The proposed change in the reporting schedule is acceptable to the NRC staff and the model SE and model application are revised to include a regulatory commitment to submit the requested operating data by the last day of month following the end of each calendar quarter.

2. Arizona Public Service (APS) commented that licensees should be allowed to either make and control the reporting of the operating data as a regulatory commitment or to make a regulatory commitment to incorporate and subsequently control the reporting of the operating data as part of a licensing document such as the safety analysis report or technical requirements manual. The proposal by APS is acceptable to the NRC staff and revised wording has been incorporated into the model SE and model application.

3. Exelon Generation Company and AmerGen Energy Company commented that the model SE and application should address the requirements in many plants-specific TSs to report as part of the monthly operating report challenges to pressurizer power operated relief valves or pressurizer safety valves for pressurized water reactors and safety/relief valves for boiling water reactors. A requirement to report such challenges within the monthly operating report was included in many plants' TS prior to licensees either converting to Revision 2 to the STS or otherwise requesting the elimination of the report as part of an application adopting the NRC-approved Revision 4 to TSTF–258, ''Changes to Section 5.0, Administrative Controls.'' The NRC staff has included a paragraph in the model SE to address the adoption of the relevant portion of TSTF–258 (*i.e.*, the elimination of the reporting of challenges to relief or safety valves) for those plants that have not previously removed this requirement. This change simply incorporates previously approved wording into the SE, maximizes the usefulness of the CLIIP for licensees preparing submittals, and improves the efficiency of NRC review of license amendment applications.

Licensees may reference in their plant-specific applications the revised SE, NSHC determination, and environmental assessment provided below.

Model Safety Evaluation

U.S. Nuclear Regulatory Commission, Office of Nuclear Reactor Regulation, Consolidated Line Item Improvement, Technical Specification Task Force (TSTF) Change Traveler TSTF–369, Elimination of Requirements for Monthly Operating Reports and Occupational Radiation Exposure Reports

1.0 Introduction

By application dated [DATE], [LICENSEE NAME] (the licensee), submitted a request for changes to the [PLANT NAME], Technical Specifications (TSs) (ADAMS Accession No. MLxxx). The requested change would delete TS [5.6.1], ''Occupational Radiation Exposure Report,'' and TS [5.6.4], ''Monthly Operating Reports,'' as described in the Notice of Availability published in the **Federal Register** on [DATE] (xx FR yyyyy).

2.0 Regulatory Evaluation

Section 182a. of the Atomic Energy Act of 1954, as amended, (the ''Act'') requires applicants for nuclear power plant operating licenses to state TS to be included as part of the license. The Commission's regulatory requirements related to the content of TSs are set forth in 10 CFR 50.36, ''Technical specifications.'' The regulation requires that TSs include items in five specific categories, including (1) safety limits, limiting safety system settings, and limiting control settings; (2) limiting conditions for operation (LCOs); (3) surveillance requirements; (4) design features; and (5) administrative controls. However, the regulation does not specify the particular requirements to be included in a plant's TSs.

The Commission has provided guidance for the content of TSs in its ''Final Policy Statement on Technical Specification Improvements for Nuclear Power Reactors'' (58 FR 39132, published July 22, 1993), in which the Commission indicated that compliance with the Final Policy Statement satisfies Section 182a. of the Act. The Final Policy Statement identified four criteria to be used in determining whether a particular item should be addressed in the TSs as an LCO. The criteria were subsequently incorporated into 10 CFR 50.36 (60 FR 36593, published July 19, 1995). While the criteria specifically apply to LCOs, the Commission indicated that the intent of these criteria may be used to identify the optimum set of administrative controls in TSs. Addressing administrative controls, 10 CFR 50.36 states that they are ''the provisions relating to organization and management, procedures, recordkeeping, review and audit, and reporting necessary to assure operation of the facility in a safe manner.'' The specific content of the administrative controls section of the TS is, therefore, related to those programs and reports that the Commission deems essential for the safe operation of the facility, which are not adequately covered by regulations or other regulatory requirements. Accordingly, the staff may determine that specific requirements, such as those associated with this change, may be removed from the administrative controls in the TS if they are not explicitly required by 10 CFR 50.36(c)(5) and are not otherwise necessary to obviate the possibility of an abnormal situation or event giving rise to an immediate threat to the public health and safety.

The impetus for the monthly operating report (MOR) came from the 1973–1974 oil embargo. Regulatory Guide 1.16, Revision 4, ''Reporting of Operating Information—Appendix A Technical Specifications,'' published for comment in August 1975, identifies operating statistics and shutdown experience information that was desired in the operating report at that time. In the mid-1990s, the NRC staff assessed the information that is submitted in the MOR and determined that while some of the information was no longer used by the staff, the MOR was the only

source of some data used in the NRC Performance Indicator (PI) Program of that time period (see NRC Generic Letter (GL) 97–02, ''Revised Contents of the Monthly Operating Report''). Beginning in the late 1990s, the NRC developed and implemented a major revision to its assessment, inspection, and enforcement processes through its Reactor Oversight Process (ROP). The ROP uses both plant-level PIs and inspections performed by NRC personnel. In conjunction with the development of the ROP, the NRC developed the Industry Trends Program (ITP). The ITP provides the NRC a means to assess overall industry performance using industry level indicators and to report on industry trends to various stakeholders (*e.g.*, Congress). Information from the ITP is used to assess the NRC's performance related to its goal of having ''no statistically significant adverse industry trends in safety performance.'' The ITP uses some of the same PIs as the PI Program from the mid-1990s and, therefore, the NRC has a continuing use for the data provided in MORs. The NRC also uses some data from the MORs to support the evaluation of operating experience, licensee event reports, and other assessments performed by the staff and its contractors.

[Optional for licensees adopting TSTF–258: The reporting requirements for the MOR include challenges to the ((pressurizer power operated relief valves and pressurizer safety valves) or (safety/relief valves)). The reporting of challenges to the ((pressurizer power operated relief valves and pressurizer safety valves) or (safety/relief valves)) was included in TSs based on the guidance in NUREG–0694, ''[Three Mile Island] TMI-Related Requirements for New Operating Licensees.'' The industry proposed and the NRC accepted the elimination of the reporting requirements in TS for challenges to ((pressurizer power operated relief valves and pressurizer safety valves) or (safety/relief valves)) in Revision 4 to TSTF–258, ''Changes to Section 5.0, Administrative Controls.'' The staff's acceptance of TSTF–258 and subsequent approval of plant-specific adoptions of TSTF–258 is based on the fact that the information on challenges to relief and safety valves is not used in the evaluation of the MOR data, and that the information needed by the NRC is adequately addressed by the reporting requirements in 10 CFR 50.73, ''Licensee event reports.'']

Licensees are required by TSs to submit annual occupational radiation exposure reports (ORERs) to the NRC. The reports, developed in the mid-1970s, supplement the reporting requirements currently defined in 10 CFR 20.2206, ''Reports of individual monitoring,'' by providing a tabulation of data by work areas and job functions. The NRC included data from the ORERs in its annual publication of NUREG–0713, ''Occupational Radiation Exposure at Commercial Nuclear Power Reactors and Other Facilities,'' through the year 1997, but no longer includes the data in that or other reports.

3.0 Technical Evaluation

3.1 Monthly Operating Reports

As previously mentioned, the administrative requirements in TSs are reserved for ''the provisions relating to organization and management, procedures, recordkeeping, review and audit, and reporting necessary to assure operation of the facility in a safe manner.'' The current use of the information from the MORs is not related to reporting on or confirming the safe operation of specific nuclear power plants. Instead, the data is used by the NRC to assess and communicate with stakeholders regarding the overall performance of the nuclear industry. Data related to PIs for specific plants are reported to the NRC as part of the ROP. The NRC staff has determined that the MORs do not meet the criteria defined for requirements to be included in the administrative section of TSs and the reporting requirement may, therefore, be removed.

Although the MORs do not satisfy the criteria for inclusion in TSs, the NRC staff nevertheless has a continuing need to receive the data in order to compile its reports on industry trends and to support other evaluations of operating experience. In addition, information such as plant capacity factors that are reported in the MORs are useful to the staff and are frequently asked for by agency stakeholders.

The NRC staff interacted with licensees, industry organizations, and other stakeholders during the development of the Consolidated Data Entry (CDE) program (currently being developed and maintained by the Institute of Nuclear Power Operation), regarding the use of an industry database like CDE to provide data currently obtained from MORs. These discussions also involved the related Revision 1 to TSTF–369, ''Removal of Monthly Operating Report and Occupational Radiation Exposure Report.'' As described in Section 4 of this safety evaluation, the licensee is making a regulatory commitment to continue to provide the data identified in GL 97–02, following the removal of the TS requirement to submit MORs, and will, therefore, continue to meet the needs of the NRC staff for the ITP and other evaluations. The use of an industry database such as CDE is more efficient and cost-effective for both the NRC and licensees than would be having the NRC staff obtain the needed information from other means currently available. Should a licensee fail to satisfy the regulatory commitment to voluntarily provide the information, the NRC could obtain the information through its inspection program (similar to the process described in NRC Inspection Procedure 71150, ''Discrepant or Unreported Performance Indicator Data'') with the licensee being charged for the time spent by the NRC staff.

The only significant changes resulting from the adoption of TSTF–369 are that the information will be provided quarterly instead of monthly (although the operating data will still be divided by month) and the form of the reporting will be from a consolidated database such as CDE instead of in correspondence from individual licensees. The change of reporting frequency to quarterly has some advantages for both the NRC staff and licensees, since it will coincide with the collection and submission of the ROP PI data. In terms of the specific method used to transmit the data to the NRC, the licensee has committed (see Section 4.0) to provide data identified in GL 97–02 on a quarterly basis. The NRC staff believes that the most efficient process for licensees and the NRC will be for all licensees to use a system such as CDE. Such systems have advantages in terms of improved data entry, data checking, and data verification and validation. The NRC will recognize efficiency gains by having the data from all plants reported using the same computer software and format. Although the data may be transmitted to the NRC from an industry organization maintaining a database such as CDE, the licensee provides the data for the system and remains responsible for the accuracy of the data submitted to the NRC for its plant(s). The public will continue to have access to the data through official agency records accessible on the Agencywide Documents Access and Management System (ADAMS).

[Optional for licensees adopting TSTF–258: The content requirements for the MOR currently include information on challenges to the ((pressurizer power operated relief valves and pressurizer safety valves) or (safety/relief valves)). As discussed in the previous section, the NRC staff has documented in its approval of TSTF–

258 and related plant-specific amendments that the reporting of challenges to ((pressurizer power operated relief valves and pressurizer safety valves) or (safety/relief valves)) may be removed from TSs since the information needed by the NRC is adequately addressed by the reporting requirements in 10 CFR 50.73, ''Licensee event reports.'' The NRC staff finds it acceptable to remove the requirement to report challenges to ((pressurizer power operated relief valves and pressurizer safety valves) or (safety/relief valves)) along with the other reporting requirements associated with the MOR.]

3.2 Occupational Radiation Exposure Reports

The information that the NRC staff needs regarding occupational doses is provided by licensees in the reports required under 10 CFR part 20. The data from the part 20 reports are sufficient to support the NRC trending programs, radiation related studies, and preparation of reports such as NUREG–0713. Accordingly, the NRC's limited use of the ORER submitted pursuant to the existing TS requirements no longer warrants the regulatory burden imposed on licensees. Therefore, the staff finds it acceptable that TS [5.6.1] is being deleted and the ORER will no longer be submitted by the licensee.

[Note: For stations with both boiling and pressurized water reactors (*i.e.*, Salem/Hope Creek and Millstone) and for stations with both operating and shutdown reactors (*e.g.*, Dresden, Indian Point, Millstone, San Onofre, Three Mile Island), the NRC staff uses information provided in the ORERs to apportion the doses reported under 10 CFR part 20 to the different categories of reactors at a single site. The licensees for facilities with different reactor types at a single site and those having both operating and shutdown reactors at a single site will include in their applications a regulatory commitment to provide information to the NRC annually (*e.g.*, with their annual submittal in accordance with 10 CFR 20.2206) to support the apportionment of the station doses to each type of reactor and to differentiate between operating and shutdown units. The data will provide the summary distribution of annual whole body doses as presented in Appendix B of NUREG–0713 for each reactor type and for operating and shutdown units.]

[The licensee's application included editorial and formatting changes such as the renumbering of TS sections to reflect the deletion of the sections related to MORs and ORERs. The NRC staff has reviewed these changes and found that they do not revise substantive technical or administrative requirements, and are acceptable.]

4.0 Verifications and Commitments

In order to efficiently process incoming license amendment applications, the NRC staff requested each licensee requesting the changes addressed by TSTF–369 using the CLIIP to address the following plant-specific regulatory commitment.

1. Each licensee should make a regulatory commitment to provide to the NRC using an industry database the operating data (for each calender month) that is described in Generic Letter 97–02 ''Revised Contents of the Monthly Operating Report,'' by the last day of the month following the end of each calendar quarter. The regulatory commitment will be based on use of an industry database (*e.g.,* the industry's Consolidated Data Entry (CDE) program, currently being developed and maintained by the Institute of Nuclear Power Operations).

The licensee has made a regulatory commitment to provide the requested data via an industry database (*i.e.,* the CDE) by the end of the month following each calendar quarter (*i.e.,* within seven to ten days after the submission of Pl data associated with the ROP). [optional: The licensee's regulatory commitment included the incorporation of the criteria for reporting operational data to the—(*e.g.,* safety analysis report, technical requirements manual).]

[2. Each licensee [(operating different reactor types at a single site) or (possessing both operating and shutdown reactors at a single site)] will include in its application a regulatory commitment to provide information to the NRC annually (*e.g.,* with its annual submittal in accordance with 10 CFR 20.2206) to support the apportionment of station doses [(to each type of reactor) or (to differentiate between operating and shutdown units)]. The data will provide the summary distribution of annual whole body doses as presented in Appendix B of NUREG–0713 for each reactor type and for operating and shutdown units.

The licensee has made a regulatory commitment to provide information to the NRC annually to support the apportionment of the station doses to each type of reactor and to differentiate between operating and shutdown units.]

The NRC staff finds that reasonable controls for the implementation and for subsequent evaluation of proposed changes pertaining to the above regulatory commitment(s) can be provided by the licensee's administrative processes, including its commitment management program. The NRC staff has agreed that Nuclear Energy Institute 99–04, Revision 0, ''Guidelines for Managing NRC Commitment Changes,'' provides reasonable guidance for the control of regulatory commitments made to the NRC staff (see Regulatory Issue Summary 2000–17, ''Managing Regulatory Commitments Made by Power Reactor Licensees to the NRC Staff,'' dated September 21, 2000). The NRC staff notes that this amendment establishes a voluntary reporting system for the operating data that is similar to the system established for the ROP Pl program. Should the licensee choose to incorporate a regulatory commitment into the final safety analysis report or other document with established regulatory controls, the associated regulations would define the appropriate change-control and reporting requirements.

5.0 State Consultation

In accordance with the Commission's regulations, the [STATE] State official was notified of the proposed issuance of the amendments. The State official had [(1) no comments or (2) the following comments—with subsequent disposition by the staff].

6.0 Environmental Consideration

The amendment relates to changes in recordkeeping, reporting, or administrative procedures or requirements. The Commission has previously issued a proposed finding that the amendment involves no significant hazards consideration, and there has been no public comment on such finding (FR citation and date). Accordingly, the amendment meets the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(10). Pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared in connection with the issuance of the amendment.

7.0 Conclusion

The Commission has concluded, based on the considerations discussed above, that (1) there is reasonable assurance that the health and safety of the public will not be endangered by operation in the proposed manner, (2) such activities will be conducted in compliance with the commission's regulations, and (3) the issuance of the amendments will not be inimical to the common defense and security or to the health and safety of the public.

Model Proposed No Significant Hazards Consideration Determination

Description of amendment request: The requested change would delete Technical Specification (TS) [5.6.1],

''Occupational Radiation Exposure Report,'' and [5.6.4], ''Monthly Operating Reports,'' as described in the Notice of Availability published in **Federal Register** on [DATE] (xx FR yyyyy).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change eliminates the Technical Specifications (TSs) reporting requirements to provide a monthly operating report of shutdown experience and operating statistics if the equivalent data is submitted using an industry electronic database. It also eliminates the TS reporting requirement for an annual occupational radiation exposure report, which provides information beyond that specified in NRC regulations. The proposed change involves no changes to plant systems or accident analyses. As such, the change is administrative in nature and does not affect initiators of analyzed events or assumed mitigation of accidents or transients. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not involve a physical alteration of the plant, add any new equipment, or require any existing equipment to be operated in a manner different from the present design. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

This is an administrative change to reporting requirements of plant operating information and occupational radiation exposure data, and has no effect on plant equipment, operating practices or safety analyses assumptions. For these reasons, the proposed change does not involve a significant reduction in the margin of safety.

Based upon the reasoning presented above, the requested change does not involve a significant hazards consideration.

Dated at Rockville, Maryland, this 16th day of June 2004.

For the Nuclear Regulatory Commission.

Robert A Gramm,

Chief, Section 1, Project Directorate IV, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 04–14164 Filed 6–22–04; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request for Review of a Revised Information Collection: Form DPRS–2809

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) will submit to the Office of Management and Budget (OMB) a request for review of a revised information collection. DPRS–2809, Request to Change Federal Employees Health Benefits (FEHB) Enrollment or to Receive Plan Brochures, is used by former spouses and Temporary Continuation of Coverage recipients who are eligible to elect, cancel, or change health benefits enrollment during open season.

Comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Approximately 27,000 DPRS–2809 forms are completed annually. We estimate it takes approximately 45 minutes to complete the form. The annual burden is 20,250 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, FAX (202) 418–3251 or via e-mail to *mbtoomey@opm.gov*. Please include a mailing address with your request.

DATES: Comments on this proposal should be received within 60 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to—Ellen Korchek, CEBS, Chief, Program Planning & Evaluation Group, Insurance Services Program, Center for Retirement & Insurance Services, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3425, Washington, DC 20415–3650.

For Information Regarding Administrative Coordination—Contact: Cyrus S. Benson, Team Leader, Publications Team, Support Group, (202) 606–0623.

U.S. Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 04–14098 Filed 6–22–04; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of OPM decisions granting authority to make appointments under Schedules A, B and C in the excepted service as required by 5 CFR 6.6 and 213.103.

FOR FURTHER INFORMATION CONTACT: Ms. Delores Everett, Center for Leadership and Executive Resources Policy, Division for Strategic Human Resources Policy, 202–606–1050.

SUPPLEMENTARY INFORMATION: Appearing in the listing below are the individual authorities established under Schedule C between May 1, 2004, and May 31, 2004. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities as of June 30 is published each year.

Schedule A

No Schedule A appointments for May 2004.

Schedule B

No Schedule B appointments for May 2004.

Schedule C

The following Schedule C appointments were approved for May 2004:

Section 213.3303 Executive Office of the President

Office of National Drug Control Policy

QQGS00027 Public Affairs Specialist (Events Manager) to the Press Secretary (Assistant Director). Effective May 14, 2004.

Section 213.3304 Department of State

DSGS60759 Staff Assistant to the Director, Global Aids Coordinator. Effective May 4, 2004.

DSGS60769 Special Assistant to the Under Secretary for Management. Effective May 14, 2004.

DSGS60764 Foreign Affairs Officer to the Assistant Secretary for East Asian and Pacific Affairs. Effective May 18, 2004.

DSGS60770 Foreign Affairs Officer to the Assistant Secretary for International Organizational Affairs. Effective May 19, 2004.

DSGS60772 Senior Advisor to the Assistant Secretary for Western Hemispheric Affairs. Effective May 19, 2004.

DSGS60771 Coordinator for Intergovernmental Affairs to the Assistant Secretary for Public Affairs. Effective May 24, 2004.

DSGS60768 Special Assistant to the Assistant Secretary for Economic and Business Affairs. Effective May 28, 2004.

Section 213.3306 Department of the Defense

DDGS16806 Staff Assistant to the Special Assistant to the Secretary of Defense for White House Liaison. Effective May 06, 2004.

DDGS16809 Staff Specialist to the Under Secretary of Defense (Acquisition, Technology, and Logistics). Effective May 06, 2004.

DDGS16810 Confidential Assistant to the Deputy Under Secretary of Defense. Effective May 06, 2004.

DDGS16803 Staff Assistant to the Deputy Under Secretary of Defense (Special Plans and Near East/South Asian Affairs). Effective May 14, 2004.

DDGS16812 Staff Assistant to the Deputy Assistant Secretary of Defense (Eurasia). Effective May 14, 2004.

DDGS16814 Staff Assistant to the Deputy Assistant Secretary of Defense (Eurasia). Effective May 14, 2004.

DDGS16817 Special Assistant to the Principal Deputy Assistant Secretary of Defense (Legal Affairs). Effective May 20, 2004.

Section 213.3310 Department of Justice

DJGS00044 Research Assistant to the Director, Office of Public Affairs. Effective May 20, 2004.

DJGS00020 Director, Office of Police Corps and Law Enforcement Education to the Assistant Attorney General for Justice Programs. Effective May 27, 2004.

DJGS00114 Special Assistant to the Advisor the Attorney General and White House Liaison. Effective May 27, 2004.

DJGS00130 Counsel to the Assistant Attorney General, Antitrust Division. May 27, 2004.

Section 213.3311 Department of Homeland Security

DMGS00222 Director of Communications for Information Analysis and Infrastructure Protection to the Deputy Assistant Secretary for Public Affairs. Effective May 04, 2004.

DMGS00231 Director of Communications for Science and Technology to the Deputy Assistant Secretary for Public Affairs. Effective May 04, 2004.

DMGS00228 Director of Communications, Office of Domestic Preparedness to the Chief of Staff and Senior Policy Advisor. Effective May 06, 2004.

DMGS00234 Public Affairs Specialist to the Director of Communications for Bureau of Citizenship and Immigration Services. Effective May 14, 2004.

DMGS00232 Press Assistant to the Director of Communications, Office of the Assistant Secretary of Public Affairs. Effective May 18, 2004.

DMGS00236 Special Assistant to the Chief of Staff. Effective May 24, 2004.

DMGS00237 Special Assistant to the Director, Mt. Weather Emergency Operations Division to the Executive Administrator, Emergency Management Center. Effective May 24, 2004.

DMGS00239 Director of Intergovernmental Affairs for Emergency Preparedness and Response to the Chief of Staff. Effective May 27, 2004.

DMGS00240 External Affairs Coordinator to the Chief of Staff. Effective May 27, 2004.

Section 213.3312 Department of the Interior

DIGS61018 Special Assistant to the White House Liaison. Effective May 06, 2004.

DIGS61019 Director-Scheduling and Advance to the Chief of Staff. Effective May 28, 2004.

Section 213.3313 Department of Agriculture

DAGS00709 Special Assistant to the Under Secretary for Rural Development. Effective May 07, 2004.

DAGS00712 Confidential Assistant to the Administrator, Rural Business Service. Effective May 07, 2004.

Section 213.3314 Department of Commerce

DCGS60353 Confidential Assistant to the Assistant Secretary and Director General of United States Foreign Commercial Services. Effective May 10, 2004.

DCGS00327 Senior Advisor to the Deputy Secretary. Effective May 14, 2004.

DCGS00599 Congressional Affairs Specialist to the Director, Office of Legislative Affairs. Effective May 19, 2004.

DCGS00227 Confidential Assistant to the Director, Minority Business Development Agency. Effective May 26, 2004.

DCGS00325 Confidential Assistant to the Director of Global Trade Programs. Effective May 27, 2004.

DCGS60688 Confidential Assistant to the Director of Global Trade Programs. Effective May 27, 2004.

Section 213.3315 Department of Labor

DLGS60017 Senior Legislative Officer to the Assistant Secretary for Congressional and Intergovernmental Affairs. Effective May 18, 2004.

Section 213.3316 Department of Health and Human Services

DHGS60336 Special Assistant to the Deputy Assistant Secretary for Legislation (Human Services) to the Deputy Assistant Secretary for Legislation (Health). Effective May 07, 2004.

DHGS60055 Special Assistant for Grants to the Chief of Staff. Effective May 14, 2004.

DHGS60629 Executive Director, President's Commission on HIV/Aids to the Assistant Secretary, Health. Effective May 14, 2004.

DHGS60684 Special Assistant to the Principal Deputy Assistant Secretary for Legislation. Effective May 14, 2004.

Section 213.3317 Department of Education

DBGS00327 Special Assistant to the Deputy Director of Communications, Office of Public Affairs. Effective May 07, 2004.

DBGS00218 Director, White House Initiative on Tribal Colleges and Universities to the Chief of Staff. Effective May 14, 2004.

DBGS00222 Confidential Assistant to the Senior Advisor to the Secretary. Effective May 24, 2004.

DBGS00331 Special Assistant to the Deputy Under Secretary for Safe and Drug-Free Schools. Effective May 24, 2004.

DBGS60140 Deputy Chief of Staff for Operations to the Chief of Staff. Effective May 27, 2004.

DBGS00332 Special Assistant to the Assistant Secretary for Elementary and Secondary Education. Effective May 28, 2004.

Section 213.3318 Environmental Protection Agency

EPGS04008 Chief of Staff, Office of Air and Radiation to the Assistant Administrator for Air and Radiation. Effective May 05, 2004.

EPGS04011 Special Assistant to the Deputy General Counsel. Effective May 14, 2004.

Section 213.3328 Broadcasting Board of Governors

IBGS00016 Special Assistant to the Chairman, Broadcasting Board of Governors. Effective May 07, 2004.

Section 213.3330 Securities and Exchange Commission

SEOT00056 Legislative Affairs Specialist to the Director of Communications. Effective May 14, 2004.

Section 213.3331 Department of Energy

DEGS00414 Deputy Director of Public Affairs to the Director of Public Affairs. Effective May 14, 2004.

DEGS00418 Special Assistant to the Chief of Staff. Effective May 24, 2004.

DEGS00420 Special Assistant to the Director of Public Affairs. Effective May 25, 2004.

DEGS00416 Deputy Assistant Secretary for Environment and Science to the Assistant Secretary for Congressional and Intergovernmental Affairs. Effective May 26, 2004.

DEGS00419 Special Assistant to the Secretary and Deputy White House Liaison to the Secretary. Effective May 26, 2004.

Section 213.3332 Small Business Administration

SBGS60189 Regional Administrator, Region 10, Seattle Washington to the Associate Administrator for Field Operations. Effective May 04, 2004.

SBGS60531 Senior Advisor to the Associate Deputy Administrator for Capital Access. Effective May 28, 2004.

Section 213.3337 General Services Administration

GSGS01317 Associate Administrator for Performance Improvement to the Administrator. Effective May 04, 2004.

GSGS60113 Special Assistant to the Regional Administrator, Region 1, Boston. Effective May 24, 2004.

GSGS00156 Confidential Assistant to the Administrator. Effective May 27, 2004.

Section 213.3342 Export-Import Bank

EBGS00058 Special Assistant to the Senior Vice President of Communications. Effective May 20, 2004.

Section 213.3352 Government Printing Office

GPSL00001 Chief of Staff to the Deputy Public Printer. Effective May 14, 2004.

GPSL00002 Special Assistant to the Public Printer. Effective May 14. 2004.

GPSL00003 Deputy Chief of Staff to the Chief of Staff. Effective May 14, 2004.

Section 213.3355 Social Security Administration

SZGS60012 Executive Editor to the Associate Commissioner for Retirement Policy. Effective May 14, 2004.

Section 213.3360 Consumer Product Safety Commission

PSGS60003 Special Assistant (Legal) to the Chairman. Effective May 18, 2004.

Section 213.3382 National Endowment for the Arts

NAGS60049 Deputy Congressional Liaison to the Director, Office of Government Affairs. Effective May 19, 2004.

NAGS00053 Director of Research and Analysis to the Chairman, National Endowment for the Arts. Effective May 24, 2004.

Section 213.3384 Department of Housing and Urban Development

DUGS60549 Senior Advisor to the Assistant Secretary for Housing, Federal Housing Commission. Effective May 04, 2004.

DUGS60344 Staff Assistant to the Assistant Secretary for Public Affairs. Effective May 24, 2004. DUGS60396 Staff Assistant to the Director of Executive Scheduling and Operations. Effective May 24, 2004.

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., P.218

Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 04–14099 Filed 6–22–04; 8:45 am]

BILLING CODE 6325–39–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–26468; File No. 812–13088]

AXP Variable Portfolio Funds, et al., Notice of Application

June 16, 2004.

AGENCY: The Securities and Exchange Commission (''SEC'' or the ''Commission'').

ACTION: Notice of Application for Exemption under section 6(c) of the Investment Company Act of 1940, as amended (the ''1940 Act''), for an exemption from the provisions of Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act, and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder.

APPLICANTS: AXP Variable Portfolio—Income Series, Inc., AXP Variable Portfolio—Investment Series, Inc., AXP Variable Portfolio—Managed Series, Inc., AXP Variable Portfolio—Money Market Series, Inc., AXP Variable Portfolio—Partners Series, Inc., AXP Variable Portfolio—Select Series, Inc. (the ''AXP VP Funds'') and American Express Financial Corporation (''AEFC'') (collectively, the ''Applicants'').

SUMMARY OF APPLICATION: Applicants seek an order pursuant to section 6(c) of the 1940 Act exempting certain life insurance companies and their separate accounts that currently invest or may hereafter invest in the AXP VP Funds (and, to the extent necessary, any investment adviser, principal underwriter and depositor of such an account) from the provisions of sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act, and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder, to the extent necessary to permit shares of the AXP VP Funds and shares of any other existing or future investment company that is designed to fund insurance products and for which AEFC or any of its affiliates may serve in the future as investment adviser, investment manager, subadviser, principal underwriter, sponsor or administrator (the ''Future Funds'') (the AXP VP Funds together with the Future Funds being hereinafter referred to individually as a ''Fund'' and collectively as the ''Funds''), or to permit shares of any existing or future series of any Fund (individually, a ''Portfolio'' and collectively, the ''Portfolios'') to be sold and held by: (a) Separate accounts funding variable annuity and variable life insurance contracts (the ''Variable Contracts'') issued by both affiliated and unaffiliated life insurance companies; (b) qualified pension and retirement plans (the ''Qualified Plans'') outside of the separate account context; (c) separate accounts that are not registered as investment companies under the 1940 Act pursuant to exemptions from registration under section 3(c) of the 1940 Act; (d) any investment manager to a Portfolio and affiliates thereof that is permitted to hold shares of a Portfolio consistent with the requirements of regulations issued by the Treasury Department (individually, a ''Treasury Regulation'' and collectively, the ''Treasury Regulations''), specifically

Treasury Regulation § 1.817–5 (collectively, the ''Manager'') and (e) any other person permitted to hold shares of the Portfolios pursuant to Treasury Regulation § 1.817–5 (the ''General Accounts'').

FILING DATE: The Application was filed on May 17, 2004 and amended and restated on June 14, 2004.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 8, 2004, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants: Mary Ellyn Minenko, Esq., Vice President and Group Counsel, American Express Financial Advisors Inc., 50607 AXP Financial Center, Minneapolis, MN 55474 with a copy to Michael S. Fischer, Esq., Halleland Lewis Nilan Sipkins & Johnson, P.A., Pillsbury Center South Suite 600, 220 South Sixth Street, Minneapolis, MN 55402.

FOR FURTHER INFORMATION CONTACT: Mark Cowan, Senior Counsel, or Zandra Bailes, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (telephone (202) 942–8090).

Applicants' Representations

1. The AXP VP Funds are all Minnesota corporations and are registered as open-end management investment companies under the 1940 Act. AEFC, a Delaware corporation, is registered with the Commission under the Investment Advisers Act of 1940, as amended, (the ''Advisers Act'') and has served as the investment adviser to the AXP VP Funds since November 1, 2004. Prior to that time, IDS Life Insurance Company, a wholly owned subsidiary of AEFC, served as the investment adviser to the AXP VP Funds while AEFC served as the subadviser. Pursuant to investment subadvisory agreements, AEFC retains both affiliated and unaffiliated subadvisers for certain Portfolios under the AXP VP Funds. Each subadviser is registered as an investment adviser with the Commission under the Advisers Act. The AXP VP Funds currently consist of six open-end management investment companies offering shares of twenty-three Portfolios. Currently, shares of the AXP VP Funds Portfolios are offered solely to separate accounts funding flexible premium variable life insurance policies and variable annuity contracts issued by insurance company affiliates of AEFC.

2. Shares of the Portfolios may be offered in the future to separate accounts of both affiliated and unaffiliated insurance (each a ''Participating Insurance Company'' and collectively, the ''Participating Insurance Companies'') to serve as investment vehicles to fund Variable Contracts. These separate accounts either will be registered as investment companies under the 1940 Act or will be exempt from registration pursuant to exemptions from registration under section 3(c) of the 1940 Act (individually, a ''Separate Account'' and collectively, the ''Separate Accounts''). Shares of the Portfolios may also be offered to Qualified Plans, the Manager and General Accounts, including the general account of any life insurance company whose separate account holds, or will hold, shares of the Funds.

3. The Participating Insurance Companies at the time of their investment in the Funds have established or will establish their own Separate Accounts and design their own Variable Contracts. Each Participating Insurance Company has or will have the legal obligation of satisfying all applicable requirements under both State and Federal law. Each Participating Insurance Company, on behalf of its Separate Accounts, has entered or will enter into an agreement with the Funds concerning such Participating Insurance Company's participation in the Portfolios. The role of the Funds under this agreement, insofar as the Federal securities laws are applicable, will consist of, among other things, offering shares of the Portfolios to the participating Separate Accounts and complying with any conditions that the Commission may impose upon granting the order requested herein.

Applicants' Legal Analysis

1. Applicants seek an order pursuant to section 6(c) of the 1940 Act exempting certain life insurance companies and their separate accounts that currently invest or may hereafter invest in the AXP VP Funds (and to the extent necessary, any investment adviser, principal underwriter and depositor of such an account) from the provisions of sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act, and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder, to the extent necessary to permit shares of the AXP VP Funds and shares of any Future Funds to be sold to and held by: (a) Separate accounts funding Variable Contracts issued by both affiliated and unaffiliated life insurance companies; (b) Qualified Plans outside of the separate account context; (c) separate accounts that are not registered as investment companies under the 1940 Act pursuant to exemptions from registration under section 3(c) of the 1940 Act; (d) the Manager; and (e) any General Accounts, including the general account of any life insurance company whose separate account holds, or will hold, shares of the Funds.

2. In connection with the funding of scheduled premium variable life insurance contracts issued through a separate account registered as a unit investment trust (''UIT'') under the 1940 Act, Rule 6e–2(b)(15) provides partial exemptions from sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act. The relief provided by Rule 6e–2 is also granted to the investment adviser, principal underwriter and depositor of the separate account. Section 9(a)(2) of the 1940 Act makes it unlawful for any company to serve as an investment adviser or principal underwriter of any UIT if an affiliated person of that company is subject to a disqualification enumerated in sections 9(a)(1) or (2) of the 1940 Act. Sections 13(a), 15(a) and 15(b) of the 1940 Act have been deemed by the Commission to require ''pass-through'' voting with respect to an underlying investment company's shares. Rule 6e–2(b)(15) provides that these exemptions apply only where all of the assets of the UIT are shares of management investment companies ''which offer their shares exclusively to variable life insurance separate accounts of the life insurer or of any affiliated life insurance company.'' Therefore, the relief granted by Rule 6e–2(b)(15) is not available with respect to a scheduled premium life insurance separate account that owns shares of an underlying fund that also offers its shares to a variable annuity separate account or a flexible premium variable life insurance separate account of the same company or any other affiliated insurance company. The use of a common management investment

company as the underlying investment vehicle for both variable annuity and variable life insurance separate accounts of the same life insurance company or of any affiliated life insurance company is referred to herein as ''mixed funding.''

3. The relief granted by Rule 6e–2(b)(15) also is not available with respect to a scheduled premium variable life insurance separate account that owns shares of an underlying fund that also offers its shares to separate accounts funding Variable Contracts of one or more unaffiliated life insurance companies. The use of a common management investment company as the underlying investment vehicle for variable annuity and/or variable life insurance separate accounts of unaffiliated life insurance companies is referred to herein as ''shared funding.''

4. The relief under Rule 6e–2(b)(15) is available only where shares are offered exclusively to variable life insurance separate accounts of a life insurer or any affiliated life insurance company; additional exemptive relief is necessary if the shares of the Portfolios are also to be sold to Qualified Plans or other eligible holders of shares, as described above. Applicants note that if shares of the Portfolios are sold only to Qualified Plans, exemptive relief under Rule 6e–2 would not be necessary. The relief provided by this section does not relate to Qualified Plans or to a registered investment company's ability to sell its shares to Qualified Plans. The use of a common management investment company as the underlying investment vehicle for variable annuity and variable life separate accounts of affiliated and unaffiliated insurance companies, and for Qualified Plans, is referred to herein as ''extended mixed and shared funding.''

5. In connection with flexible premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a UIT, Rule 6e–3(T)(b)(15) provides partial exemptions from sections 9(a), 13(a), 15(a) and 15(b) of the 1940. The exemptions granted by Rule 6e–3(T)(b)(15) are available only where all the assets of the separate account consist of the shares of one or more registered management investment companies that offer to sell their shares ''exclusively to separate accounts of the life insurer, or of any affiliated life insurance companies, offering either scheduled contracts or flexible contracts, or both; or which also offer their shares to variable annuity separate accounts of the life insurer or of an affiliated life insurance company or which offer their shares to any such life insurance company in consideration solely for advances made by the life insurer in connection with the operation of the separate account.'' Therefore, Rule 6e–3(T)(b)(15) permits mixed funding but does not permit shared funding.

6. The relief under Rule 6e–3(T) is available only where shares are offered exclusively to variable life insurance separate accounts of a life insurance company or any affiliated life insurance company, and additional exemptive relief is necessary if the shares of the Portfolios are also to be sold to Qualified Plans or other eligible holders of shares as described above. Applicants note that if shares of the Portfolios were sold only to Qualified Plans, exemptive relief under Rule 6e–3(T)(b)(15) would not be necessary. The relief provided for under this section does not relate to Qualified Plans or to a registered investment company's ability to sell shares to Qualified Plans.

7. Applicants maintain, as discussed below, that there is no policy reason for the sale of the Portfolios' shares to Qualified Plans, the Manager or General Accounts to result in a prohibition against, or otherwise limit, a Participating Insurance Company from relying on the relief provided by Rules 6e–2(b)(15) and 6e–3(T)(b)(15). However, because the relief under Rules 6e–2(b)(15) and 6e–3(T)(b)(15) is available only when shares are offered exclusively to separate accounts, additional exemptive relief may be necessary if the shares of the Portfolios are also to be sold to Qualified Plans, the Manger or General Accounts. Applicants therefore request relief in order to have the Participating Insurance Companies enjoy the benefits of the relief granted in Rules 6e–2(b)(15) and 6e–3(T)(b)(15). Applicants note that if the Portfolios' shares were to be sold only to Qualified Plans, the Manger, General Accounts and/or separate accounts funding variable annuity contracts, exemptive relief under Rule 6e–2 and Rule 6e–3(T) would be unnecessary. None of the relief provided for in Rules 6e–2(b)(15) and 6e–3(T)(b)(15) relates to Qualified Plans, the Manager or General Accounts, or to a registered investment company's ability to sell its shares to such purchasers.

8. Applicants also note that the promulgation of Rules 6e–2(b)(15) and 6e–3(T)(b)(15) preceded the issuance of the Treasury Regulations that made it possible for shares of an investment company portfolio to be held by the trustees of a Qualified Plan, the investment company's investment manager or its affiliates or a General Account without adversely affecting the ability of shares of the same investment company portfolio to also be held by the separate accounts of insurance companies in connection with their variable insurance contracts. Thus, the sale of shares of the same portfolio to separate accounts through which variable insurance contracts are issued and to Qualified Plans, the investment company's investment manager or its affiliates or General Accounts was not contemplated at the time of the adoption of Rules 6e–2(b)(15) and 6e–3(T)(b)(15).

9. Consistent with the Commission's authority under section 6(c) of the 1940 Act to grant exemptive orders to a class or classes of persons and transactions, the Application requests relief for the class consisting of insurers and Separate Accounts (and to the extent necessary, investment advisers, principal underwriters, and depositors of such accounts) that will invest in the Portfolios.

10. Section 9(a)(3) of the 1940 Act provides that it is unlawful for any company to serve as investment adviser or principal underwriter of any registered open-end investment company if an affiliated person of that company is subject to a disqualification enumerated in sections 9(a)(1) or (2). Rules 6e–2(b)(15)(i) and (ii) and Rules 6e–3(T)(b)(15)(i) and (ii) under the 1940 Act provide exemptions from section 9(a) under certain circumstances, subject to the limitations discussed above on mixed and shared funding. These exemptions limit the application of the eligibility restrictions to affiliated individuals or companies that directly participate in management of the underlying management investment company.

11. The partial relief granted in Rules 6e–2(b)(15) and 6e–3(T)(b)(15) under the 1940 Act from the requirements of section 9 of the 1940 Act, in effect, limits the amount of monitoring of an insurance company's personnel that would otherwise be necessary to ensure compliance with section 9 to that which is appropriate in light of the policy and purposes of section 9. Those 1940 Act rules recognize that it is not necessary for the protection of investors or the purposes fairly intended by the policy and provisions of the 1940 Act to apply the provisions of section 9(a) to many individuals in a large insurance complex, most of whom will have no involvement in matters pertaining to investment companies in that organization. The Participating Insurance Companies and Qualified Plans are not expected to play any role in the management or administration of

the Funds. Those individuals who participate in the management of the Funds will remain the same regardless of which Separate Accounts or Qualified Plans invest in the Funds. Therefore, applying the monitoring requirements of section 9(a) of the 1940 Act because of investment by Separate Accounts of other Participating Insurance Companies or Qualified Plans would be unjustified and would not serve any regulatory purpose. Furthermore, the increased monitoring costs could reduce the net rates of return realized by contract owners and Qualified Plan participants.

12. Moreover, the relief requested should not be affected by the sale of shares of the Portfolios to Qualified Plans, the Manager or General Accounts. Since the Qualified Plans, the Manager and General Accounts are not themselves investment companies, and therefore are not subject to section 9 of the 1940 Act and will not be deemed affiliates solely by virtue of their shareholdings, no additional relief is necessary.

13. Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) under the 1940 Act provide exemptions from the pass-through voting requirement with respect to several significant matters, assuming the limitations on mixed and shared funding are observed. Rules 6e–2(b)(15)(iii)(A) and 6e–3(T)(b)(15)(iii)(A) under the 1940 Act provide that the insurance company may disregard the voting instructions of its contract owners with respect to the investments of an underlying fund, or any contract between such fund and its investment adviser, when required to do so by an insurance regulatory authority (subject to the provision of paragraphs (b)(5)(i) and (b)(7)(ii)(A) of such rules). Rules 6e–2(b)(15)(iii)(B) and 6e–3(T)(b)(15)(iii)(A)(2) under the 1940 Act provide that the insurance company may disregard the voting instructions of its contract owners if the contract owners initiate any change in an underlying portfolio's investment policies, principal underwriter, or any investment adviser (provided that disregarding such voting instructions is reasonable and subject to the other provisions of paragraphs (b)(5)(ii), (b)(7)(ii)(B), and (b)(7)(ii)(C), respectively, of Rules 6e–2 and 6e–3(T) under the 1940 Act).

14. Rule 6e–2 under the 1940 Act recognizes that a variable life insurance contract, as an insurance contract, has important elements unique to insurance contracts and is subject to extensive State regulation of insurance. In adopting Rule 6e–2(b)(15)(iii), the Commission expressly recognized that State insurance regulators have authority, pursuant to State insurance laws or regulations, to disapprove or require changes in investment policies, investment advisers, or principal underwriters. The Commission also expressly recognized that State insurance regulators have authority to require an insurance company to draw from its general account to cover costs imposed upon the insurer by a change approved by contract owners over the insurance company's objection. The Commission, therefore, deemed such exemptions necessary ''to assure the solvency of the life insurer and performance of its contractual obligations by enabling an insurance regulatory authority or the life insurer to act when certain proposals reasonably could be expected to increase the risks undertaken by the life insurer.'' In this respect, flexible premium variable life insurance contracts are identical to scheduled premium variable life insurance contracts. Therefore, the corresponding provisions of Rule 6e–3(T) under the 1940 Act undoubtedly were adopted in recognition of the same factors.

15. Applicants state that the sale of Portfolio shares to Qualified Plans, the Manager and General Accounts will not have any impact on the relief requested herein. With respect to Qualified Plans, which are not registered as investment companies under the 1940 Act, there is no requirement to pass through voting rights to Qualified Plan participants. Indeed, to the contrary, applicable law expressly reserves voting rights associated with Qualified Plan assets to certain specified persons. Under Section 403(a) of ERISA, shares of a portfolio of a fund sold to a Qualified Plan must be held by the trustees of the Qualified Plan. Section 403(a) also provides that the trustees must have exclusive authority and discretion to manage and control the Qualified Plan, with two exceptions: (a) When the Qualified Plan expressly provides that the trustees are subject to the direction of a named fiduciary who is not a trustee, in which case the trustees are subject to proper directions made in accordance with the terms of the Qualified Plan and not contrary to ERISA, and (b) when the authority to manage, acquire, or dispose of assets of the Qualified Plan is delegated to one or more investment managers pursuant to section 402(c)(3) of ERISA. Unless one of the above two exceptions stated in section 403(a) applies, a Qualified Plan trustees have the exclusive authority and responsibility for voting proxies.

16. Where a named fiduciary to a Qualified Plan appoints an investment manager, the investment manager has the responsibility to vote the shares held unless the right to vote such shares is reserved to the trustee or the named fiduciary. The Qualified Plans may have their trustees or other fiduciaries exercise voting rights attributable to investment securities held by the Qualified Plans in their discretion. Some of the Qualified Plans, however, may provide for the trustees, an investment adviser (or advisers), or another named fiduciary to exercise voting rights in accordance with instructions from participants. Similarly, the Manager and General Accounts are not subject to any pass-through voting requirements. Accordingly, unlike the case with insurance company separate accounts, the issue of resolution of material irreconcilable conflicts with respect to voting is not present with Qualified Plans, the Manager or General Accounts.

17. Where a Qualified Plan does not provide participants with the right to give voting instructions, the trustee or named fiduciary has responsibility to vote the shares held by the Qualified Plan. In this circumstance, the trustee has a fiduciary duty to vote the shares in the best interest of the Qualified Plan participants. Accordingly, even if the Manager were to serve in the capacity of trustee or named fiduciary with voting responsibilities, the Manager would have a fiduciary duty to vote those shares in the best interest of the Qualified Plan participants.

18. In addition, even if a Qualified Plan were to hold a controlling interest in a Portfolio, Applicants do not believe that such control would disadvantage other investors in such Portfolio to any greater extent than is the case when any institutional shareholder holds a majority of the voting securities of any open-end management investment company. In this regard, Applicants submit that investment in a Portfolio by a Qualified Plan will not create any of the voting complications occasioned by mixed funding or shared funding. Unlike mixed funding or shared funding, Qualified Plan investor voting rights cannot be frustrated by veto rights of insurers or State regulators.

19. Where a Qualified Plan provides participants with the right to give voting instructions, Applicants see no reason to believe that participants in Qualified Plans generally or those in a particular Qualified Plan, either as a single group or in combination with participants in other Qualified Plans, would vote in a manner that would disadvantage Variable Contract holders. The purchase of shares of Portfolios by Qualified Plans that provide voting rights does not

present any complications not otherwise occasioned by mixed or shared funding.

20. The prohibitions on mixed and shared funding might reflect concern regarding possible different investment motivations among investors. When Rule 6e–2 under the 1940 Act was first adopted, variable annuity separate could invest in mutual funds whose shares were also offered to the general public. Therefore, the Commission staff contemplated underlying funds with public shareholders, as well as with variable life insurance separate account shareholders. The Commission staff may have been concerned with the potentially different investment motivations of public shareholders and variable life insurance contract owners. There also may have been some concern with respect to the problems of permitting a State insurance regulatory authority to affect the operations of a publicly available mutual fund and to affect the investment decisions of public shareholders.

21. For reasons unrelated to the 1940 Act, however, Internal Revenue Service Revenue Ruling 81–225 (1981–2 C.B. 12) (as clarified in Revenue Ruling 82–55, 1982–1 C.B. 12) effectively deprived variable annuities funded by publicly available mutual funds of their tax-benefited status. The Tax Reform Act of 1984 codified the prohibition against the use of publicly available mutual funds as an investment vehicle for variable contracts (including variable life contracts). Section 817(h) of the Internal Revenue Code of 1986 (the ''Code''), as amended, in effect requires that the investments made by variable annuity and variable life insurance separate accounts be ''adequately diversified.'' If a separate account is organized as a UIT that invests in a single fund or series, the diversification test will be applied at the underlying fund level, rather than at the separate account level, but only if ''all of the beneficial interests'' in the underlying fund ''are held by one or more insurance companies (or affiliated companies) in their general account or in segregated asset accounts* * *.'' Accordingly, a UIT separate account that invests solely in a publicly available mutual fund will not be adequately diversified. In addition, any underlying mutual fund, including any Portfolio, that sells shares to separate accounts, in effect, would be precluded from also selling its shares to the public. Consequently, there will be no public shareholders in any Portfolio.

22. Shared funding by unaffiliated insurance companies does not present any issues that do not already exist where a single insurance company is licensed to do business in several or all States. A particular State insurance regulatory body could require action that is inconsistent with the requirements of other States in which the insurance company offers its policies. The fact that different Participating Insurance Companies may be domiciled in different States does not create a significantly different or enlarged problem.

23. Shared funding by unaffiliated Participating Insurance Companies, in this respect, is no different than the use of the same investment company as the funding vehicle for affiliated Participating Insurance Companies, which Rules 6e–2(b)(15) and 6e–3(T)(b)(15) under the 1940 Act permit under various circumstances. Affiliated Participating Insurance Companies may be domiciled in different States and be subject to differing State law requirements. Affiliation does not reduce the potential, if any exists, for differences in State regulatory requirements. In any event, the conditions set forth below are designed to safeguard against, and provide procedures for resolving, any adverse effects that differences among State regulatory requirements may produce. If a particular State insurance regulator's decision conflicts with the majority of other State regulators, then the affected Participating Insurance Company will be required to withdraw its Separate Account investments in the affected Funds. This requirement will be provided for in agreements that will be entered into by Participating Insurance Companies with respect to their participation in the relevant Portfolio.

24. Rules 6e–2(b)(15) and 6e–3(T)(b)(15) under the 1940 Act give an insurance company the right to disregard contract owners' voting instructions. This right does not raise any issues different from those raised by the authority of State insurance administrators over separate accounts. Under Rules 6e–2(b)(15) and 6e–3(T)(b)(15), an insurer can disregard contract owner voting instructions only with respect to certain specified items. Affiliation does not eliminate the potential, if any exists, for divergent judgments as to the advisability or legality of a change in investment policies, principal underwriter, or investment adviser initiated by contract owners. The potential for disagreement is limited by the requirements in Rules 6e–2 and 6e–3(T) under the 1940 Act that the insurance company's disregard of voting instructions be reasonable and based on specific good faith determinations.

25. A particular Participating Insurance Company's disregard of voting instructions, nevertheless, could conflict with the majority of contract owners' voting instructions. The Participating Insurance Company's action possibly could be different than the determination of all or some of the other Participating Insurance Companies (including affiliated insurance companies) that the voting instructions of contract owners should prevail, and either could preclude a majority vote approving the change or could represent a minority view. If the Participating Insurance Company's judgment represents a minority position or would preclude a majority vote, then the Participating Insurance Company may be required, at the affected Fund's election, to withdraw its Separate Account's investment in such Portfolio. No charge or penalty will be imposed as a result of such withdrawal. This requirement will be provided for in the agreements entered into with respect to participation by the Participating Insurance Companies in each Portfolio.

26. Each Portfolio will be managed to attempt to achieve the investment objective or objectives of such Portfolio, and not to favor or disfavor any particular Participating Insurance Company or type of insurance product. There is no reason to believe that different features of various types of contracts, including the ''minimum death benefit'' guarantee under certain Variable Contracts, will lead to different investment policies for different types of Variable Contracts. To the extent that the degree of risk may differ as between variable annuity contracts and variable life insurance policies, differing insurance charges imposed may well, in effect, adjust any such differences and serve to equalize the insurance company's exposure in either case.

27. Applicants do not believe that the sale of the shares of the Portfolios to Qualified Plans, the Manager or General Accounts will increase the potential for material irreconcilable conflicts of interest between or among different types of investors. In particular, Applicants see very little potential for such conflicts beyond those that would otherwise exist between variable annuity and variable life insurance contract owners. Moreover, in considering the appropriateness of the requested relief, Applicants have analyzed the following issues to assure themselves that there were either no conflicts of interest or that there existed the ability by the affected parties to resolve the issues without harm to the contract owners in the Separate Accounts or to the participants under the Qualified Plans.

28. Applicants considered whether there are any issues raised under the Code, or Treasury Regulations or Revenue Rulings thereunder, if Qualified Plans, the Manager, General Accounts, variable annuity separate accounts and/or variable life insurance separate accounts all invest in the same underlying fund. As noted above, section 817(h) of the Code imposes certain diversification standards on the underlying assets of variable annuities and variable life insurance contracts held in an underlying mutual fund. The Code provides that a variable contract will not be treated as an annuity contract or as life insurance, as applicable, for any period (and any subsequent period) for which the investments are not, in accordance with Treasury Regulations, adequately diversified.

29. Treasury Regulations issued under section 817(h) provide that, in order to meet the statutory diversification requirements, all of the beneficial interests in the investment company must be held by the segregated asset accounts of one or more insurance companies. However, Treasury Regulation § 1.817–5(f)(3) specifically permits, among other things, ''qualified pension or retirement plans,'' ''the general account of a life insurance company,'' ''the manager * * * of an investment company'' and separate accounts to share the same underlying management investment company. For this reason, Applicants have concluded that neither the Code, nor Treasury Regulations or Revenue Rulings thereunder, present any inherent conflicts of interest if Separate Accounts, Qualified Plans, the Manager and General Accounts all invest in the same underlying fund.

30. Applicants note that, while there are differences in the manner in which distributions from Variable Contracts and Qualified Plans are taxed, these differences will have no impact on the Funds. When distributions are to be made, and a Separate Account or Qualified Plan is unable to net purchase payments to make distributions, the Separate Account or Qualified Plan will redeem shares of the relevant Portfolio at their respective net asset values in conformity with Rule 22c–1 under the 1940 Act (without the imposition of any sales charge) to provide proceeds to meet distribution needs. A Participating Insurance Company then will make distributions in accordance with the terms of its Variable Contract, and a Qualified Plan then will make distributions in accordance with the terms of the Qualified Plan.

31. In connection with any meeting of shareholders, the soliciting Fund will inform each shareholder, including each Separate Account, Qualified Plan, Manager and General Account, of information necessary for the meeting, including their respective share of ownership in the relevant Portfolio. Each Participating Insurance Company then will solicit voting instructions in accordance with Rules 6e–2 and 6e–3(T), as applicable, and its agreement with the Portfolio concerning participation in the relevant Portfolio. Shares of a Portfolio that are held by the Manager and any General Account will be voted in the same proportion as all Variable Contract owners having voting rights with respect to that Portfolio. However, the Manager and any General Account will vote their shares in such a manner as the Commission may require. Shares held by Qualified Plans will be voted in accordance with applicable law. The voting rights provided to Qualified Plans with respect to shares of a Portfolio would be no different from the voting rights that are provided to Qualified Plans with respect to shares of funds sold to the general public. Furthermore, if a material irreconcilable conflict arises because of a Qualified Plan's decision to disregard Qualified Plan participant voting instructions, if applicable, and that decision represents a minority position or would preclude a majority vote, the Qualified Plan may be required, at the election of the affected Fund, to withdraw its investment in such Portfolio, and no charge or penalty will be imposed as a result of such withdrawal.

32. Applicants reviewed whether a ''senior security,'' as such term is defined under section 18(g) of the 1940 Act, is created with respect to any Variable Contract owner as opposed to a participant under a Qualified Plan, the Manager or a General Account. Applicants concluded that the ability of the Funds to sell their Portfolios directly to Qualified Plans, the Manager or General Accounts does not create a ''senior security.'' ''Senior security'' is defined under section 18(g) of the 1940 Act to include ''any stock of a class having priority over any other class as to distribution of assets or payment of dividends.'' As noted above, regardless of the rights and benefits of participants under Qualified Plans or contract owners under Variable Contracts, Qualified Plans, the Manager, General Accounts and the Separate Accounts only have rights with respect to their respective shares of the Portfolio. They only can redeem such shares at net asset value. No shareholder of a Portfolio has any preference over any other shareholder with respect to distribution of assets or payment of dividends.

33. Applicants also considered whether there are any conflicts between contract owners of the Separate Accounts and the participants under the Qualified Plans, the Manager and the General Accounts with respect to the State insurance commissioners' veto powers over investment objectives. Although the interests and opinions of shareholders may differ, this does not mean that inherent conflicts of interest exist between or among such shareholders. State insurance commissioners have been given certain veto powers in recognition of the fact that insurance companies usually cannot simply redeem their separate accounts out of one fund and invest in another. Generally, time-consuming, complex transactions must be undertaken to accomplish such redemptions or transfers. Conversely, the trustees of Qualified Plans or the participants in participant-directed Qualified Plans, the Manager and General Accounts can make decisions quickly, redeem their interests in the Portfolios and reinvest in another funding vehicle without the same regulatory impediments faced by the Separate Accounts or, as in the case with most Qualified Plans, even hold cash pending suitable investments. Based on the foregoing, issues where the interests of contract owners and the interests of Qualified Plans, the Manager and General Accounts are in conflict can be almost immediately resolved since the trustees (or participants in) the Qualified Plans, the Manager and the General Accounts can, on their own, redeem shares out of the Portfolios.

34. Applicants do not see any greater potential for material irreconcilable conflicts arising between the interests of participants in Qualified Plans, General Accounts and contract owners of the Separate Accounts from future changes in the Federal tax laws than that which already exists between variable annuity contract owners and variable life insurance contract owners.

35. Applicants assert that permitting a Portfolio to sell its shares to the Manager in compliance with Treasury Regulation § 1.817–5 will enhance Portfolio management without raising significant concerns regarding material irreconcilable conflicts. Unlike the circumstances of many investment companies that serve as underlying investment media for variable insurance products, the Funds may be deemed to lack an insurance company ''promoter'' for purposes of Rule l4a–2 under the

1940 Act. Accordingly the Funds and any Portfolios thereunder that are established as new registrants may be subject to the requirements of section 14(a) of the 1940 Act, which generally requires that an investment company have a net worth of $100,000 upon making a public offering of its shares. A potential source of the requisite initial capital is a Portfolio's Manager or a Participating Insurance Company. Given the conditions of Treasury Regulation § 1.817–5(f)(3) and the harmony of interest between a Portfolio, on the one hand, and its Manager or a Participating Insurance Company on the other, Applicants assert that little incentive for overreaching exists. Furthermore, permitting investments by the Manager or Participating Insurance Companies' General Accounts will permit the orderly and efficient creation and operation of the Funds or Portfolios thereof, and reduce the expense and uncertainty of using outside parties at the early stages of Portfolio operations.

36. Various factors have limited the number of insurance companies that offer variable annuity and variable life insurance contracts. Use of a Portfolio as a common investment vehicle for Variable Contracts, Qualified Plans and General Accounts would help reduce or eliminate these factors because Participating Insurance Companies, Qualified Plans and General Accounts will benefit not only from the investment and administrative expertise of AEFC, or any other investment manager to a Portfolio, but also from the cost efficiencies and investment flexibility afforded by a large pool of funds. Therefore, making the Funds available for mixed and shared funding and permitting the purchase of Portfolio shares by Qualified Plans and General Accounts may encourage more insurance companies to offer variable contracts. This should result in increased competition with respect to both variable contract design and pricing, which can be expected to result in more product variation and lower charges. Mixed and shared funding also may benefit Variable Contract owners by eliminating a significant portion of the costs of establishing and administering separate funds. Furthermore, granting the requested relief should result in an increased amount of assets available for investment by the Funds. This may benefit Variable Contract owners by promoting economies of scale, by reducing risk through greater diversification due to increased money in the Fund, or by making the addition of new Portfolios more feasible.

Applicant's Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions, which will apply to the AXP VP Funds as well as any Future Fund that relies on the requested order:

1. A majority of the Board of Trustees or Board of Directors (the ''Board'') of each Fund will consist of persons who are not ''interested persons'' of the Fund, as defined by section 2(a)(19) of the 1940 Act, and the rules thereunder, and as modified by any applicable orders of the Commission (''Independent Board Members''), except that if this condition is not met by reason of the death, disqualification, or bona-fide resignation of any trustee or director, then the operation of this condition will be suspended: (a) For a period of 90 days if the vacancy or vacancies may be filled by the Board; (b) for a period of 150 days if a vote of shareholders is required to fill the vacancy or vacancies; or (c) for such longer period as the Commission may prescribe by order upon application or by future rule.

2. Each Board will monitor each Fund for the existence of any material irreconcilable conflict among and between the interests of the contract owners of all Separate Accounts and participants of all Qualified Plans investing in such Fund, and determine what action, if any, should be taken in response to such conflicts. A material irreconcilable conflict may arise for a variety of reasons, including: (a) An action by any State insurance regulatory authority; (b) a change in applicable Federal or State insurance, tax, or securities laws or regulations, or a public ruling, private letter ruling, no-action or interpretive letter, or any similar action by insurance, tax or securities regulatory authorities; (c) an administrative or judicial decision in any relevant proceeding; (d) the manner in which the investments of any Portfolio are being managed; (e) a difference in voting instructions given by variable annuity contract owners, variable life insurance contract owners and trustees of the Qualified Plans; (f) a decision by a Participating Insurance Company to disregard the voting instructions of contract owners; or (g) if applicable, a decision by a Qualified Plan to disregard the voting instructions of Qualified Plan participants.

3. Participating Insurance Companies (on their own behalf, as well as by virtue of any investment of general account assets in a Portfolio), the Manager and any Qualified Plan that executes a participation agreement upon becoming an owner of 10 percent or more of the assets of any Portfolio (collectively, the ''Participants'') will report any potential or existing conflicts to the Board. The Participants will be responsible for assisting the Board in carrying out the Board's responsibilities under these conditions by providing the Board with all information reasonably necessary for the Board to consider any issues raised. This responsibility includes, but is not limited to, an obligation by each Participating Insurance Company to inform the Board whenever contract owner voting instructions are disregarded, and, if pass-through voting is applicable, an obligation by each Qualified Plan to inform the Board whenever it has determined to disregard Qualified Plan participant voting instructions. The responsibility to report such information and conflicts, and to assist the Board, will be a contractual obligation of all Participating Insurance Companies under their participation agreements with the Funds, and these responsibilities will be carried out with a view only to the interests of the contract owners. The responsibility to report such information and conflicts, and to assist the Board, also will be contractual obligations of all Qualified Plans with participation agreements, and such agreements will provide that these responsibilities will be carried out with a view only to the interests of Qualified Plan participants.

4. If it is determined by a majority of the Board, or a majority of the Independent Board Members, that a material irreconcilable conflict exists, then the relevant Participant will, at its expense and to the extent reasonably practicable (as determined by a majority of the Independent Board Members), take whatever steps are necessary to remedy or eliminate the material irreconcilable conflict, up to and including: (a) Withdrawing the assets allocable to some or all of the Separate Accounts from the relevant Portfolio and reinvesting such assets in a different investment vehicle including another Portfolio, if any or, in the case of Participating Insurance Company Participants, submitting the question as to whether such segregation should be implemented to a vote of all affected contract owners and, as appropriate, segregating the assets of any appropriate group (*i.e.*, variable annuity contract owners or variable life insurance contract owners of one or more Participating Insurance Companies) that votes in favor of such segregation, or offering to the affected contract owners the option of making such a change; and

(b) establishing a new registered management investment company or managed separate account. If a material irreconcilable conflict arises because of a decision by a Participating Insurance Company to disregard contract owner voting instructions, and that decision represents a minority position or would preclude a majority vote, then the Participating Insurance Company may be required, at the election of a Fund, to withdraw such Participating Insurance Company's Separate Account's investment in the Fund, and no charge or penalty will be imposed as a result of such withdrawal. If a material irreconcilable conflict arises because of a Qualified Plan's decision to disregard Qualified Plan participant voting instructions, if applicable, and that decision represents a minority position or would preclude a majority vote, the Qualified Plan may be required, at the election of a Fund, to withdraw its investment in the Fund, and no charge or penalty will be imposed as a result of such withdrawal. The responsibility to take remedial action in the event of a Board determination of a material irreconcilable conflict and to bear the cost of such remedial action will be a contractual obligation of all Participants under their agreements governing participation in the Funds, and these responsibilities will be carried out, with a view only to the interests of contract owners and, as applicable, Qualified Plan participants.

For purposes of this Condition 4, a majority of the Independent Board Members will determine whether or not any proposed action adequately remedies any material irreconcilable conflict, but, in no event, will a Fund or the Manager, as relevant, be required to establish a new funding vehicle for any Variable Contract. No Participating Insurance Company will be required by this Condition 4 to establish a new funding vehicle for any Variable Contract if any offer to do so has been declined by vote of a majority of the contract owners materially and adversely affected by the material irreconcilable conflict. Further, no Qualified Plan will be required by this Condition 4 to establish a new funding vehicle for the Qualified Plan if: (a) A majority of the Qualified Plan participants materially or adversely affected by the irreconcilable material conflict vote to decline such offer, or (b) pursuant to documents governing the Qualified Plan, the Qualified Plan makes such decision without a Qualified Plan participant vote.

5. The Board's determination of the existence of a material irreconcilable conflict and its implications will be made known in writing promptly to all Participants.

6. As to Variable Contracts issued by Separate Accounts registered under the 1940 Act, Participating Insurance Companies will provide pass-through voting privileges to all Variable Contract owners as required by the 1940 Act as interpreted by the Commission. However, as to Variable Contracts issued by unregistered Separate Accounts, pass-through voting privileges will be extended to contract owners to the extent granted by the issuing insurance company. Accordingly, such Participants, where applicable, will vote shares of the applicable Portfolio held in their Separate Accounts in a manner consistent with voting instructions timely received from Variable Contract owners. Participating Insurance Companies will be responsible for assuring that each Separate Account investing in a Portfolio calculates voting privileges in a manner consistent with other Participants.

The obligation to calculate voting privileges as provided in the Application will be a contractual obligation of all Participating Insurance Companies under their agreements with the Funds governing participation in a Portfolio. Each Participating Insurance Company will vote shares for which it has not received timely voting instructions, as well as shares it owns through its Separate Accounts, in the same proportion as it votes those shares for which it has received voting instructions. Each Qualified Plan will vote as required by applicable law and governing Qualified Plan documents.

7. As long as the 1940 Act requires pass-through voting privileges be provided to Variable Contract owners, the Manager and any General Account will vote its shares of any Portfolio in the same proportion as all Variable Contract owners having voting rights with respect to that Portfolio; provided, however, that the Manager or any insurance company General Account will vote its shares in such other manner as may be required by the Commission or its staff.

8. The Funds will comply with all provisions of the 1940 Act requiring voting by shareholders, which for these purposes, will be the persons having a voting interest in the shares of the respective Portfolios, and, in particular the Funds will either provide for annual meetings (except insofar as the Commission may interpret Section 16 of the 1940 Act not to require such meetings) or comply with section 16(c) of the 1940 Act (although the AXP VP Funds are not the type of funds described in section 16(c) of the 1940 Act), as well as with section 16(a) of the 1940 Act and, if and when applicable, section 16(b) of the 1940 Act. Further, the Portfolios will act in accordance with the Commission's interpretation of the requirements of section 16(a) of the 1940 Act with respect to periodic elections of directors or trustees and with whatever rules the Commission may promulgate with respect thereto.

9. A Portfolio will make its shares available to the Separate Accounts and Qualified Plans at or about the same time it accepts any seed capital from the Manager or General Account of a Participating Insurance Company.

10. The Funds will notify all Participants that Separate Account prospectus disclosure or Qualified Plan prospectuses or other Qualified Plan disclosure documents regarding potential risks of mixed and shared funding may be appropriate. The Funds will disclose in their prospectuses that: (a) Shares of the Portfolios may be offered to Separate Accounts of Variable Contracts and, if applicable, to Qualified Plans; (b) due to differences in tax treatment and other considerations, the interests of various contract owners participating in the Funds and the interests of Qualified Plans investing in the Funds, if applicable, may conflict; and (c) the Board will monitor events in order to identify the existence of any material irreconcilable conflicts and determine what action, if any, should be taken in response to any such conflict.

11. If and to the extent that Rule 6e–2 and Rule 6e–3(T) under the 1940 Act are amended, or proposed Rule 6e–3 under the 1940 Act is adopted, to provide exemptive relief from any provision of the 1940 Act, or the rules promulgated thereunder, with respect to mixed or shared funding, on terms and conditions materially different from any exemptions granted in the order requested in the Application, then Funds and/or Participating Insurance Companies, as appropriate, will take such steps as may be necessary to comply with Rules 6e–2 and Rule 6e–3(T) or Rule 6e–3, as such rules are applicable.

12. The Participants, at least annually, will submit to the Board such reports, materials, or data as the Board reasonably may request so that the directors or trustees of the Board may fully carry out the obligations imposed upon the Board by the conditions contained in the Application. Such reports, materials, and data will be submitted more frequently if deemed appropriate by the Board. The obligations of the Participants to provide these reports, materials, and

data to the Board, when it so reasonably requests, will be a contractual obligation of all Participants under their agreements governing participation in the Portfolios.

13. All reports of potential or existing conflicts received by the Board, and all Board action with regard to determining the existence of a conflict, notifying Participants of a conflict, and determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the Board or other appropriate records, and such minutes or other records will be made available to the Commission upon request.

14. A Fund will not accept a purchase order from a Qualified Plan if such purchase would make the Qualified Plan shareholder an owner of 10 percent or more of the assets of such Portfolio unless the Qualified Plan executes an agreement with the Fund governing participation in such Portfolio that includes the conditions set forth herein to the extent applicable. A Qualified Plan or Qualified Plan Participant will execute an application containing an acknowledgement of this condition at the time of its initial purchase of shares of any Portfolio.

Conclusion

Applicants submit, based on the grounds summarized above, that the requested exemptions, in accordance with the standards of section 6(c), are necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–14139 Filed 6–22–04; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49863; File No. 4–429]

Joint Industry Plan; Order Approving Joint Amendment No. 12 to the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage Relating to the Limitation in Liability for Filling Satisfaction Orders Sent Through the Linkage at the End of the Trading Day

June 15, 2004.

I. Introduction

On April 26, 2004, April 26, 2004, May 5, 2004, May 7, 2004, May 7, 2004, and May 11, 2004, the International Securities Exchange, Inc. (''ISE''), the Pacific Exchange, Inc. (''PCX''), the American Stock Exchange LLC (''Amex''), the Boston Stock Exchange, Inc. (''BSE''), the Philadelphia Stock Exchange, Inc. (''Phlx''), and the Chicago Board Options Exchange, Inc. (''CBOE'') (collectively, the ''Participants''), respectively, filed with the Securities and Exchange Commission (''Commission'') an amendment (''Joint Amendment No. 12'') to the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage (''Linkage Plan'').[1] In Joint Amendment No. 12, the Participants propose to extend the pilot provision limiting Trade-Through[2] liability at the end of the trading day for an additional seven months, until January 31, 2005, and to increase the limitation on liability from 10 contracts to 25 contracts.

The proposed amendment to the Linkage Plan was published in the **Federal Register** on May 19, 2004.[3] No comments were received on the proposed amendment. This order approves the proposed amendment to the Linkage Plan.

II. Description of the Proposed Amendment

In Joint Amendment No. 12, the Participants propose to extend the pilot provision contained in Section 8(c)(ii)(B)(2)(c) of the Linkage Plan, which limits Trade-Through liability for the last seven minutes of the trading day for an additional seven months, until January 31, 2005, and to increase the limitation on liability from 10 contracts to 25 contracts, per Satisfaction Order.[4] The proposed increase in the limit on liability would become effective on July 1, 2004, when the current pilot expires. Pursuant to the pilot as currently in effect, the Trade-Through liability of a member of a Participant is limited to 10 contracts per Satisfaction Order for the period between five minutes prior to the close of trading in the underlying security and the close of trading in the options class.

III. Discussion

When this pilot was originally proposed in Joint Amendment No. 4 to the Linkage Plan,[5] the Participants represented to the Commission that their members had expressed concerns regarding their obligations to fill Satisfaction Orders (which may be sent by a Participant's member that is traded through) at the close of trading in the underlying security. Specifically, the Participants represented that their members were concerned that they may not have sufficient time to hedge the positions they acquire.[6] The Participants stated that they believed that their proposal to limit liability at the end of the options trading day to the filling of 10 contracts per exchange, per transaction would protect small customer orders, but still establish a reasonable limit for their members' liability. The Participants further represented that the proposal should not affect a member's potential liability under an exchange disciplinary rule for engaging in a pattern or practice of

[1] On July 28, 2000, the Commission approved a national market system plan for the purpose of creating and operating an intermarket option linkage proposed by Amex, CBOE, and ISE. *See* Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000). Subsequently, Phlx, PCX, and BSE joined the Linkage Plan. *See* Securities Exchange Act Release Nos. 43573 (November 16, 2000), 65 FR 70850 (November 28, 2000); 43574 (November 16, 2000), 65 FR 70851 (November 28, 2000); and 49198 (February 5, 2004), 69 FR 7029 (February 12, 2004). On June 27, 2001, May 30, 2002, January 29, 2003, June 18, 2003, and January 29, 2004, the Commission approved joint amendments to the Linkage Plan. *See* Securities Exchange Act Release Nos. 44482 (June 27, 2001), 66 FR 35470 (July 5, 2001); 46001 (May 30, 2002), 67 FR 38687 (June 5, 2002); 47274 (January 29, 2003), 68 FR 5313 (February 3, 2003); 48055 (June 18, 2003), 68 FR 37869 (June 25, 2003); and 49146 (January 29, 2004), 69 FR 5618 (February 5, 2004).

[2] A ''Trade-Through'' is defined as a transaction in an options series at a price that is inferior to the national best bid and offer in an options series calculated by a Participant. *See* Section 2(29) of the Linkage Plan.

[3] *See* Securities Exchange Act Release No. 49692 (May 12, 2004), 69 FR 28956.

[4] A ''Satisfaction Order'' is defined as an order sent through the Intermarket Options Linkage to notify a Participant of a Trade-Through and to seek satisfaction of the liability arising from that Trade-Through. *See* Section 2(16)(c) of the Linkage Plan.

[5] *See* Securities Exchange Act Release No. 47028 (December 18, 2002), 67 FR 79171 (December 27, 2002) (Notice of Proposed Joint Amendment No. 4).

[6] *See* letter from Michael Simon, Senior Vice President and General Counsel, ISE, to Annette Nazareth, Director, Division of Market Regulation, Commission, dated November 19, 2002.

trading through other markets under Section 8(c)(i)(C) of the Linkage Plan.

The Commission approved the proposed amendment for a one-year pilot [7] to give the Participants and the Commission an opportunity to evaluate: (1) The need for the limitation on liability for Trade-Throughs near the end of the trading day; (2) whether 10 contracts per Satisfaction Order is the appropriate limitation; and (3) whether the opportunity to limit liability for Trade-Throughs near the end of the trading day leads to an increase in the number of Trade-Throughs.

In the order approving Joint Amendment No. 4, the Commission stated that in the event the Participants chose to seek permanent approval of this limitation, the Participants must provide the Commission with a report regarding data on the use of the exemption no later than 60 days before seeking permanent approval (the ''Report''). [8] The Commission specified that the Report should include information about the number and size of Trade-Throughs that occur during the last seven minutes of the options trading day and during the remainder of the trading day, the number and size of Satisfaction Orders that Participants might be required to fill without the limitation on liability and how those amounts are affected by the limitation on liability, and the extent to which the Participants use the underlying market to hedge their options positions. [9] In a subsequent amendment to the Linkage Plan for the purpose of extending the pilot, Joint Amendment No. 8, the Participants represented that if they were to seek to make the limitation on Trade-Through liability permanent, they would submit the Report to the Commission no later than March 31, 2004. [10]

Following the most recent extension of the pilot program, certain Participants provided the Commission with portions of the data required in the Report, but were unable to provide sufficient information to enable the Commission to evaluate whether permanent approval would be appropriate. Extending the pilot through January 31, 2005 would allow the limitation to continue in effect, with the increase in liability to 25 contracts, while the Participants continue to compile the data necessary to permit the Commission to evaluate the propriety of permanent approval of the Trade-Through liability limitation.

After careful consideration, the Commission finds that the proposed amendment to the Linkage Plan seeking to extend the pilot provision limiting Trade-Through liability for the last seven minutes of the trading day in the options markets for an additional seven months, and to increase the limitation on liability from 10 contracts to 25 contracts per Satisfaction Order is consistent with the requirements of the Act and the rules and regulations thereunder. Specifically, the Commission finds that the proposed amendment to the Linkage Plan is consistent with Section 11A of the Act [11] and Rule 11Aa3–2 thereunder, [12] in that extending the pilot while the Participants gather and the Commission evaluates data relating to the effect of the operation of the pilot, is appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets. The Commission further finds that raising the limitation on liability to 25 contracts per Satisfaction Order, which should increase the average size of Satisfaction Order fills during the last seven minutes of the options trading day, is appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets. Therefore, the Commission is extending the effectiveness of Section 8(c)(ii)(B)(2)(c) of the Linkage Plan, with the increase in the limitation in liability to 25 contracts per Satisfaction Order, for an additional seven months, until January 31, 2005.

IV. Conclusion

It is therefore ordered, pursuant to Section 11A of the Act [13] and Rule 11Aa3–2 thereunder, [14] that the proposed Joint Amendment No. 12 is approved on a pilot basis from July 1, 2004 until January 31, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority. [15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–14142 Filed 6–22–04; 8:45 am]

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[7] *See* Securities Exchange Act Release No. 47298 (January 31, 2003), 68 FR 6524 (February 7, 2003) (approval of the pilot program on a 120-day basis); *see also* Securities Exchange Act Release No. 48055 (June 18, 2003), 68 FR 37869 (June 25, 2003) (Order approving Joint Amendment No. 4).

The Commission subsequently extended the pilot program for five months until June 30, 2004. *See* Securities Exchange Act Release No. 49010 (December 30, 2003), 69 FR 706 (January 6, 2004) (Order approving Joint Amendment No. 8).

[8] *See* Order approving Joint Amendment No. 4, *supra* note 7.

[9] *Id.*

[10] *See* Order approving Joint Amendment No. 8, *supra* note 7.

[11] 15 U.S.C. 78k–1.

[12] 17 CFR 240.11Aa3–2.

[13] *See supra* note 11.

[14] *See supra* note 12.

[15] 17 CFR 200.30–3(a)(29).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49871; File No. SR–OPRA–2004–03]

Options Price Reporting Authority; Notice of Filing of Proposed Amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information To Revise Guideline 1 of the Capacity Guidelines To Confirm That It Is Within the Authority of the Independent System Capacity Advisor To Make Determinations Concerning the Establishment, Modification or Removal of Output Throttles From the OPRA System

June 16, 2004.

Pursuant to Section 11A of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 11Aa3–2 thereunder, [2] notice is hereby given that on May 7, 2004, the Options Price Reporting Authority (''OPRA''), [3] submitted to the Securities and Exchange Commission (''Commission'') an amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information (''OPRA Plan''). The proposed amendment would revise Guideline 1 of the Capacity Guidelines to confirm that it is within the authority of the Independent System Capacity Advisor (''ISCA'') under the OPRA Plan to make determinations concerning the establishment, modification or removal of any throttle on the output of the OPRA System. The Commission is publishing this notice to solicit comments from interested persons on the proposed OPRA Plan amendment.

[1] 15 U.S.C. 78k–1.

[2] 17 CFR 240.11Aa3–2.

[3] OPRA is a national market system plan approved by the Commission pursuant to Section 11A of the Act and Rule 11Aa3–2 thereunder. *See* Securities Exchange Act Release No. 17638 (March 18, 1981), 22 S.E.C. Docket 484 (March 31, 1981).

The OPRA Plan provides for the collection and dissemination of last sale and quotation information on options that are traded on the participant exchanges. The six participants to the OPRA Plan are the American Stock Exchange LLC, the Boston Stock Exchange, Inc., the Chicago Board Options Exchange, Inc., the International Securities Exchange, Inc., the Pacific Exchange, Inc., and the Philadelphia Stock Exchange, Inc.

I. Description and Purpose of the Amendment

Guideline 1 of the Capacity Guidelines provided for in the OPRA Plan sets forth the ''Function and Authority of the ISCA.'' The purpose of the proposed amendment to Guideline 1 is to include in the Capacity Guidelines an express statement that the authority of the ISCA would include the authority to establish a throttle limiting the output of the System to less than the total capacity available in the System, and to modify or remove any such throttles that may be established from time to time.[4] OPRA believes that throttling System output to less than total System capacity could sometimes be an appropriate way to limit the maximum message-handling capacity that vendors and subscribers could be required to have in order to handle OPRA's maximum output. Previously, the authority to establish, modify or remove throttles on the output of the OPRA System has been exercised by OPRA's Policy Committee. The proposed amendment would acknowledge that, in light of the recent establishment of an independent entity (the ISCA) with responsibilities of planning and implementing System modifications, it would be appropriate to clarify the ISCA's authority to make decisions with respect to System output throttles. OPRA believes that providing this authority to the ISCA would assure that these decisions would not be influenced by competitive considerations among the parties to the OPRA Plan, and would not present any appearance of being so influenced.

The text of the proposed revised Capacity Guideline 1 is set forth below. Proposed new language is in *italics.*

* * * * *

1. *Function and Authority of the ISCA.* As a general matter, it is the responsibility of the ISCA to determine when and how to modify the OPRA System so that each party to the OPRA Plan may be provided with the System capacity it has requested. *Without limiting the general authority of the ISCA in this regard, the ISCA is specifically authorized to establish a throttle on the output of the OPRA System to less than the total capacity available in the System and to modify or remove any such throttles that have been established.* The ISCA will also determine, consistent with these Guidelines, how the costs of modifying, maintaining and operating the OPRA System to meet the needs of the parties should be allocated among the parties, and, within the limits of its authority under Guideline 6, how System capacity should be allocated among the parties in certain circumstances when available System capacity is not sufficient to provide each party with the capacity it has requested.

* * * * *

II. Implementation of Plan Amendment

The proposed amendment will be effective upon its approval by the Commission pursuant to Rule 11Aa3–2 of the Act.[5]

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed OPRA Plan amendment is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form *(http://www.sec.gov/rules/sro.shtml)*; or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–OPRA–2004–03 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–OPRA–2004–03. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site *(http://www.sec.gov/rules/sro.shtml)*. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed plan amendment that are filed with the Commission, and all written communications relating to the proposed plan amendment between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of OPRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–OPRA–2004–03 and should be submitted on or before July 8, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

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[4] The output throttle that is the subject of the proposed amendment would serve to limit the total output of the OPRA System. It would be different from the OPRA System's ''dynamic throttle,'' which allows any unused System capacity to be temporarily and dynamically allocated to a participant exchange that needs additional capacity on a short-term, interruptible basis. Telephone conversation between Michael L. Meyer, Counsel to OPRA, Schiff Hardin LLP, and Cyndi N. Rodriguez, Special Counsel, Division of Market Regulation, Commission, on June 14, 2004.

[5] 17 CFR 240.11Aa3–2.

[6] 17 CFR 200.30–3(a)(29).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49884; File No. PCAOB 2004–03]

Public Company Accounting Oversight Board; Order Approving Proposed Auditing Standard No. 2, An Audit of Internal Control Over Financial Reporting Performed in Conjunction With an Audit of Financial Statements (''Auditing Standard No. 2'')

June 17, 2004.

I. Introduction

On March 17, 2004, the Public Company Accounting Oversight Board (the ''Board'' or the ''PCAOB'') filed with the Securities and Exchange Commission (the ''Commission'') proposed Auditing Standard No. 2, *An Audit of Internal Control Over Financial Reporting Performed in Conjunction with an Audit of Financial Statements* (''Auditing Standard No. 2''), pursuant to section 107 of the Sarbanes-Oxley Act of 2002 (the ''Act'') and section 19(b) of the Securities Exchange Act of 1934 (the ''Exchange Act''). Auditing Standard No. 2 would provide the professional standards and related performance guidance for independent auditors to attest to, and report on, management's assessment of the effectiveness of internal control over financial reporting under section 404 of the Act. Notice of the proposed standard was published in

the **Federal Register** on April 16, 2004,[1] and the Commission received 31 comment letters. For the reasons discussed below, the Commission is granting approval of the proposed standard.

II. Description

The Act establishes the PCAOB to oversee the audits of public companies and related matters, to protect investors, and to further the public interest in preparation of informative, accurate and independent audit reports.[2] Section 103(a) of the Act directs the PCAOB to establish auditing and related attestation standards, quality control standards, and ethics standards to be used by registered public accounting firms in the preparation and issuance of audit reports as required by the Act or the rules of the Commission. The Board has defined the term ''auditing and related processional practice standards'' to mean the standards established or adopted by the Board under section 103(a) of the Act.

Section 404 of the Act requires that registered public accounting firms attest to and report on an assessment of internal control made by management, and that such attestation ''shall be made in accordance with standards for attestation engagements issued or adopted by the Board.'' The Board's proposed Auditing Standard No. 2 provides the professional standards and related performance guidance for independent auditors to attest to, and report on, management's assessment of the effectiveness of internal control over financial reporting under section 404 of the Act. A significant aspect of this proposed standard is the requirement of the independent auditor to attest on two items. The auditor has to evaluate management's assessment process to be satisfied that management has an appropriate basis for its conclusion. Additionally, the auditor must test and evaluate both the design and the operating effectiveness of internal control to be satisfied that management's conclusion is correct and, therefore, fairly stated. The auditor's report on internal control over financial reporting will express two opinions—an opinion on whether management's assessment of the effectiveness of internal control over financial reporting as of the end of the most recent fiscal year is fairly stated, and an opinion on whether the company has maintained effective internal control over financial reporting as of that date.

[1] Release No. 34–49544 (April 8, 2004); 69 FR 20672 (April 16, 2004).

[2] Section 101(a) of the Act.

III. Discussion

The Commission received 31 comment letters in response to its request for comments on Auditing Standard No. 2. The comment letters came from issuers, registered public accounting firms, professional associations and others. In general, issuers expressed opposition to the proposed standard, and accounting firms, professional associations, and others expressed support for the proposed standard. Most commenters, irrespective of affiliation or position on the proposed standard, recommended that the Commission and the PCAOB provide additional guidance with respect to a number of different issues. Several commenters recommended that the Commission limit the scope of management's assessment of the effectiveness of internal control over financial reporting by excluding entities that are consolidated but over which the issuer lacks control.

Issuers and many of the professional associations also expressed concern with the cost of compliance in terms of management time, consultant fees and audit fees. One commenter requested that the PCAOB closely monitor the impact of the proposed standard on small and medium-sized companies. Other requests included clarifying that an adverse internal control report would not of itself result in regulatory action; delaying the effective date of the proposed standard; providing a one-year deferral to issuers that meet the definition of an accelerated filer for the first time in 2004; and deferring the accelerated filing date for Forms 10–K filed for year-end 2004. The PCAOB gave careful consideration to the issues raised by these commenters in the course of revising the proposed standard prior to its adoption by the Board. The resulting standard is a reasonable exercise of the Board's standards-setting authority under the Act.

IV. Conclusion

On the basis of the foregoing, the Commission finds that proposed Auditing Standard No. 2 is consistent with the requirements of the Act and the securities laws and is necessary and appropriate in the public interest and for the protection of investors.

It is therefore ordered, pursuant to Section 107 of the Act and Section 19(b)(2) of the Exchange Act, that proposed Auditing Standard No. 2, *An Audit of Internal Control Over Financial Reporting Performed in Conjunction With an Audit of Financial Statements* (File No. PCAOB–2004–03) be and hereby is approved.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–14233 Filed 6–22–04; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49877; File No. SR–CBOE–2004–05]

Self-Regulatory Organizations; Order Granting Accelerated Approval of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 3 Thereto by the Chicago Board Options Exchange, Inc. Relating to the Relocation of an Entire Trading Station's Securities to Another Trading Station

June 16, 2004.

I. Introduction

On January 28, 2004, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend CBOE Rules 8.84 and 8.95 to transfer the authority to approve the relocation of an entire trading station's securities to another trading station that is operated by the same DPM organization to the MTS Committee from the Allocation Committee. CBOE filed Amendment No. 1 and 2 on March 15, 2004,[3] and May 6, 2004,[4] respectively. The proposed rule change and Amendments Nos. 1 and 2 were published for comment in the **Federal Register** on May 19, 2004.[5] CBOE filed Amendment No. 3 on May 19, 2004.[6] No

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Patrick Sexton, Assistant General Counsel, CBOE, to Christopher Solgan, Attorney, Division of Market Regulation (''Division''), Commission, dated March 12, 2004 (''Amendment No. 1'').

[4] *See* letter from Patrick Sexton, Assistant General Counsel, CBOE, to Christopher Solgan, Attorney, Division, Commission, dated May 5, 2004 (''Amendment No. 2'').

[5] *See* Securities Exchange Act Release No. 49687 (May 12, 2004), 69 FR 28959.

[6] *See* letter from Patrick Sexton, Assistant General Counsel, CBOE, to Christopher Solgan, Attorney, Division, Commission, dated May 18, 2004 (''Amendment No. 3''). In Amendment No. 3, CBOE amended CBOE Rule 8.84 to clarify that the MTS Committee may determine whether to relocate an entire trading station's securities to another trading station that is operated by the same DPM, pursuant to a request from a DPM organization or on the Committee's own initiative. CBOE also requested

comments were received on the proposed rule change and Amendments Nos. 1 and 2. This order approves the proposed rule change and Amendments Nos. 1 and 2 on an accelerated basis and issues notice of filing and approves Amendment No. 3 on an accelerated basis.

II. Description of the Proposal

CBOE proposed to amend CBOE Rules 8.84 and 8.95 to transfer the authority to approve the relocation of an entire trading station's securities to another trading station that is operated by the same DPM organization to the MTS Committee from the Allocation Committee. Specifically, CBOE proposed to add a new interpretation to CBOE Rule 8.84 which states that it shall be the responsibility of the MTS Committee to determine whether to relocate all of the securities traded at a trading station operated by a DPM organization to another trading station operated by the same DPM. Interpretation .01 to CBOE Rule 8.84 also states that in making such a determination, the MTS Committee should evaluate whether the change is in the best interest of the Exchange, and that the Committee may consider any information that it believes will be of assistance to it. Factors to be considered include, but are not limited to, any one or more of the following: Performance, operational capacity of the Exchange or the DPM, efficiency, number and experience of personnel of the DPM who will be performing functions related to the trading of the applicable securities, number of securities involved in the relocation, number of market-makers affected by the relocation of the securities, and trading volume of the securities.

Under Interpretation .01(b) to CBOE Rule 8.84, before the MTS Committee decides whether to relocate all of a trading station's securities pursuant to Interpretation .01(a) to CBOE Rule 8.85, it must notify the DPM organization and trading crowds that may be affected. Interpretation .01(b) also states that the MTS Committee shall convene one or more informal meetings with the affected DPM and trading crowds to discuss the matter, or provide the interested DPM and trading crowds with the opportunity to submit a written statement to the MTS Committee. Under Interpretation .01(a) to CBOE Rule 8.84, the MTS Committee may forego notice to the interested DPM and trading crowds only if expeditious action is required. Expeditious action may be required during unusual circumstances such as, for example, extreme market volatility. Expeditious action may also occur if there is another situation that would similarly require urgent action.

Finally, DPMs and members of the trading crowd retain the right to appeal, if economically aggrieved by a MTS Committee decision under this proposed rule change. The appeal process is also available if the MTS Committee takes expeditious action.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 3, including whether Amendment No. 3 is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2004–05 on the subject line.

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–CBOE–2004–05. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2004–05 and should be submitted on or before July 14, 2004.

IV. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[7] In particular, the Commission believes that the proposed rule change is consistent with section 6(b)(5) of the Act,[8] which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and to protect investors and the public interest. Specifically, the Commission believes it is reasonable to transfer the authority to determine the relocation of all of the securities traded at a particular trading station operated by a DPM organization to another trading station operated by the same DPM organization from the Exchange's Allocation Committee to the MTS Committee. The Commission believes that such determinations are properly within the MTS Committee's authority because they may impact the operational performance and market performance of the DPM.

The Commission believes that the factors to be considered by the MTS Committee in making DPM consolidation decisions, set forth in Interpretation .01(a) to CBOE Rule 8.84, are consistent with the Act. The Commission notes that these factors are intended to relate to, and be more descriptive of, the factors that the Allocation Committee considered in making similar decisions. The Commission believes that the proposed rule change gives the MTS Committee the flexibility to consider the appropriate factors for a determination to consolidate a DPM's trading location and alerts the CBOE membership of the factors that are considered important in making such a determination.

The Commission notes that CBOE has established procedural safeguards for its members. For example, Interpretation .01(a) to CBOE Rule 8.24 requires that the MTS Committee provide notice to the DPM and trading crowds potentially affected by the relocation of securities, and provide them the opportunity to participate in an informal meeting with the MTS Committee or submit a written

that the Commission approve the proposed rule change on an accelerated basis.

[7] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78f(b)(5).

statement concerning the matter. The Commission also notes that any person economically aggrieved by a decision made under Interpretation .01 to CBOE Rule 8.84 has the right to a formal hearing, with the assistance of counsel, before CBOE's Appeals Committee. Moreover, decisions of the Appeals Committee may be appealed to the CBOE's Board of Directors.[9]

The Commission notes that CBOE believes that MTS Committee determinations to consolidate DPM trading locations should have a positive impact on the DPM trading those options classes, the trading crowds, and other market participants. In addition, CBOE has represented that CBOE trading crowd members, including market makers, should continue to be able to move freely among the trading crowds to which they are appointed on the CBOE trading floor. Therefore, members of the trading crowd should continue to be able to trade their assigned option classes even if those options classes are moved to another trading station due to the consolidation of a DPM's options classes.[10] Further, the Commission notes that the trading crowd would retain appeal rights under Chapter XIX of the CBOE Rules if they were economically aggrieved by an MTS Committee decision.

The Commission finds good cause for accelerating approval of the proposed rule change and Amendment Nos. 1, 2, and 3 thereto prior to the thirtieth day after publication in the **Federal Register**. The Commission notes that the proposed rule change and Amendment Nos. 1and 2 thereto were noticed for the full comment period and that no comments were received. The Commission also notes that the amendments merely provided additional description and detail to the proposed rule change. The Commission believes that accelerated approval will permit the MTS Committee to begin to consider pending requests to relocate an entire trading station's securities to another trading station that is operated by the same DPM organization in a timelier manner. For these reasons, the Commission finds good cause exists, consistent with sections 6(b)(5)[11] and 19(b)(2) of the Act,[12] to approve the proposed rule change and Amendment Nos. 1, 2, and 3 thereto on an accelerated basis.

V. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[13] that the proposed rule change (SR–CBOE–2004–05) and Amendment Nos. 1, 2, and 3 thereto are approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–14229 Filed 6–22–04; 8:45 am]

BILLING CODE 8010–01–P

[9] *See* Chapter XIX of the CBOE's Rules.

[10] Specifically, CBOE market makers are able to move freely around the trading floor, if the market makers execute at least 75% of their total contract volume in their appointed classes. *See* Interpretation .03A to CBOE Rule 8.7.

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78s(b)(2).

[13] 15 U.S.C. 78s(b)(2).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49880; File No. SR–CBOE–2004–15]

Self-Regulatory Organizations; Order Granting Approval of a Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Board Options Exchange, Inc. Relating to Automatic Executions for Underlying Specialists

June 17, 2004.

On March 2, 2004, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with Securities and Exchange Commission (''Commission'') the proposed rule change, pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] to amend CBOE Rule 6.13 relating to access to the automatic execution feature of its Hybrid System. On April 28, 2004, the CBOE submitted Amendment No. 1 to the proposed rule change.[3] The proposed rule change, as amended, was published for comment in the **Federal Register** on May 13, 2004.[4] The Commission received no comment letters on the proposal. This order approves the proposed rule change, as amended.

The Exchange currently trades equity options, as well as index and ETF options on the CBOE Hybrid System (''Hybrid'').[5] Hybrid merges the electronic and open outcry trading models, offering CBOE market makers the ability to stream electronically their own market quotes.

CBOE Rule 6.13 governs Hybrid's automatic execution (''auto-ex'') feature. Currently, CBOE Rule 6.13(b)(i)(C)(ii) allows the appropriate floor procedure committee (''FPC'') to determine whether to provide all market makers and specialists, whether on an options or stock exchange, with auto-ex access to CBOE's markets. The Exchange proposes to amend CBOE Rule 6.13 to allow the FPC to provide different levels of auto-ex access to: (i) Options exchange market makers and specialists (collectively, ''options market makers''); and (ii) stock exchange specialists.

The appropriate FPC would have the ability to allow options exchange market makers to have auto-ex access while stock exchange specialists would not have auto-ex access. Alternatively, the appropriate FPC may determine to set the auto-ex eligible order size level higher for options market makers than the corresponding order size level for stock exchange specialists. The proposal applies only to stock exchange specialists with respect to their options transactions in classes overlying stocks in which they are specialists. Further, the Exchange states that proposed CBOE Rule 6.13(b)(i)(C)(ii)(A) and (B) would enable the appropriate FPC to make the access determinations on a class-by-class basis.

Moreover, specialists' orders in their non-specialty stocks would be treated in the same manner as orders of broker-dealers that are not market makers or specialists on an options exchange and thus would be eligible for automatic execution in accordance with CBOE Rule 6.13(b)(i)(C)(i).[6] The proposed rule change would not affect a responsible broker-dealer's firm quote obligations to broker-dealer orders (which includes options market makers and stock specialists), which will remain at one contract. Similarly, the proposal does not affect the auto-ex access currently available to public customer and non-market-maker/specialist broker-dealer

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Steve Youhn, Counsel, CBOE, to Deborah Flynn, Assistant Director, Division of Market Regulation (''Division''), Commission, dated April 27, 2004 (''Amendment No. 1''). Amendment No. 1 clarified the access to the Exchange's automated execution system for stock exchange specialists' orders in options classes overlying stocks in which they are not specialists.

[4] *See* Securities Exchange Act Release No. 49659 (May 6, 2004), 69 FR 26627.

[5] *See* Securities Exchange Act Release Nos. 47959 (May 30, 2003), 68 FR 34441 (June 9, 2003) (''Hybrid Release''), and 48953 (December 18, 2003), 68 FR 75004 (December 29, 2003).

[6] *See* Amendment No. 1, *supra* note 3.

orders, which is governed by CBOE Rule 6.13(b)(i)(C)(i).[7]

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of section 6 of the Act,[8] and the rules and regulations thereunder applicable to a national securities exchange.[9] In particular, the Commission finds that the proposed rule change, which would allow the appropriate FPC to provide different levels of access to auto-ex to options market makers and to stock exchange specialists, is consistent with section 6(b)(5) of the Act,[10] which requires, among other things, that the Exchange's rules be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest.

The Commission believes that providing different levels of access to options market makers and stock specialists is not unreasonable. Specifically, providing no access or less access to stock specialists in stocks in which they are specialists is not inappropriate, given the superior market information available to stock specialists in the stocks in which they act as specialists.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[11] that the proposed rule change (SR–CBOE–2004–15), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–14234 Filed 6–22–04; 8:45 am]

BILLING CODE 8010–01–P

[7] At the request of the Exchange staff, the citation of CBOE Rule 6.13(b)(i)(B)(i) was amended to refer to CBOE Rule 6.13(b)(i)(C)(i). Telephone conversation between Steve Youhn, Counsel, CBOE, and Hong-Anh Tran, Special Counsel, Division, Commission, on April 28, 2004.

[8] 15 U.S.C. 78f.

[9] In approving the proposed rule change, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49853; File No. SR–ISE–2004–15]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the International Securities Exchange, Inc., Relating to Fee Changes

June 14, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 18, 2004, the International Securities Exchange, Inc. (the ''Exchange'' or the ''ISE'') 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 ISE. On June 4, 2004, the ISE submitted Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the amended proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE is proposing to amend its Schedule of Fees to extend waiver reductions on certain fees, and to amend the fee for use of the Facilitation Mechanism. The text of the amended proposed rule change is available at the Commission and the ISE.

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 ISE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Michael Simon, Senior Vice President and General Counsel, ISE, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated June 3, 2004 (''Amendment No. 1''). Amendment No. 1 replaces and supersedes the Exchange's original filing in its entirety. For purposes of calculating the 60-day abrogation period, the Commission considers the period to have commenced on June 4, 2004, the date the ISE filed Amendment No. 1.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to amend the ISE Schedule of Fees as follows, as well as to remove references to fee waivers that have expired:

- *Waiver of Customer Transaction and Comparison Fees:* The Exchange currently waives customer transaction and comparison fees, with such waivers scheduled to expire on June 30, 2004.[4] In order to remain competitive in the market place, the ISE proposes to extend these waivers through June 30, 2005.
- *Waiver of the CLICK Terminal and Session Fees:* ''CLICK'' is the front-end order-entry terminal the ISE provides to members. Currently, the Exchange waives software license and maintenance fees, as well as API/Session fees (based on member log-ins), for a member's second and subsequent CLICK terminals. These waivers also are scheduled to expire on June 30, 2004.[5] The Exchange believes that these waiver programs encourage firms to install and use multiple CLICKs and thus the Exchange proposes to extend these waivers for an additional year through June 30, 2005.
- *Discount on QQQ Fees:* In November of 2003, the ISE instituted a six-month discount program in order to attract order flow in the Nasdaq 100 Tracking Stock (''QQQ''), according to the Exchange, the most actively-traded equity option.[6] The Exchange triggers the discount based on two progressive milestones for firms entering non customer orders (since customer orders already are fee-exempt). Attaining the first milestone, a monthly average daily trading volume (''ADV'') of 8,000, enables the firm to receive a $0.10 reduction in transaction fees for contracts traded above this amount and up to the next target ADV. Surpassing the second milestone, a monthly ADV of 10,000, entitles the market makers to trade all additional volume with no transaction or comparison fee. In order to continue the marketing efforts to attract order flow in the QQQ's, the ISE

[4] *See* Securities Exchange Act Release Nos. 42473 (February 29, 2000), 65 FR 11818 (March 6, 2000), and 48129 (July 3, 2003), 68 FR 41409 (July 11, 2003).

[5] *See* Securities Exchange Act Release Nos. 45840 (April 29, 2002), 67 FR 30408 (May 6, 2002), and 48129 (July 3, 2003), 68 FR 41409 (July 11, 2003).

[6] *See* Securities Exchange Act Release No. 49147 (January 29, 2004), 69 FR 5629 (February 5, 2004).

proposes extending this discount until November 30, 2004.

• *Facilitation Fee:* The Exchange currently charges transaction fees on a sliding scale, depending on the Exchange's overall trading volume. These fees range from $.21 a contract to $.12 a contract.[7] As an alternative, the ISE also imposes a flat $.15 a contract fee for use of the Facilitation Mechanism (when firms provide liquidity for the customers' block-sized orders). The Exchange originally established the $.15 fee to be a discount from the standard transaction fee charge. However, as volume has increased, there are months in which the standard transaction fee is less than the Facilitation fee. Thus, the Exchange proposes to amend the fee schedule to establish the charge for Facilitation trades as the lesser of the prevailing transaction fee or $.15.[8]

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act,[9] in general and Section 6(b)(4) of the Act,[10] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. In particular, the Exchange believes that the amended proposed rule change would generally extend current waivers or otherwise lower fees.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties with respect to the proposed rule change.

[7] The Commission notes that the fee is based on the Exchange's ADV, with the transaction fees decreasing as ADV increases.

[8] The Commission notes that the proposal also removes references in its Schedule of Fees to certain index option fee waivers that have already expired. *See* Exhibit A of the proposed rule change.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing amended proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [11] and Rule 19b–4(f)(2) thereunder,[12] because it changes a fee imposed by the Exchange. At any time within 60 days of the filing of the amended 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 amended proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–ISE–2004–15 on the subject line.

Paper Comments

• Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. All submissions should refer to File Number SR–ISE–2004–15. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of such filing also will be available for inspection and copying at the principal office of the ISE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2004–15 and should be submitted on or before July 14, 2004.

[11] 15 U.S.C. 78s(b)(3)(A)(ii).

[12] 17 CFR 240.19b–4(f)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–14141 Filed 6–22–04; 8:45 am]

BILLING CODE 8010–01–P

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49854; File No. SR–NASD–2004–057]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the National Association of Securities Dealers, Inc. Relating to Proposed Amendments To Reduce the Reporting Period for Transactions in TRACE-Eligible Securities

June 14, 2004.

On April 1, 2004, the National Association of Securities Dealers, Inc. (''NASD'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Rule 6230(a) to reduce the period to report a transaction in a TRACE-eligible debt security in two stages: (i) From 45 to 30 minutes in stage one (''Stage One''), and (ii) subsequently, from 30 to 15 minutes in stage two (''Stage Two''). Rule 6230 is one of the Trade Reporting and Compliance Engine (''TRACE'') rules. On April 16, 2004, NASD filed Amendment No. 1 to the proposed rule change.[3] On April 22, 2004, NASD filed Amendment No. 2 to the proposed rule

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Sharon K. Zackula, Assistant General Counsel, NASD, to Katherine A. England, Assistant Director, Division of Market Regulation, SEC, dated April 16, 2004 (''Amendment No. 1''). Amendment No. 1 clarifies the effective dates that NASD will establish for the proposed rule change upon approval by the Commission.

change.[4] Notice of the proposed rule change and Amendment Nos. 1 and 2 thereto were published for comment in the **Federal Register** on April 29, 2004.[5]

The Commission received two comment letters regarding the proposal.[6] On June 2, 2004, NASD filed a response to the comment letters.[7] This order approves the proposed rule change.

After careful consideration, the Commission finds that the proposed rule change, as amended, is consistent with the Act and the rules and regulations promulgated thereunder applicable to a registered securities association and, in particular, with the provisions of Section 15A(b)(6) of the Act[8], which requires, among other things, that NASD's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.[9] The Commission believes that the proposed rule change, as amended, will provide NASD, as the self-regulatory organization for the over-the-counter markets, with appropriate capabilities to regulate and provide surveillance of the over-the-counter debt securities market to prevent fraudulent and manipulative acts and practices, and will improve transparency for the benefit of investors by reducing the period between the time of execution of a transaction and the dissemination of transaction information for securities subject to dissemination in furtherance of the public interest and for the protection of investors.

Both commenters on the proposal opposed any further reduction of the period to report a transaction in a TRACE-eligible debt security. Mr. Seifer's Letter expressed concern that decreasing the reporting period would leave a reporting window insufficient to allow the proper reporting of TRACE-eligible securities and would create a market environment where the immediate needs of a customer would have to be put on hold to comply with the requirements of TRACE reporting. Mr. Schlesinger's Letter stated that the mechanics of the corporate bond marketplace and the equity marketplace are distinctly different, and that reducing the reporting time of trades on TRACE to what is appropriate for an equity trade on Nasdaq is mistaken.

NASD's Response Letter states that current reporting statistics support its position that member firms have taken, and continue to take, the steps necessary to meet the proposed TRACE requirement of 30-minute, and subsequently, 15-minute reporting. NASD stated that during the first four months of 2004, approximately 84 percent of all transactions in TRACE-eligible securities were reported within 30 minutes, and approximately 73 percent of all TRACE-eligible securities transactions were reported within 15 minutes, although a 45-minute reporting period was in effect. NASD further stated that both NASD and the SEC have provided notice over a period of years that 15-minute TRACE reporting was a regulatory goal, pointed out that NASD is proposing a two-stage process to allow firms to implement the measures necessary to comply with 15-minute reporting, and stated that NASD consulted extensively with member firms and industry associations in developing this two-stage process. In response to the concern that NASD is trying to reduce the TRACE reporting period to one that is feasible for equity securities, NASD noted that the current reporting requirement for equity securities is 90 seconds, a significant difference from the current proposal to reduce the reporting period to 30 minutes, and later, to 15 minutes.

Both commenters stated that reducing the TRACE reporting period would increase members' costs of trading TRACE-eligible securities. Mr. Seifer's Letter stated that TRACE has added layers of expense for both clearing and non-clearing firms by expanding the need for additional personnel and imposing fines against brokers for late TRACE reporting. Mr. Schlesinger's Letter stated that his firm would incur significant costs in technology and personnel in order to be compliant with the reduced reporting period.

NASD's Response Letter states that the two-stage process is being used to minimize the impact to firms as they make any necessary changes, including the costs of such changes. By extending the period over which the TRACE reporting period will be reduced, NASD stated that it believes that firms should be able to prepare more efficiently to make the changes needed to achieve 15-minute reporting.

NASD's Response Letter respectfully disagreed with Mr. Seifert's comment that TRACE does not provide transparency for the general public. NASD stated that public investors and other market participants have been provided increased transparency in the corporate bond markets as a direct result of TRACE. NASD stated that transaction information currently is publicly disseminated on approximately 70 percent of the total par value traded in investment-grade TRACE-eligible securities. NASD further stated that members of the public may access last sale pricing at no cost in these debt securities at NASD's Web site, *http://www.nasdbondinfo.com*, or at other Web sites, such as that of The Bond Market Association (*http://www.investinginbonds.com*). Pricing information on these Web sites is delayed at least four hours. Information on certain actively traded bonds is also published daily in *The Wall Street Journal*. Members of the public seeking more immediate access to transaction data may contract to receive disseminated transaction data from commercial vendors. NASD also stated that it expects transaction information to be more widely available in the future.

In addition, Mr. Schlesinger's Letter expressed concern that the ''time of execution'' for a transaction in a TRACE-eligible security within the meaning of NASD Rule 6210(a) is not clear. Mr. Schlesinger stated that ''a meeting of the minds'' evidencing an executed transaction does not occur ''until a report is given and accepted.'' NASD's Response Letter states that NASD believes that this is an inaccurate description of an execution, and notes that executing a transaction precedes the steps described by Mr. Schlesinger, which are those generally taken to confirm a trade previously executed.

In addition, Mr. Seifer recommended that TRACE be funded as part of the NASD annual assessment for each member firm and Mr. Schlesinger stated that the reporting of agency transactions as if they were principal transactions can be confusing and cumbersome. This proposed rule change, as amended, does not address those issues.

[4] *See* letter from Sharon K. Zackula, Assistant General Counsel, NASD, to Katherine A. England, Assistant Director, Division of Market Regulation, SEC, dated April 22, 2004 (''Amendment No. 2''). Amendment No. 2 amends the discussion of industry and regulatory trends in the securities industry favoring more ''real-time'' reporting and ''real-time'' transmission of transaction information for clearance and settlement.

[5] Securities Exchange Act Release No. 49607 (April 23, 2004), 69 FR 23549.

[6] *See* e-mail letter from Richard F. Seifer, President and C.E.O., Bernard, Richards Securities Inc., to *rule-comments@sec.gov* dated May 10, 2004 (''Mr. Seifer's Letter''), and e-mail letter from Alan H. Schlesinger, Sage Securities Corp., to *rule-comments@sec.gov* dated May 20, 2004 (''Mr. Schlesinger's Letter'').

[7] *See* letter from Sharon K. Zackula, Associate General Counsel, Regulatory Policy and Oversight, Office of General Counsel, NASD, to Katherine A. England, Assistant Director, Division of Market Regulation, SEC, dated June 2, 2004 (''NASD's Response Letter'').

[8] 15 U.S.C. 78o–3(b)(6).

[9] In approving this proposed rule change, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

After careful consideration, the Commission believes that NASD's reduction in the reporting period for transactions in TRACE-eligible securities will enable it to implement TRACE more effectively, thus enhancing investor protection by improving the immediacy of information reported to TRACE for both regulatory and transparency purposes. For the reasons discussed above, the Commission finds that the amended proposal is consistent with the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change, as amended, (SR–NASD–2004–057), be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–14140 Filed 6–22–04; 8:45 am]

BILLING CODE 8010–01–P

[10] *Id.*

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49875; File No. SR–NASD–2004–001]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Arbitrator Training Fees

June 16, 2004.

I. Introduction

On January 7, 2004, the National Association of Securities Dealers, Inc. (''NASD''), through its wholly owned subsidiary, NASD Dispute Resolution, filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to revise the fees that are charged to its panel member arbitrators. On April 2, 2004, NASD filed Amendment No. 1 to the proposed rule change.[3] Notice of the proposed rule change, as amended, was published for comment in the **Federal Register** on May 14, 2004.[4] No comments were received on the proposed rule change. This order approves the proposed rule change.

II. Description of Proposed Rule Change

The proposed rule change would amend the fees that are charged to its panel member arbitrators. Specifically, the proposal would raise the fee for panel member training from $100 to $125 for all applicants who register for the training after the proposed rule change becomes effective.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[5] Specifically, the Commission believes that the increased fee that NASD proposes to charge for arbitrator training is consistent with Sections 15A(b)(5) and 15A(b)(6) of the Act. Section 15A(b)(5) requires that the rules of a registered national securities association provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which the association operates or controls. Section 15A(b)(6) requires, among other things, that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[6] that the proposed rule change (SR–NASD–2004–001) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–14146 Filed 6–22–04; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Mignon McLemore, NASD, to Katherine England, Assistant Director, Division of Market Regulation, Commission, dated April 2, 2004.

[4] *See* Securities Exchange Act Release No. 49674 (May 10, 2004), 69 FR 26909.

[5] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78s(b)(2).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49876; File No. SR–NASD–2004–016]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Implementation of a Web-based Arbitration Claim Notification and Filing Procedure

June 16, 2004.

I. Introduction

On January 29, 2004, the National Association of Securities Dealers, Inc. (''NASD'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change amending NASD Rule 10314(a) to allow parties to complete part of the arbitration claim filing process through the Internet. On February 25, 2004, NASD filed Amendment No. 1 to the proposed rule change.[3] On April 16, 2004, NASD filed Amendment No. 2 to the proposed rule change.[4] Notice of the proposed rule change, as amended, was published for comment in the **Federal Register** on May 14, 2004.[5] No comments were received on the proposed rule change. This order approves the proposed rule change.

II. Description of Proposed Rule Change

Currently, to file an arbitration claim, NASD requests that the party voluntarily complete and remit, along with other documents, a Claim Information Sheet containing data about the claim and the parties. Upon receipt, NASD staff manually enters the claim data into its CRAFTIS computer system.[6]

The proposed rule change would permit, but not require, a claimant to file an arbitration claim by completing an online version of the Claim Information Form. The online version of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Mignon McLemore, Counsel, NASD, to Katherine England, Assistant Director, Division of Market Regulation, Commission, dated February 24, 2004.

[4] *See* letter from Mignon McLemore, Counsel, NASD, to Katherine England, Assistant Director, Division of Market Regulation, Commission, dated April 16, 2004.

[5] *See* Securities Exchange Act Release No. 49673 (May 10, 2004), 69 FR 26910.

[6] CRAFTIS is the legacy software application that NASD Dispute Resolution uses to support its case administration function. It uses a non-Web-based technology platform.

the Claim Information Form would gather information similar to the paper Claim Information Sheet currently in use. Once the claimant has completed the Claim Information Form, the system would generate a Tracking Form that summarizes the claimant's entries for review and provides a tracking number for the claim. The claimant would then file a copy of the Tracking Form, the Statement of Claim (if it has not been submitted electronically with the Claim Information Form), an executed Uniform Submission Agreement, and the filing fee and hearing session deposit through the mail, as is the current practice.

Using the tracking number, NASD staff could locate the claimant's data, verify it, and then upload it into CRAFTIS. NASD staff would be able to analyze the claimant's file without having to manually input the data into CRAFTIS.

III. Discussion

For the following reasons, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[7] Specifically, the Commission believes that the proposed rule change is consistent with Section 15A(b)(6) of the Act, which requires, among other things, that NASD's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The Commission believes that the proposed rule change should enhance the efficiency of the NASD arbitration forum by providing a mechanism to process new claims expeditiously. The proposed implementation of the voluntary online claim notification procedure should expedite the case intake process, reduce manual data entry, and provide for more efficient claims intake and administration. Moreover, the implementation of a Web-based arbitration claim notification and filing system should streamline the claim filing process and provide global access to potential filers.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (SR–NASD–2004–016) be, and hereby is, approved.

[7] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–14147 Filed 6–22–04; 8:45 am]

BILLING CODE 8010–01–P

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49872; File No. SR–NASD–2004–075]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto to Eliminate Certain Transaction Charges for ITS Securities

June 16, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 29, 2004, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. Nasdaq has filed this proposed rule change pursuant to section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. On June 4, 2004, Nasdaq filed Amendment No. 1 to the proposed rule change.[5] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to amend NASD Rule 7010(d)(2) (''Computer Assisted Execution Service'') to eliminate certain transaction charges for the use of SuperMontage to trade Intermarket Trading System (''ITS'') securities.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 C.F.R. 240.19b–4(f)(2).

[5] *See* letter from Mary M. Dunbar, Vice President and Deputy General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated June 3, 2004. Amendment No. 1 clarifies the proposed rule text and replaces the proposed rule change in its entirety.

Nasdaq will implement the proposed rule change on May 3, 2004.

The text of the proposed rule change appears below. New language is in italics.

* * * * *

7010. System Services

(a) through (c) No change.

(d) Computer Assisted Execution Service

The charges to be paid by members receiving the Computer Assisted Execution Service (CAES) shall consist of a fixed service charge and a per transaction charge plus equipment related charges.

(1) No change.

(2) Transaction Charges and Credits

(A) No change.

(B) No change.

(C) There shall be no charge for an order entered by a member that accesses its own Quote/Order submitted under the same or a different market participant identifier of the member.

(e) through (u) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Commission recently approved Nasdaq's proposal to replace the Computer Assisted Execution System (''CAES'') with SuperMontage for the trading of all ITS securities.[6] The purpose of this proposed rule change is to modify certain transaction charges under NASD Rule 7010(d) for the trading of ITS securities to conform with similar transaction charges under NASD Rule 7010(i) for Nasdaq-listed securities. Currently, under NASD Rule 7010(d)(2)(B), Nasdaq charges for orders to buy or sell ITS securities not listed on the New York Stock Exchange.

[6] *See* Securities Exchange Act Release No. 49349 (March 2, 2004), 69 FR 10775 (March 8, 2004).

Nasdaq charges a per share fee based on the average daily share volume executed in CAES or through the ITS/CAES linkage during a month. The fees are as follows: (1) $0.0027 per share if the average daily share volume is 0 to 499,999; and (2) $0.0025 per share if the average daily share volume is 500,000 or more. Under the current rule, these fees are subject to a maximum charge of $75 per execution. Nasdaq is proposing to eliminate these transaction charges for orders entered by a member that accesses its own Quote/Order submitted under the same or a different market participant identifier of the member for the trading of all ITS securities. Nasdaq believes that the proposed rule change reflects more accurately the existing market price levels for similar services, and, as such, will result in a more equitable allocation among members of the charges associated with the trading of ITS securities. Nasdaq also expects that the proposal will encourage greater use of SuperMontage for trading ITS securities, thereby contributing to greater competition among the available venues for executions of orders for ITS securities.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A of the Act,[7] in general, and with section 15A(b)(5) of the Act,[8] which requires that the rules of the NASD provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls. Nasdaq believes that it has proposed a pricing structure that is responsive to market demands. In addition, Nasdaq believes that the proposed rule change supports the efficient use of existing systems and ensures that the charges associated with such use are allocated equitably.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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.

[7] 15 U.S.C. 78*o*–3.

[8] 15 U.S.C. 78*o*–3(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act[9] and Rule 19b–4(f)(2) thereunder,[10] because it establishes or changes a due, fee, or other charge imposed by the Association. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that 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.[11]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

• Use the Commission's Internet comment for (*http://www.sec.gov/rules/sro.shtml*); or

• Send an e-mail to rule-comments@sec.gov. Please include File Number SR–NASD–2004–075 on the subject line.

Paper comments:

• Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. All submissions should refer to File Number SR–NASD–2004–075. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASD–2004–075 and should be submitted on or before July 14, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–14228 Filed 6–22–04; 8:45 am]

BILLING CODE 8010–01–P

[9] 15 U.S.C. 78s(b)(3)(a)(ii).

[10] 17 CFR 240.19b–4(f)(2).

[11] For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under section 19(b)(3)(C) of the Act, the Commission considers that period to commence on June 4, 2004, the date Nasdaq submitted Amendment No. 1. *See* 15 U.S.C. 78s(b)(3)(C).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49883; File No. SR–NASD–2002–162]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendments No. 1 and 2 by National Association of Securities Dealers, Inc. Relating to Internal Controls and Supervisory Control Amendments and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 3.

June 17, 2004.

I. Introduction

On November 4, 2002, the National Association of Securities Dealers, Inc. (''NASD'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change relating to the establishment, maintenance, and testing of internal controls and supervision of NASD members. The proposed rule change was published for comment in the **Federal Register** on November 27, 2002.[3] The Commission received 72 comment letters in response to proposed

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 46859 (November 20, 2002), 67 FR 70990 (November 27, 2002). On December 18, 2002, the Commission extended the 21-day comment period for an additional 30 days. *See* Securities Exchange Act Release No. 47021, 67 FR 78840 (December 26, 2002).

rule change.[4] In response, on August 5, 2003, the NASD filed Amendment No. 1 to the proposed rule change. On August 7, 2003, the NASD filed Amendment No. 2 to the proposed rule

[4] *See* Letters from Robert J. Schoen, President, Quest Securities, Inc., to Jonathan G. Katz, Secretary, Commission, dated November 22, 2002 (''Quest Letter''); William L. Sabol, President, Mutual Securities, Inc., to Jonathan G. Katz, Secretary, Commission, dated November 26, 2002 (''Mutual Securities Letter''); Keo Sheng Lin, President, Kyson & Co., to Jonathan G. Katz, Secretary, Commission, dated November 25, 2002 (''Kyson Letter''); Hsiao-wen Kao, President, Monitor Capital Inc., to Jonathan G. Katz, Secretary, Commission, dated November 25, 2002 (''Monitor Letter''); M. Shawn Dreffin, President, National Planning Corporation, to Jonathan G. Katz, Secretary, Commission, dated December 2, 2002 (''National Planning Letter''); William Partin, President, Duerr Financial Corporation, to Jonathan G. Katz, Secretary, Commission, dated November 27, 2002 (''Duerr Letter''); Stanley C. Brooks, President and Chief Executive Officer, Brookstreet Securities Corporation, to Jonathan G. Katz, Secretary, Commission, dated December 4, 2003 (''Brookstreet Letter''); Thomas H. Oliver, President and Chief Executive Officer, United Planners' Financial Services of America, to Jonathan G. Katz, Secretary, Commission, dated December 13, 2002 (''United Planners' Letter''); Kevin P. Maas, Vice President and Director of Compliance, PrimeVest Financial Services, Inc., to Jonathan G. Katz, Secretary, Commission, received December 18, 2002 (''PrimeVest Letter''); R. Jack Conley, President and Chief Executive Officer, Vestax Securities Corporation, to Jonathan G. Katz, Secretary, Commission, dated December 17, 2002 (''Vestex Letter''); David R. Wickersham, President and Z. Jane Riley, Compliance Officer, The Leaders Group, Inc., to Jonathan G. Katz, Secretary, Commission, dated December 13, 2002 (''Leaders Letter''); Jacqueline C. Conley, Vice President, Compliance, Locust Street Securities, Inc., to Jonathan G. Katz, Secretary, Commission, dated December 13, 2002 (''Locust Letter''); John L. Dixon, President, Pacific Select Distributors, to Jonathan G. Katz, Secretary, Commission, dated December 13, 2002 (''Pacific Select Letter''); Paul M. Phalen, Assistant Vice President, Variable Product Services, Midland National Life Insurance Company, to Jonathan G. Katz, Secretary, Commission, dated December 17, 2002 (''Midland Letter''); Peter T. Wheeler, President, Commonwealth Financial Network, to Jonathan G. Katz, Secretary, Commission, dated December 17, 2002 (''Commonwealth Letter''); Nina S. McKenna, Sonnenschein, to Jonathan G. Katz, Secretary, Commission, dated December 17, 2002 (''Sonnenschein Letter''); Robert Watts, John Hancock, Financial Services, Inc., to Jonathan G. Katz, Secretary, Commission, dated December 17, 2002 and January 16, 2003 (''John Hancock Letter''); Michael L. Kerley, Vice President and Chief Legal Officer, MML Investors Services, Inc., to Jonathan G. Katz, Secretary, Commission, dated December 17, 2002 (''MML Letter''); Tom K. Rippberger, Vice President and Chief Compliance Officer, Washington Square Securities, Inc., to Jonathan G. Katz, Secretary, Commission, received December 17, 2003 (''Washington Square Letter''); Patrick H. McEvoy, President and Chief Executive Officer, Multi-Financial Securities Corporation, to Jonathan G. Katz, Secretary, Commission, dated December 16, 2002 (''Multi-Financial Letter''); Bryan R. Hill, President, Securities America, to Jonathan G. Katz, Secretary, Commission, dated December 16, 2002 (''Securities America Letter''); Neal E. Nakagiri, President and Chief Executive Officer, Associated Securities Corp., to Jonathan G. Katz, Secretary, Commission, dated December 19, 2002 (''ASC Letter''); R. Jack Conley, President and Chief Executive Officer, IFG Network Securities, Inc., to Jonathan G. Katz, Secretary, Commission, dated December 18, 2002 (''IFG Letter''); Michael D. Burns, Chief Compliance Officer, USAllianz Securities, Inc., to Jonathan G. Katz, Secretary, Commission, dated December 16, 2002 (''USAllianz Letter''); Greg Gunderson, President, Investment Centers of America, Inc., to Jonathan G. Katz, Secretary, Commission, dated December 16, 2002 (''Investment Centers Letter''); Sandy Brown, President and Chief Operating Officer, TransAmerica Financial Advisors, to Jonathan G. Katz, Secretary, Commission, dated December 16, 2002 (''TransAmerica Letter''); Jack R. Handy, Jr., President, Financial Network Investment Corporation, to Jonathan G. Katz, Secretary, Commission, dated December 13, 2002 (''Financial Network Letter''); Julius J. Anderson, Vice President, David M. Hoff, President and Zeonia Christy, Compliance Officer, First Heartland Capital, to Jonathan G. Katz, Secretary, Commission, dated December 27, 2002 (''First Heartland Letter''); David W. Schofield, Director of Operations and Compliance, FMN Capital Corporation, to Jonathan G. Katz, Secretary, Commission, dated December 18, 2002 (''FMN Letter''); Arthur F. Grant, President, Cadaret, Grant & Co., Inc., to Jonathan G. Katz, Secretary, Commission, dated December 17, 2002 (''Cadaret Grant Letter''); Charles Mazziotti, President, 21st Century Financial Services, Inc., to Jonathan G. Katz, Secretary, Commission, dated December 17, 2002 (''21st Century Letter''); J. Kemp Richardson, President, J.K.R. & Co., Inc., to Jonathan G. Katz, Secretary, Commission, dated December 10, 2002 (''J.K.R. Letter''); Dominick Del Duca, Chief Compliance Officer, ING FNC, to Jonathan G. Katz, Secretary, Commission, dated December 12, 2002 (''ING Letter''); Robert L. Hamman, President, Iron Street Securities, Inc., to Jonathan G. Katz, Secretary, Commission, dated December 24, 2002 (''Iron Street Letter''); Christopher R. Franke, Chairman, Self-Regulation and Supervisory Practices Committee, Securities Industry Association, to Jonathan G. Katz, Secretary, Commission, dated December 18, 2002 (''SIA Letter 1''); Lynn R. Niedermeier, President and Chief Executive Officer, INVEST Financial Corporation, to Jonathan G. Katz, Secretary, Commission, dated December 17, 2002 (''INVEST Letter''); Steven J. Svoboda, President, Eagle One Investments, LLC, to Jonathan G. Katz, Secretary, Commission, dated December 16, 2002 (''Eagle One Letter''); Stephen Batman, Chief Executive Officer, 1st Global, Inc., to Jonathan G. Katz, Secretary, Commission, dated December 18, 2002 (''1st Global Letter''); Thomas A. Hopkins, Chairman, Waterstone Financial Group, Inc., to Jonathan G. Katz, Secretary, Commission, dated December 16, 2002 (''Waterstone Letter''); David L. Meckenstock, Vice President and Chief Compliance Officer, Main Street Securities, LLC, to Jonathan G. Katz, Secretary, Commission, dated December 13, 2002 (''Main Street Letter''); Leesa M. Easley, Chief Legal Officer, World Group Securities, Inc., to Jonathan G. Katz, Secretary, Commission, dated December 19, 2002 (''World Group Letter''); Andrew J. Powers, President and Chief Compliance Officer, Re-Direct Securities Corporation, to Jonathan G. Katz, Secretary, Commission, dated December 13, 2002 (''RDS''); Dennis S. Kaminisi, Executive Vice President and Chief Administrative Officer, Mutual Service Corporation, to Jonathan G. Katz, Secretary, Commission, dated December 18, 2002 (''MSC Letter''); Roger W. Raber, President and Chief Executive Officer, National Association of Corporate Directors, to Jonathan G. Katz, Secretary, Commission, dated December 4, 2002 (''NACD Letter''); Rod J. Michel, President, World Trade Financial Corporation, to Jonathan G. Katz, Secretary, Commission, dated December 31, 2002 (''WORL Letter''); Brian C. Underwood, Senior Vice President and Director of Compliance, A.G. Edwards & Sons, Inc., to Jonathan G. Katz, Secretary, Commission, dated December 18, 2002 (''A.G. Edwards Letter''); Joan Hinchman, Executive Director, President and Chief Executive Officer, National Society of Compliance Professionals Inc., to Jonathan G. Katz, Secretary, Commission, dated January 8, 2003 (''NSCP Letter''); Minoo Spellerberg, Compliance Officer, Princor Financial Services Corporation, to Jonathan G. Katz, Secretary, Commission, dated December 16, 2002 (''Princor Letter''); Philip A. Pizelo, President, Pacific West Securities, Inc., to Jonathan G. Katz, Secretary, Commission, dated January 14, 2003 (''Pacific West Letter''); Terry L. Lister, General Counsel, Cambridge Investment Research, Inc., to Jonathan G. Katz, Secretary, Commission, dated December 20, 2002 (''Cambridge Letter''); Malcolm A. Morrison, President, Wharton Equity Corporation, to Jonathan G. Katz, Secretary, Commission, dated January 10, 2003 (''Wharton Letter''); John T. Treece, President, Liberty Life Securities LLC, to Jonathan G. Katz, Secretary, Commission, dated January 15, 2003 (''Liberty Life Letter''); Beth E. Weimer, Vice President and Chief Compliance Officer, American Express Financial Advisors Inc., to Jonathan G. Katz, Secretary, Commission, dated January 17, 2003 (''AEFA Letter''); James F. McGuire, Senior Vice President and Chief Compliance Officer, Linsco/Private Ledger, Corp, to Jonathan G. Katz, Secretary, Commission, dated January 16, 2003 (''LPL Letter''); Beverly A. Byrne, Secretary, BenefitsCorp Equities, Inc., to Jonathan G. Katz, Secretary, Commission, dated December 18, 2002 (''BenefitsCorp Letter''); Michael G. Brennan, Associate Counsel and Assistant Secretary, Woodbury Financial Services, Inc., to Jonathan G. Katz, Secretary, Commission, dated December 18, 2002 (''Woodbury Letter''); Craig Junkins, President and Chief Executive Officer, FFP Securities, to Jonathan G. Katz, Secretary, Commission, dated December 24, 2002 (''FFP Letter''); John M. Lefferts, President, AXA Advisors, LLC, to Jonathan G. Katz, Secretary, Commission, dated December 18, 2002 (''AXA Letter''); Charles Lesko, Jr., President, Lesko Securities, Inc., to Jonathan G. Katz, Secretary, Commission, dated December 24, 2002 (''Lesko Letter''); Marcia L. Martin, President, CUNA Brokerage Services, Inc., to Jonathan G. Katz, Secretary, Commission, dated December 24, 2002 (''CUNA Letter''); Robert M. Roth, President, MWA Financial Services, Inc., to Jonathan G. Katz, Secretary, Commission, dated December 24, 2002 (''MWAFS Letter''); Gregory D. Teese, Vice President, Compliance, Equity Services, Inc., to Jonathan G. Katz, Secretary, Commission, dated December 18, 2002 (''Equity Services Letter''); Selwyn J. Notelovitz, Senior Vice President, Global Compliance, Charles Schwab & Co., Inc., to Jonathan G. Katz, Secretary, Commission, dated February 25, 2003 (''Schwab Letter''); Kevin Ballou, President, Clark/Bardes Financial Services, Inc., to Jonathan G. Katz, Secretary, Commission, dated March 17, 2003 (''CBFS Letter''); Victoria Bach-Fink, Executive Vice President, Wall Street Financial Group, to Jonathan G. Katz, Secretary, Commission, dated December 18, 2002 (''Wall Street Letter''); Sandra T. Masek, Executive Vice President and Chief Compliance Officer, Rhodes Securities, Inc., to Jonathan G. Katz, Secretary, Commission, dated December 18, 2002 (''Rhodes Securities Letter''); Bridget M. Gaughan, Executive Vice President, Chief Legal and Regulatory Counsel, AIG Advisory Group, Inc., to Jonathan G. Katz, Secretary, Commission, dated January 2, 2003 (''AIG Letter''); Adam Antoniades, President and Chief Operating Officer, First Allied Securities, Inc. (''First Allied Letter'') to Jonathan G. Katz, Secretary, Commission, dated December 19, 2002; Martin Cohen, President, Balanced Financial Securities, to Jonathan G. Katz, Secretary, Commission, dated June 14, 2003 (''Balanced Financial Letter''); and Scott Lynn Fagin, Chief Operating Officer and Chief Financial Officer, The Jeffrey Matthews Financial Group, LLC, to Jonathan G. Katz, Secretary, Commission, dated July 31, 2003 (''Jeffrey Matthews Letter'').

change. On August 13, 2003, Amendments No. 1 and 2 were published for comment in **Federal Register**.[5] The Commission received 14 comments letters in response to these Amendments.[6] On December 17, 2003, NASD submitted Amendment No. 3 to the proposed rule change.[7] This Order approves the proposed rule, as amended, and accelerates approval of Amendment No. 3.

II. Description

A. Background

1. Purpose for and General Description of Proposal

The NASD's proposed rule change is designed to address concerns regarding its members' supervisory systems. Many of these concerns were brought to light following an investigation by the Commission into the activities of a branch office manager, Frank Gruttadauria.[8] Over a period of 15 years, Mr. Gruttadauria misappropriated over $100 million from more than 40 clients. Mr. Gruttadauria was able to cover up his fraud by, among other things, providing clients with falsified account statements, and by causing the actual brokerage statements for some clients to be mailed, without the knowledge or authorization of these clients, to entities or post offices boxes under his control.

In an effort to ensure that members are more effectively supervised going forward, the NASD has proposed a new rule and amendments to existing rules to strengthen members' supervisory procedures and internal controls. Proposed new NASD Rule 3012 sets forth detailed requirements for members' supervisory control systems, while amendments to certain other rules complement that effort.

2. General Comments on the Proposed Rule Change

Several commenters stated that the effective enforcement of existing supervisory rules should be sufficient to protect investors.[9] These commenters frequently added that they viewed the proposed rules as an overreaction to the Gruttadauria case. The commenters stated that the Gruttadauria case was not a result of inadequate supervisory systems but, instead, was a case of a single individual intent on defrauding customers.[10]

In Amendment No. 1, NASD responded that it understood the concern that regulators not overreact to one case of violative conduct, but stated that it did not view the proposed rule change as a reaction to any particular legal or regulatory event. Rather, NASD stated that the proposed rule change is designed to enhance the current rules and examination efforts by specifically requiring members to establish adequate supervisory control systems.

Many commenters also suggested that implementing the proposed rule change would require firms to hire a large number of additional personnel to conduct the supervisory activities required by the proposed rules, thereby placing a significant financial burden on firms.[11] Some commenters believed that this cost could destroy the business model of independent contractors located in small branch offices.[12] Two commenters suggested that the proposed rule change be adopted in the form of ''principles for effective supervision'' or ''best practices'' that could be tailored to various business models rather than rules that would apply to all firms.[13]

In Amendment No. 1, NASD stated that it disagreed with the suggestion that the proposed rule change should be adopted in the form of ''principles'' or ''best practices.'' NASD stated that it believes that the degree of authority carried by the proposed rules is necessary to effectively induce appropriate conduct. However, as discussed in detail below, NASD amended its proposed rules to allow greater flexibility in certain respects, such as, to account for variations in members' business models.

B. Discretionary Accounts (NASD Rule 2510)

1. Original Proposal and Comments Received

[5] *See* Securities Exchange Act Release No. 48298 (August 7, 2003), 68 FR 48421. On September 8, 2003, the Commission extended the 21-day comment period for an additional 30 days. *See* Securities Exchange Act Release No. 48460, 68 FR 54034 (September 15, 2003).

[6] *See* Letters from Carl B. Wilkerson, Chief Counsel, Securities and Litigation, American Counsel of Life Insurers, to Jonathan G. Katz, Secretary, Commission dated September 3, 2003 and October 3, 2003 (''ACLI Letters''); Neal E. Nakagiri, President and CEO, Associated Securities Corp., to Jonathan G. Katz, Secretary, Commission dated October 2, 2003 (''ASC Letter-2''); Pamela K. Cavness, Director of Compliance, Edward D. Jones and Co., LP, to Jonathan G. Katz, Secretary, Commission dated October 2, 2003 (''Edward Jones Letter''); Robert S. Rosenthal, Second Vice President and Associate General Counsel, Mass Mutual Financial Group, to Jonathan G. Katz, Secretary, Commission dated August 29, 2003 (''Mass Mutual Letter-2''); Dennis S. Kaminski, EVP/CAO, Mutual Service Corp., to Jonathan G. Katz, Secretary, Commission dated October 3, 2003 (''MSC Letter-2''); Barbara Black, Director, Pace University School of Law, to Jonathan G. Katz, Secretary, Commission dated October 2, 2003; S. Kendrick Dunn, Assistant Vice President, Pacific Select Distributors, to Jonathan G. Katz, Secretary, Commission dated October 3, 2003 (''Pacific Select Letter-2''); John Polanin, Jr., Chairman, Self-Regulation and Supervisory Practices Commission, Securities Industry Association, to Jonathan G. Katz, Secretary, Commission dated October 3, 2003 (''SIA Letter-2''); Terry Lister, Of Counsel, Sonnenschein, Nath & Rosenthal, LLP, to Jonathan G. Katz, Secretary, Commission dated September 30, 2003 (''Sonnenschein Letter-2''); Julie Gebert, Vice President and Director of Compliance, United Planners Financial Services of America, to Jonathan G. Katz, Secretary, Commission dated October 3, 2003 (''United Planners Letter-2''); Ralph A. Lambiase, President and Director, Connecticut Division of Securities, North American Securities Administrators Association, Inc., to Jonathan G. Katz, Secretary, Commission dated October 24, 2003 (''NASAA Letter''); Lisa Roth, President, Monahan & Roth, to Jonathan G. Katz, Secretary, Commission, dated October 30, 2003 (''M&R Letter''); and Donald Gloisten, President, GBS Financial Corporation, to Jonathan G. Katz, Secretary, Commission dated January 15, 2004. The Commission notes that the letter from Edward Jones primarily sought interpretative guidance on application of the proposed rule from the NASD. These requests are not reflected as part of the summary of comments.

[7] *See* letter from Patricia Albrecht, Assistant General Counsel, NASD to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated December 16, 2003 (''Amendment No. 3'').

[8] *See In the Matter of SG Cowen Securities Corporation*, 80 SEC Docket 3154 (September 9, 2003), Securities Exchange Act Release No. 48335 (August 14, 2003) Administrative Proceeding File No. 3–11216. *See also In the Matter of Lehman Brothers, Inc.*, 80 SEC Docket 3173 (September 9, 2003), Securities Exchange Act Release No. 48336 (August 14, 2003) Administrative Proceeding File No. 3–11217.

[9] *See* 1st Global Letter; AIG Letter; Cambridge Letter; Schwab Letter; CBFS Letter; Commonwealth Letter; CUNA Letter; FFP Letter; First Allied Letter; INVEST Letter; Investment Centers Letter; Lesko Letter; MSC Letter; MWAFS Letter; Princor Letter; Rhodes Securities Letter; Securities America Letter; SIA Letter; TransAmerica Letter; United Planners' Letter; USAllianz Letter; Waterstone Letter; and World Group Letter.

[10] *See* 1st Global Letter; AIG Letter; Cambridge Letter; Schwab Letter; CBFS Letter; Commonwealth Letter; CUNA Letter; FFP Letter; First Allied Letter; INVEST Letter; Investment Centers Letter; Lesko Letter; MSC Letter; MWAFS Letter; Princor Letter; Rhodes Securities Letter; Securities America Letter; SIA Letter; TransAmerica Letter; United Planners' Letter; USAllianz Letter; Waterstone Letter; and World Group Letter; *see also* Associated Securities Letter; AXA Letter; Cadaret Grant Letter; Equity Services Letter; LPL Letter; NSCP Letter; and Pacific Select Letter.

[11] *See* 1st Global Letter; AIG Letter; AEFA Letter; Cambridge Letter; CBFS Letter; CUNA Letter; Equity Services Letter; FFP Letter; Financial Network Letter; First Allied Letter; IFG Letter; INVEST Letter; Investment Centers Letter; John Hancock Letters; Lesko Letter; LPL Letter; Locust Letter; Multi-Financial Letter; MSC Letter; MWAFS Letter; PrimeVest Letter; Princor Letter; Rhodes Securities Letter; Securities America Letter; TransAmerica Letter; United Planners' Letter; USAllianz Letter; Vestax Letter; Washington Square Letter; and Waterstone Letter.

[12] *See* Associated Securities Letter; AXA Advisors Letter; MSC Letter; Pacific Select Letter; SIA Letter; and Woodbury Letter.

[13] *See* 1st Global Letter and SIA Letter.

As originally proposed, changes to existing NASD Rule 2510(d)(1) required that discretionary authority as to the time or price at which an order may be executed be limited to the day it is granted, absent written authorization to the contrary. Several commenters suggested that the one-day time and price discretionary authority should be limited only to retail accounts and that NASD should craft an exemption for institutional accounts.[14] Commenters argued that large orders for institutional accounts are ''worked'' over one or more days pursuant to a Good-Till-Cancelled Order with instructions issued on a ''not held'' basis.

In Amendment No. 1, NASD responded that it believes that a general institutional exemption is inappropriate. However, in an effort to address commenters' concerns, NASD amended NASD Rule 2510 to clarify that written authorization need not be obtained for the exercise of time and price discretion beyond the day a customer grants such discretion for orders effected with or for an institutional account, as that term is defined in NASD Rule 3110(c)(4), that are exercised pursuant to valid Good-Till-Cancelled instructions issued on a ''not held'' basis. NASD also amended NASD Rule 2510 to require that any exercise of time and price discretion be reflected on the customer order ticket.

Several commenters also argued that allowing time and price discretion only until the end of the business day on which the discretion was granted absent written authorization from the customer seemed unduly restrictive and would not work to advantage of customers in moving markets.[15] Commenters also requested that NASD clarify that the requirement to obtain written instructions for the exercise of time and price discretion beyond the business day it was granted allows customers to issue general ''standing'' instructions, rather than issuing written instructions on an order-by-order basis.[16] NASD declined to adopt this position. In Amendment No. 1, NASD pointed out that the current text of NASD Rule 2510(d) clearly limits the exercise of time and price discretion to ''the purchase or sale of a definite amount of a specified security * * *.'' NASD noted that any written authorization granting time and price discretion must comply with this established, trade-specific standard and that customers who wish to grant more extensive discretionary authority to their registered representatives may do so pursuant to a fully executed trading authorization.

2. NASD Proposed Amendment in Response to Commenters

Thus, in Amendment No. 1, which the Commission noticed on August 7, 2003, NASD proposed amending NASD Rule 2510 to provide that the authority to exercise time and price discretion will be considered to be in effect only until the end of the business day on which the customer granted such discretion, absent a specific, written contrary indication signed and dated by the customer. However, the limitation shall not apply to time and price discretion exercised for orders effected with or for an institutional account[17] pursuant to valid Good-Till-Cancelled instructions issued on a ''not-held'' basis. Further, any exercise of time and price discretion must be reflected on the customer order ticket.

C. Supervision and Internal Inspections (NASD Rule 3010)

1. Original Proposal and Comments Received

The NASD originally proposed to amend NASD Rule 3010 to require that office inspections be conducted by a person who is ''independent'' from the activities being performed at the office and the people providing supervision to that office. In addition, NASD proposed to require that office inspections include, without limitation, the testing and verification of the member's supervisory policies and procedures in the areas of: Safeguarding customer funds and securities; maintaining books and records; supervision of customer accounts serviced by branch office managers; transmittal of funds between customers and registered representatives and between customers and third parties; validation of customer address changes; and validation of changes in customer account information.

Several commenters agreed that requiring inspections of Offices of Supervisory Jurisdiction (''OSJs'') by persons who are not supervised by the OSJ manager makes sense and is reasonable given the facts of the Gruttadauria case.[18] However, these commenters questioned the necessity of requiring the use of ''independent'' persons to inspect branch offices.

Many commenters requested clarification regarding who would be sufficiently ''independent'' to conduct the office inspections required in NASD Rule 3010.[19] At least one commenter stated that the ''independence'' requirement proposed in NASD Rule 3010 appeared to refer to someone within the firm who does not receive compensation based on sales.[20] Commenters also stated that the ''independence'' requirement proposed in NASD Rule 3010(c) would severely reduce the number of principals eligible to conduct branch exams and would put enormous pressure on home office exam personnel to conduct more office inspections.[21] Commenters suggested that if home office exam personnel had to conduct more office inspections, the audit cycle would have to be extended to multiple-year durations and the quality of the audits would decline.[22]

Some commenters argued that the current supervisory system, which allows OSJ managers to conduct office inspections of branch and satellite offices, should be retained because it is both effective and cost efficient.[23]

[14] *See* A.G. Edwards Letter; Schwab Letter; NSCP Letter; and SIA Letter.

[15] *See* Prime Vest Letter; ING Letter; Financial Network Letter; IFG Letter; Washington Square Letter; Multi-Financial Letter; and Vestax Letter.

[16] *See* NSCP Letter and SIA Letter.

[17] *See* NASD Rule 3110(c)(4).

[18] *See* PrimeVest Letter; Financial Network Letter; Vestax Letter; and Washington Square Letter.

[19] *See* 1st Global Letter; A.G. Edwards Letter; AIG Letter; Cambridge Letter; Schwab Letter; CBFS Letter; Commonwealth Letter; CUNA Letter; FFP Letter; First Allied Letter; INVEST Letter; Investment Centers Letter; Lesko Letter; Midland Letter; MML Letter; MSC Letter; MWAFS Letter; NSCP Letter; Princor Letter; Rhodes Securities Letter; Schwab Letter; Securities America Letter; SIA Letter; United Planners' Letter; USAllianz Letter; Waterstone Letter; and World Group Letter.

[20] *See* Woodbury Letter.

[21] *See* 1st Global Letter; AIG Letter; AEFA Letter; Cambridge Letter; CBFS Letter; CUNA Letter; Equity Services Letter; FFP Letter; Financial Network Letter; First Allied Letter; IFG Letter; INVEST Letter; Investment Centers Letter; John Hancock Letter; Lesko Letter; LPL Letter; Locust Letter; Multi-Financial Letter; MSC Letter; MWAFS Letter; PrimeVest Letter; Princor Letter; Rhodes Securities Letter; Securities America Letter; TransAmerica Letter; United Planners' Letter; USAllianz Letter; Vestax Letter; Washington Square Letter; and Waterstone Letter.

[22] *See* 21st Century Letter; AIG Letter; Brookstreet Letter; Cambridge Letter; CBFS Letter; CUNA Letter; Duerr Letter; Eagle One Letter; FFP Letter; Financial Network Letter; First Allied Letter; First Heartland Letter; FMN Letter; IFG Letter; INVEST Letter; Investment Centers Letter; Iron Street Letter; JKR Letter; Kyson Letter; Lesko Letter; Liberty Life Letter; Locust Letter; Main Street Letter; Monitor Letter; Multi-Financial Letter; Mutual Securities Letter; MSC Letter; MWAFS Letter; National Planning Letter; Pacific West Letter; PrimeVest Letter; Princor Letter; Quest Letter; Rhodes Securities Letter; Securities America Letter; Leaders Group Letter; TransAmerica Letter; United Planners' Letter; USAllianz Letter; Vestax Letter; Washington Square Letter; Waterstone Letter; Wharton Letter; World Group Letter; and WORL Letter.

[23] *See* 21st Century Letter; AIG Letter; Brookstreet Letter; Cambridge Letter; CBFS Letter; CUNA Letter; Duerr Letter; Eagle One Letter; FFP Letter; Financial Network Letter; First Allied Letter; First Heartland Letter; FMN Letter; IFG Letter; INVEST Letter; Investment Centers Letter; Iron Street Letter; JKR Letter; Kyson Letter; Lesko Letter; Liberty Life Letter; Locust Letter; Main Street Letter; Monitor

Continued

Commenters noted that OSJ managers are the most familiar with registered representatives and activities located at particular offices, and therefore, are the most qualified to perform the periodic inspections. Another commenter suggested that firms should have the flexibility to design internal control systems that conform to the nature of the business conducted by the member.[24] In addition, commenters asserted that OSJ managers' auditing of branch and satellite offices serves to reinforce their accountability for the registered representatives' actions.[25]

2. NASD Proposed Amendments in Response to Commenters

In Amendments No. 1 and 2, the NASD responded to commenters and amended NASD Rule 3010 to replace the proposed ''independence'' requirement with a provision that prohibits a branch office manager or any person within that office who has supervisory responsibilities or any individual who is supervised by such person(s) from conducting an office inspection.

Specifically, in Amendments No. 1 and 2, which the Commission noticed on August 7, 2003, NASD proposed amending NASD Rule 3010 to provide that an office inspection cannot be conducted by a branch office manager or any person within that office who has supervisory responsibilities or by any individual who is supervised by such person(s). This means that someone outside the branch office's managerial structure must conduct the inspection, such as regional or district office personnel, another branch office manager, or someone within the branch office who does not report to the branch office manager or other supervisor within the office (*e.g.*, an employee that reports to the regional or district home office).

Also, in Amendment No. 1, NASD proposed amending NASD Rule 3010 to require that members establish heightened inspection procedures in situations where the person conducting the inspection either works in an office supervised by the branch office manager's supervisor or reports to the branch office manager's supervisor and the branch office manager generates 20% or more of the income of the branch office manager's supervisor. NASD explained that the term ''heightened inspection'' means those inspection procedures that are designed to avoid conflicts of interest that serve to undermine complete and effective inspection because of economic, commercial, or financial interests that the branch office manager's supervisor holds in the associated persons and businesses being inspected.

In Amendment No. 2, NASD gave examples of heightened inspection procedures, stating that members should consider such elements as unannounced office inspections, increased frequency of inspections, a broaden scope of activities inspected, and/or having one or more principals review and approve the office's inspections. To allow members flexibility, NASD stated that these examples are meant to illustrate the type of procedures a member may want to include in its heightened inspection procedures and are not meant to be an exclusive or exhaustive list.

The proposed rule requires that an office inspection and review by a member must be reduced to a written report and kept on file by the member for a minimum of three years, unless the regular periodic schedule for the inspection is longer than a three-year cycle, in which case the report must be kept on file at least until the next inspection report has been written. The written inspection report must also include, without limitation, the testing and verification of the member's policies and procedures, including supervisory policies and procedures in the following areas: (A) Safeguarding of customer funds and securities; (B) maintaining books and records; (C) supervision of customer accounts serviced by branch office managers; (D) transmittal of funds between customers and registered representatives and between customers and third parties; (E) validation of customer address changes; and (F) validation of changes in customer account information. NASD Rule 3010, however, does not limit member testing and verification of the members' policies and procedures during an inspection to these specific areas but requires testing and verification of all relevant policies and procedures.

In addition, in Amendment No. 1, NASD amended NASD Rule 3010 to codify previous NASD guidance that non-supervisory branch offices must be inspected at least every three years based on the nature and complexity of the securities activities and that all non-branch locations must be inspected periodically, and to provide that OSJs must be inspected annually.

Finally, in Amendment No. 1, NASD deleted the provision in NASD Rule 3010(c) that would have allowed members to seek an exemption from the independence requirement in NASD Rule 3010(c) subject to specified terms and conditions, because it had removed the ''independence'' requirement regarding inspections conducted pursuant to NASD Rule 3010(c). NASD also removed its Rule 3010(c) from the list of rules in NASD Rule 9610(a) from which a member can seek an exemption.

D. Supervisory Controls (NASD Rule 3012)

1. Original Proposal and Comments Received

As originally proposed, NASD Rule 3012 required that each member establish supervisory control procedures that (a) test and verify that the member's supervisory procedures are reasonably designed to comply with the federal securities laws and regulations and NASD rules; and (b) amend the supervisory procedures where such testing and verification identifies the need to do so. NASD further proposed that the supervisory control procedures be performed by persons who are ''independent'' from those activities being tested and verified and the persons who directly supervise those activities.

One commenter stated that the proposed rule change would expand a member's existing supervisory procedures and place a more substantive emphasis on testing and verification of the member's examination processes.[26] This commenter did not believe that the change would be overly burdensome compared to the benefit derived—tightened security. Another commenter recommended that the proposed rule be limited to retail accounts.[27]

Many commenters requested clarification regarding who would be sufficiently ''independent'' to perform the supervisory control procedures required under proposed NASD Rule 3012.[28] A large number of commenters

Letter; Multi-Financial Letter; Mutual Securities Letter; MSC Letter; MWAFS Letter; National Planning Letter; Pacific West Letter; PrimeVest Letter; Princor Letter; Quest Letter; Rhodes Securities Letter; Securities America Letter; Leaders Group Letter; TransAmerica Letter; United Planners' Letter; USAllianz Letter; Vestax Letter; Washington Square Letter; Waterstone Letter; Wharton Letter; World Group Letter; and WORL Letter.

[24] *See* Schwab Letter.

[25] *Id.*

[26] *See* John Hancock Letter.

[27] *See* NSCP Letter.

[28] *See* 1st Global Letter; AIG Letter; Cambridge Letter; Schwab Letter; CBFS Letter; Commonwealth Letter; CUNA Letter; FFP Letter; First Allied Letter; INVEST Letter; Investment Centers Letter; Lesko Letter; Midland Letter; MML Letter; MSC Letter; MWAFS Letter; Princor Letter; Rhodes Securities Letter; Securities America Letter; SIA Letter; United Planners' Letter; USAllianz Letter; Waterstone Letter; and WORL Letter; *see also* Sonnenschein Letter.

thought that the proposal restricted the firms' senior supervisory personnel from performing and/or overseeing the review of a firm's supervisory control procedures, which could compromise the quality of the review. These commenters stated that the alternative approach of assigning someone from another division of the firm, such as Marketing or Operations, to perform the review could result in a supervisory review that is less sensitive to compliance requirements.[29] At least one commenter stated that the ''independence'' requirement in NASD Rule 3012 appears to refer to someone outside of the firm.[30]

In response to these concerns, in Amendments No.1 and 2, NASD amended proposed NASD Rule 3012 to eliminate the requirement that persons establishing, maintaining, and enforcing supervisory control policies and procedures be ''independent.'' Instead, NASD amended NASD Rule 3012 to require firms to designate a person who is senior to the producing manager (at any level) to perform the supervisory reviews that will test and verify that members' supervisory procedures are sufficient. In Amendments No. 1 and 2, NASD stated that this individual must not report to the producing manager, his compensation must not be determined by the producing manager, and he may not be in the same chain of authority as the producing manager.

Several commenters mentioned that the requirements originally proposed in NASD Rule 3012 to test and verify a member's supervisory procedures and make any changes identified through the testing and verification procedures appear to be substantially similar to NASD Rule 3010(a)(8), which requires a member to review the supervisory system and make any appropriate changes. Commenters stated that it would be redundant to require a member to conduct two separate, yet very similar, reviews of the member's supervisory procedures to determine if changes need to be made.[31] NASD agreed and in Amendment No. 1 modified the proposed rule change to combine the two supervisory review requirements into proposed NASD Rule 3012 and eliminate NASD Rule 3010(a)(8) altogether.

Two commenters stated that the requirement that specific supervisory controls be in place to address the transmittal of funds between accounts, changes of customers' addresses, and changes in customers' investment objectives should apply only to retail customer activity and not to institutional customer activity.[32] One commenter went on to explain that an institutional exemption was appropriate because much of that business is done on a delivery-versus-payment or receipt-versus-payment basis or via prime brokerage arrangements that involve systems and controls that are different from retail account servicing.[33] NASD responded that it is reasonable and appropriate for regulatory oversight in the sensitive areas designated in proposed NASD Rule 3012 extend to institutional account activity.

2. NASD Amendments in Response to Commenters

As described above, in Amendments No. 1 and 2, NASD amended proposed NASD Rule 3012, in response to commenters' concerns regarding the ''complete independence'' standard, to require that a member designate and specifically identify to NASD one or more principals who will establish, maintain, and enforce supervisory control procedures that will test and verify the sufficiency of the member's supervisory procedures and that create additional or amend supervisory procedures where the need is identified by such testing and verification. NASD stated that it expects that the designated principals will test and verify the adequacy of the supervisory control procedures in a manner that is independent of a member's countervailing business considerations.

Proposed NASD Rule 3012, as modified by Amendments No. 1 and 2, provides that these policies and procedures must include procedures that are reasonably designed to review and supervise the customer account activity conducted by the member's branch office managers, sales managers, regional or district sales managers, or any person performing a similar supervisory function. Proposed NASD Rule 3012 further provides that a person who is senior to the producing manager must perform these supervisory reviews. A person who does not report to the producing manager, whose compensation is not determined in whole or part by the producing manager, and is not be in the same chain of authority may be senior for the purposes of such supervision if that person has the authority to oversee, direct and correct the activities of the producing manager and take all necessary remedial actions, including termination, if and when necessary.

NASD proposed an exception to this requirement. In Amendment No. 1, NASD proposed that if a member (1) does not conduct a public business; or (2) has a capital requirement of $5,000 or less; or (3) employs ten or fewer representatives and its business is conducted in a manner necessitated by a limitation of resources that includes fewer than two layers of supervisory personnel, then a person in another office who is in the same or similar position to the producing manager may conduct the supervisory review. This exception may only be used if the person in the same or similar position to the producing manager does not have supervisory responsibility over the activity being reviewed; reports to his supervisor his supervision and review of the producing manager; and has not performed a review of the producing manager in the last two years.

Proposed NASD Rule 3012 also requires that members adopt procedures that are reasonably designed to review and monitor activities such as transmittal of funds or securities from customers to outside entities or locations other than a customer's primary residence, customer changes of address and the validation of such changes, and customer changes of investment objectives and the validation of such changes. The proposed Rule further requires that these policies and procedures include a means or method of customer confirmation, notification, or follow-up that can be documented.

In Amendments No. 1 and 2, NASD proposed that the supervisory policies and procedures required under proposed NASD Rule 3012 also include procedures reasonably designed to provide heightened supervision of the activities of each producing manager who is responsible for generating 20% or more of the revenue of the business units supervised by the branch office manager's supervisor. NASD explained that the term ''heightened supervision'' means those supervisory procedures

[29] *See* 21st Century Letter; AIG Letter; Brookstreet Letter; Cambridge Letter; CUNA Letter; Duerr Letter; Eagle One Letter; Financial Network Letter; ING Letter; First Allied Letter; First Heartland Letter; FMN Letter; IFG Letter; INVEST Letter; Investment Centers Letter; Iron Street Letter; JKR Letter; John Hancock Letter; Kyson Letter; Lesko Letter; Liberty Life Letter; Locust Letter; Main Street Letter; Monitor Letter; Multi-Financial Letter; Mutual Securities Letter; MSC Letter; MWAFS Letter; National Planning Letter; Pacific West Letter; PrimeVest Letter; Princor Letter; Quest Letter; Rhodes Securities Letter; Securities America Letter; Leaders Group Letter; TransAmerica Letter; United Planners' Letter; USAllianz Letter; Vestax Letter; Washington Square Letter; Waterstone Letter; Wharton Letter; World Group Letter; and WORL Letter.

[30] *See* Woodbury Letter.

[31] *See* CBFS Letter; Financial Network Letter; ING Letter; IFG Letter; Locust Letter; MML Letter; Multi-Financial Letter; PrimeVest Letter; Vestax Letter; and Washington Square Letter; see also Sonnenschein Letter.

[32] *See* 1st Global Letter and SIA Letter.

[33] *See* SIA Letter.

that evidence supervisory activities that are designed to avoid conflicts of interest that serve to undermine complete and effective inspection because of economic, commercial, or financial interests that the branch office manager's supervisor holds in the associated persons and businesses being supervised.

In establishing such heightened supervisory procedures, NASD stated that members should consider such elements as unannounced supervisory reviews, an increased number of supervisory reviews by different reviewers within a certain period, a broader scope of activities reviewed, and/or having one or more principals approve the supervisory review of such producing managers. These examples are meant to illustrate the type of procedures a member may want to include in its heightened supervisory procedures. NASD believes that proposed NASD Rule 3012, as amended, should allow members sufficient flexibility to create the supervisory control procedures mandated by the rule without creating undue burdens and costs.

Finally, proposed NASD Rule 3012 provides that a member that is in compliance with substantially similar requirements of the New York Stock Exchange shall be deemed to be in compliance with the supervisory control requirements set forth in NASD Rule 3012.

E. Books and Records (NASD Rule 3110)

1. Original Proposal and Comments Received

As originally proposed, the amendments to NASD Rule 3110 required that, before a customer order is executed, the account name or designation be placed upon the memorandum for each transaction. In addition, the proposed rule provided that only a designated person may approve any changes in account names or designations. The designated person also must document the essential facts relied upon in approving the changes and maintain the record in a central location. The designated person must pass a qualifying principal examination appropriate to the business of the firm before he or she can approve these changes.

One commenter to the original proposal stated that its clerical staff is responsible for making changes to account names or designations and that requiring a principal to authorize the changes and be informed of the surrounding facts would place undue burden and cost upon the firm.[34]

In response, NASD acknowledged that the proposed amendments may place additional costs and burdens upon members; however, NASD stated that it believes that account names and designations are material information that must be protected from possible fraudulent activity and that requiring a principal to authorize the change and be aware of the surrounding facts for the change is a relatively low-cost method of protecting this information.

The same commenter stated that the requirement that a name or account designation be placed on ''each transaction'' is impractical for the administration of a variable life or variable annuity policy because dozens of transactions involving expense and insurance charges automatically occur each month for the multitude of funds associated with each policy.[35]

In response, NASD noted that it proposed this rule change to promote consistency with the SEC's books and records rules. Specifically, SEC Rule 17a–3(a)(6) requires that a memorandum of each brokerage order identify, among other things, the account for which the order was entered.[36] In Amendment No. 1, NASD stated that it expects that members, regardless of the type of securities business they engage in, will comply with this requirement in the same manner that they comply with the SEC's books and records requirements.

At least one commenter requested clarification regarding whether a firm may avoid duplicate records by maintaining the ''Account Designation Change'' documentation ''in the location whether the determination and approval occurs,'' rather than in the central location of the ''Home Office.'' [37]

In response to this comment, in Amendment No. 1, NASD amended the proposed rule change to require members to preserve these records in a manner substantially similar to the record retention requirements of SEC Rule 17a–4.[38]

2. NASD Amendment in Response to Comments

Thus, NASD proposed to amend NASD Rule 3110 to require that, before a customer order is executed, the account name or designation must be placed upon the memorandum for each transaction. In addition, only a designated person may approve any changes in account names or designations. The designated person must pass a qualifying principal examination appropriate to the business of the firm before he or she can approve these changes. The designated person also must document the essential facts relied upon in approving the changes and maintain the record in a central location. Members must preserve account designation change documentation for a period of not less than three years, with the documentation preserved for the first two years in an easily accessible place, as the term ''easily accessible place'' is used in Rule 17a–4 under the Act

F. Customer Account Information (NASD Rule IM–3110)

1. Original Proposal and Comments Received

Proposed changes to NASD IM–3110 would permit a member, upon a customer's written instructions, to hold mail for a customer who will not be at his or her usual address for the period of his or her absence, but not to exceed (A) two months if the member is advised that the customer will be on vacation or traveling or (B) three months if the customer is going abroad.

At least one commenter stated that a member would have to impose additional recordkeeping and administrative controls to avoid lost or misplaced mail in situations where a customer that travels frequently looks to a member to provide custody of his or her mail.[39] Another commenter expressed concerns about the rule's application to foreign customers.[40]

2. NASD Amendment in Response to Comments

In response to these comments, in Amendment No. 2, NASD acknowledged that members that agree to hold mail for customers may have to implement additional procedures to comply with the limitations set forth in this rule. However, NASD stated that the rule will help to ensure that members that do hold mail for customers who are away from their usual addresses, do so only pursuant to the customers' written instructions and for a specified, relatively short period of time, thus reducing the likelihood that customers would not receive account statements or other account documentation at their usual addresses.

[34] *See* Midland Letter.

[35] *Id.*

[36] 17 CFR 240.17a–3(a)(6).

[37] *See* A.G. Edwards Letter.

[38] 17 CFR 240.17a–4.

[39] *See* John Hancock Letter.

[40] *See* NSCP Letter.

G. Comments on the Effective Date of the Rule Change

Several commenters stated the proposed rule change may tax member resources that were already under pressure due to requirements imposed by other new rules, such as the U.S.A. Patriot Act and the Commission's books and records rules.[41] At least one commenter requested that the effective date of any new requirements be delayed for six to nine months after the approval date. [42] In response, NASD is proposing to establish an effective date of six months from SEC approval of the proposed rule change to allow members sufficient time to address any necessary procedural or system changes.

III. Summary of Comments on Proposal as Amended by Amendments No. 1 and 2 and Description of Amendment No. 3

After the publishing for comment the original proposal in the **Federal Register** on November 27, 2002, the Commission again noticed for comment the proposal, as amended by Amendments No. 1 and 2, in the **Federal Register** on August 13, 2003.[43] In response to the proposed rule, as amended, the Commission received 14 comment letters.[44] These letters and the NASD's response in Amendment No. 3 are summarized below.

A. Discretionary Accounts (NASD Rule 2510)

One commenter stated that NASD Rule 2510(d) should contain a requirement that firms notify their clients of the one-day limit on time and price discretionary authority. The commenter believed that informing customers would better protect them.[45]

In Amendment No. 3, NASD responded that it believes that the commenter may have misperceived the purpose of the amendment to NASD Rule 2510(d)(1). NASD explained that the intent of the amendment is to provide greater investor protection by clarifying the terms of an order given pursuant to price and time discretion pertaining to the time such an order remains pending, and NASD believes that the amendment achieves its stated purpose.

B. Internal Inspections (NASD Rule 3010)

One commenter suggested that NASD's codification of a minimum three-year inspection period for ''certain non-registered and/or non-supervisory branch offices'' was inappropriate and could have a detrimental effect on the overall supervisory systems for firms with remote office locations.[46] This commenter stated that the codification was contrary to previous NASD guidance regarding how often offices should be inspected. Another commenter stated that members often conduct examinations of non-supervisory branch offices more than once every three years to ensure that supervisors maintain regular and frequent professional contact but that these examinations did not always cover every area required under the amendments to proposed NASD Rule 3010.[47] The commenter requested assurance that these more frequent inspections do not violate proposed NASD Rule 3010, even if they are not designed to comply strictly with NASD Rule 3010's requirements.

In response to these comments, in Amendment No. 3, NASD explained that proposed NASD Rule 3010 requires a member to examine non-supervisory branch offices at least once every three years, and that a member may choose to examine these offices on a more frequent schedule. NASD went on to state that more frequent inspections are not equivalent to complying with the requirements of NASD Rule 3010, however, if all of the express constituent areas of supervision are not covered during the course of those examinations. NASD explained that members must consider whether the nature and complexity of a branch office's securities activities, the branch office's volume of business, and the number of associated persons assigned to the branch office require inspections more frequently than every three years. In this regard, NASD explained that members must set forth in their written supervisory and inspection procedures the examination cycle and an explanation of the factors used in determining the frequency of the cycle.

To further address the commenters' concerns, NASD also proposed a clarification to the rule text which states that if a member establishes a more frequent inspection cycle than every three years, the member must ensure that at least every three years, all the inspection requirements provided for in the rule have been met and describe in the member's written supervisory and inspection procedures, the manner in which this will be accomplished.

Two commenters suggested that NASD either eliminate, or provide greater detail on, the requirement in proposed NASD Rule 3010(c) to inspect non-branch locations on a regular periodic schedule.[48] In response NASD noted that the provision requiring members to inspect non-branch locations on a regular periodic schedule codifies previous and consistent NASD guidance on this issue.[49] NASD stated that members should already be familiar with the requirement to inspect non-branch locations and should be currently conducting such inspections.

One commenter suggested that the NASD should require chief executive officers and chief compliance officers to certify that firms have adequate compliance and supervisory policies and procedures.[50] In response to this comment, NASD stated it believes that the proposed amendments put in place appropriate measures to ensure a member's responsibilities for its supervisory control policies and procedures. NASD noted that proposed NASD Rule 3012 already requires each member to designate and identify one or more principals who will establish, maintain, and enforce a system of supervisory control policies that test and verify that the supervisory procedures are reasonably designed to achieve compliance with applicable securities laws and regulations and with applicable NASD rules. Further, NASD explained that it recently filed with the Commission a proposed rule change to require each member to designate a chief compliance officer and require the member's chief compliance officer and chief executive officer to certify annually that the member has in place process to establish, maintain, review, modify and test policies and procedures reasonably designed to achieve compliance with applicable NASD rules, Municipal Securities Rulemaking

[41] *See* Quest Letter; Mutual Securities Letter; Kyson Letter; Monitor Letter; Duerr Letter; Brookstreet Letter; United Planners Letter; PrimeVest Letter; Vestax Letter; Leaders Group Letter; Locust Letter; Commonwealth Letter; Washington Square Letter; Multi-Financial Letter; Securities America Letter; IFG Letter; TransAmerica Letter; Financial Network Letter; First Heartland Letter; FMN Letter; 21st Century Letter; JKR Letter; Iron Street Letter; SIA Letter; INVEST Letter; Eagle One Letter; 1st Global Letter; Waterstone Letter; Main Street Letter; World Group Letter; RDS Letter; MSC Letter; WORL Letter; A.G. Edwards Letter; Princor Letter; Pacific West Letter; Wharton Letter; Liberty Mutual Letter; AEFA Letter; FFP Letter; Lesko Letter; CUNA Letter; Rhodes Securities Letter; AIG Letter; and First Allied Letter.

[42] *See* Pacific Select Letter.

[43] *See* Securities Exchange Act Release No. 48298 (August 7, 2003), 68 FR 48421.

[44] *See* note 6, *supra*.

[45] *See* Pace Letter.

[46] *See* M&R Letter.

[47] *See* Mass Mutual Letter–2.

[48] *See* Pacific Select Letter-2; and United Planners Letter-2.

[49] *See* NASD *Notice to Members* 98–38 (May 1998); NASD *Notice to Members* 99–45 (June 1999).

[50] *See* Mass Mutual Letter-2.

Board rules, and the federal securities laws.[51]

One commenter stated that NASD should assure the integrity of office inspections by restricting persons responsible for office inspections from reporting directly or indirectly to the branch office's sales manager, and that NASD should also require members to send inspection reports directly to the compliance department.[52] In response to these comments, NASD noted that as proposed, the amendments to NASD Rule 3010 restrict the branch office manager or any person within that office who has supervisory responsibilities or any individual who is supervised by such persons from conducting inspections. NASD stated that it does not believe that additional restrictions on the persons appropriate to conduct office inspections would necessarily increase the integrity of office inspections.

One commenter asked whether the written reports of office inspections required by proposed NASD Rule 3010(c)(2) to be kept on file are subject to direct review by NASD examiners during the course of an examination or whether they can be made available upon request.[53] In response, the NASD explained that it expects a member to produce the office inspection reports during an examination by any self-regulatory organization if the information contained in the reports is relevant to the subject matter of the examination and if it is requested for production by a self-regulatory organization.

Finally, several commenters requested more clarification regarding who can conduct an office inspection.[54] Specifically, the commenters asked who could conduct an office inspection if a firm has small or single-person satellite offices that report to an OSJ, rather than to a separate branch office. The commenters asked whether the OSJ manager, who may also be considered the branch office manager of the small offices under some business models, could conduct the office inspection.

In response to these comments, in Amendment No. 3, NASD acknowledged that members have different business models and that some members may be so limited in both size and resources that their business models do not make it possible to comply fully with the restrictions regarding who can conduct an office inspection. Therefore, in Amendment No. 3 NASD proposed an exception to proposed NASD Rule 3010 that provides that if a member is so limited in size and resources that it cannot comply with the prohibition against office inspections being conducted by the branch office manager or any person within that office who has supervisory responsibilities or by any person who is supervised by such person, then the member may have a principal who has the requisite knowledge to conduct an office inspection perform the inspections. NASD stated that examples of such situations would include a member that has only one office or has a business model where small or single-person offices report directly to an OSJ manager who is also considered the offices' branch office manager. NASD proposed to require that a member must document in its office inspection reports the factors relied upon in determining that it is so limited in size and resources that it has no other alternative than to comply in the manner described above.[55]

Finally, one commenter raised a concern with respect to the requirement in proposed NASD Rule 3010 that a member's written inspection report include, without limitation, the testing and verification of the member's policies and procedures, including supervisory policies and procedures in the areas of safeguarding of customer funds and securities; maintaining books and records; supervision of customer accounts serviced by branch office managers; transmittal of funds between customers and registered representatives and between customers and third parties; validation of customer address changes; and validation of changes in customer account information.[56] Specifically, this commenter asked whether broker-dealers that did not engage in any or all of these activities would nonetheless be required to test and verify procedures governing such activities.

In response to this comment, in Amendment No. 3, NASD proposed an amendment to NASD Rule 3010 that provides that if a member does not engage in all the activities identified in the proposed rule, the member must identify those activities in which it does not engage in its written inspection report and document in the report that supervisory policies and procedures for such activities must be in place before the member can engage in them.

C. Supervisory Controls (NASD Rule 3012)

One commenter stated that NASD should not limit the scope of persons qualified to conduct a producing manager's review under NASD Rule 3012 only to those individuals who are ''senior'' to the producing manager.[57] The commenter argued that other persons within a branch office or within a firm who are not senior to the producing branch office manager should be allowed to review the producing manager, as long as that person is of an equal level of ''seniority'' and has the requisite knowledge to conduct a meaningful review.

In Amendment No. 3, NASD responded that it understands the concern that members may have to make changes to their supervisory review procedures to comply with this seniority requirement. NASD believes, however, that requiring the producing manager's reviewer to be senior to the producing manager is essential to protecting investors and helping to ensure that events, such as those that led to the Gruttadauria case, do not occur again. NASD noted that the determination of seniority is a facts and circumstances test, and that for the purposes of supervision, a person who does not report to the producing manager, whose compensation is not determined in whole or part by the producing manager and who is not in the same line of authority, may be senior for the purposes of supervision if that person has the authority to oversee, direct, and correct the activities of the producing manager and take all necessary remedial actions, including termination, if and when necessary.

NASD also pointed out that the rule as currently proposed provides for an exception to the ''seniority'' requirement. Specifically, the proposed rule states that for members who (1) do not conduct a public business; or (2) have a capital requirement of $5,000 or less; or (3) employ 10 or fewer employees and in the case of (1) through (3), have fewer than two layers of supervisory personnel, a person in another office who is in the same or similar position to the producing

[51] *See* Securities Exchange Act Release No. 48981 (December 23, 2003), 68 FR 75704 (December 31, 2003) (NASD–2003–176).

[52] *See* NASAA Letter.

[53] *See* ASC Letter-2.

[54] *See* Mass Mutual Letter-2; and Sonnenschein, Letter-2.

[55] NASD notes, however, that the ''heightened inspection'' procedures in proposed NASD Rule 3010(c)(3) would be applicable to a member availing itself of the ''limited size and resources'' exception to the prohibition against office inspections being conducted by the branch office manager or any person within that office who has supervisory responsibilities or by any person who is supervised by such person. Telephone conversation between Patricia Albrecht, Assistant General Counsel, NASD and Florence Harmon, Senior Special Counsel Division, Commission on April 15, 2004.

[56] *See* ACLI Letters.

[57] *See* SIA Letter-2.

manager may conduct the supervisory reviews, provided that the person does not have supervisory authority over the activity being reviewed, reports to his supervisor his supervision and review, and has not performed a review of the producing manager in the last two years.

Nevertheless, NASD stated in response to commenters that it understands that some members may be so limited in both size and resources that their business models do not make it possible to meet all of the exception's above-mentioned prerequisites. Therefore, in Amendment No. 3, the NASD proposed an additional exception from the ''seniority'' requirement.

The exception would provide that if a member is so limited in size and resources that it cannot avail itself of the above-described exception (*i.e.,* the member has only one office or has two offices, but an insufficient number of qualified personnel who can conduct reviews on a two-year rotation), the member may have a principal who is sufficiently knowledgeable of the member's supervisory control procedures conduct the reviews. NASD further proposed to require that the member document in its supervisory control procedures the factors it relied upon in determining that its size and the resources available to it are so limited that the member has no other alternative than to comply in this manner.[58]

One commenter requested clarification regarding whether a member could comply with NASD Rule 3012, with respect to changes of customer address and investment objectives and validation of such changes if the member follows the procedures set forth in SEC Rule 17a–3(a)(17)(i).[59] In response, NASD explained that proposed NASD Rule 3012(a)(2)(B) requires members to have in place supervisory control policies and procedures that include procedures that are reasonably designed to review and monitor all transmittals of customer funds and securities, and customer address and investment objectives changes, and the validation of such changes. NASD stated that proposed NASD Rule 3012(a)(2)(B) was not designed to address the specific measures a member should adopt regarding the supervision of changes in a customer's address or investment objectives. Further, NASD noted compliance with SEC Rule 17a–3(a)(17)(i)'s recordkeeping provisions may not be sufficient under all facts and circumstances to discharge a firm's supervisory requirements under proposed NASD Rule 3012(a)(2)(B) and that to avoid potential problems, members should ensure that they comply with both proposed NASD Rule 3012(a)(2)(B) and Rule 17a–3(17)(i) under the Act.

Another commenter requested that NASD delete proposed NASD Rule 3012's provision allowing a ''dual'' NASD/NYSE member to satisfy Rule 3012's requirements if the member satisfies substantially similar requirements promulgated by the NYSE.[60] The commenter argued that proposed NASD Rule 3012 is more specific and detailed than comparable supervisory control requirements proposed by the NYSE.

NASD responded that it is retaining proposed NASD Rule 3012's originally proposed provision that any member in compliance with substantially similar requirements of the NYSE shall be deemed to be in compliance with NASD Rule 3012. As NASD stated in its response to comments to the original rule filing, NASD believes that this provision helps promote consistency between NASD's and the NYSE's supervisory control requirements.

Several commenters requested clarification regarding the 20% threshold contained in proposed NASD Rules 3010 and 3012.[61] Specifically, commenters identified three concerns regarding the threshold: (1) How to structure compensation; (2) what time period to use to calculate the 20% threshold; and (3) whether the 20% threshold can be viewed as a ''safe harbor.'' In addition, at least one commenter asked for clarification regarding who is considered to be the producing manager's supervisor if the producing manager is supervised directly by the member's compliance department.[62]

In Amendment No. 3, NASD amended NASD Rules 3010 and 3012 to address the commenters' concerns regarding compensation structure and time periods for calculation. NASD proposed to replace the 20% threshold of income of the producing manager's supervisor with a threshold of 20% of the revenue of the business units supervised by the producing manager's supervisor. For purposes of determining the 20% revenue threshold, under the proposed rule, all revenue generated by or credited to the branch office or the branch office manager would be attributed as revenue generated by the business unit or units supervised by the branch office manager's supervisor irrespective of the internal allocation of such revenue by the member. NASD also clarified that a member must calculate the 20% threshold on a rolling, twelve-month basis.

NASD explained that if a producing manager does not have an individual assigned to supervise him, but rather, is supervised directly by the member's compliance department, then the revenue produced would be attributable to a business unit supervised by the compliance department, and if such revenue constituted 20% or more of all the supervised revenue attributable to the compliance department, then the member must have in place heightened inspection and supervisory procedures. Finally, NASD explained that it does not view the 20% threshold as a ''safe harbor,'' but rather, as a trigger for determining when a member clearly must put in place heightened inspection and/or supervisory procedures.

Finally, one commenter raised a concern with respect to the requirement in proposed NASD Rule 3012 that members establish, maintain, and enforce written supervisory control policies and procedures, including procedures that are reasonably designed to review and monitor the transmittals of funds from customer accounts to locations other than a customer's primary residence and between customers and registered representatives; customer changes of address and validation of such changes of address; and customer changes of investment objectives and the validation of such changes of investment objectives.[63] Specifically, this commenter asked whether broker-dealers that did not engage in all of these activities would nonetheless be required to institute policies governing such activities.

In response to this comment, in Amendment No. 3, NASD proposed an amendment to NASD Rule 3012 that provides that if a member does not engage in all the activities identified in the proposed rule, the member must identify those activities in which it does

[58] NASD notes, however, that the ''heightened supervision'' procedures in proposed NASD Rule 3012(a)(2)(C) would be applicable to a member availing itself of the ''limited size and resources'' exception from the requirement that a person senior to the producing manager perform supervisory reviews. Telephone conversation between Patricia Albrecht, Assistant General Counsel, NASD and Florence Harmon, Senior Special Counsel, Division, Commission on April 15, 2004.

[59] *See* Sonnenschein Letter-2.

[60] *See* Securities Exchange Act Release No. 48299 (August 7, 2003), 68 FR 48431 (August 13, 2003); *See* Securities Exchange Act Release No. 46858 (November 20, 2002), 67 FR 70994 (November 27, 2002).

[61] *See* ASC Letter-2; Pacific Select Letter-2; SIA Letter-2; Sonnenschein Letter-2; and United Planners Letter-2.

[62] *See* Sonnenschein Letter-2.

[63] *See* ACLI Letters.

not engage in its written supervisory control policies and procedures and document in those policies and procedures that additional supervisory policies and procedures for such activities must be in place before the member can engage in them.

D. Holding of Customer Mail (NASD IM–3110)

One commenter stated that NASD should provide a limited exception that would allow a firm, when necessary, to receive and hold a customer's mail for a longer time than the two-month and three-month limits proposed in IM–3110(i).[64]

NASD responded that it continues to believe that the time periods mentioned in the rules are appropriate. As NASD stated in the response to comments to the original rule filing, it believes that the amendments to NASD IM–3110(i) will help to ensure that members that do hold mail for customers who are away from their usual addresses, do so only pursuant to the customers' written instructions and for a specified, relatively short, period of time.

IV. Discussion

After careful review, the Commission finds that the proposed rule change, as amended is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[65] In particular, the Commission finds that the proposal, as amended, is consistent with the provisions of Section 15A(b)(6) of the Act,[66] which requires, among other things, that a national securities association's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The Commission finds that NASD's proposal, as amended, is designed to accomplish these ends by requiring members to establish more extensive supervisory and supervisory control procedures to monitor customer account activities of their employees and thereby reduce the potential for customer fraud and theft.

A. Discretionary Accounts (NASD Rule 2510)

Currently, NASD Rule 2510(d)(1) allows members to exercise time and price discretion on orders for the purchase or sale of a definite amount of a specified security without prior written authorization from the customer and prior written approval by the member, but does not specify the duration of such discretionary authority. The Commission believes that NASD's proposal to limit the time for such discretion to the end of the business day on which it was granted, absent a signed authorization from the customer providing otherwise, is appropriate. Such a control should limit the opportunity for misapplication of discretionary authority, thus furthering investor protection. The Commission also believes that this change will clarify for members and customers the length of time for which discretionary authority is granted in the ordinary course.

Commenters argued that the limited duration for the exercise of time and price discretion should be applied only retail accounts, not institutional accounts. NASD chose not to include a general institutional exemption, but instead amended NASD Rule 2510 to provide a limited exception from the requirement to obtain written authorization for good-til-cancel orders for institutional accounts where discretion is exercised on a ''not held'' basis. The Commission believes that this exception from the general rule will provide members handling institutional accounts the flexibility they require while still providing adequate protection over client accounts.

B. Supervision and Internal Inspections (NASD Rule 3010)

The Commission believes that NASD's proposal with respect to internal inspections should increase the likelihood that fraudulent activity with respect to handling customer accounts will be detected in a timely manner. To this end, proposed NASD Rule 3010 requires each member to inspect every office of supervisory jurisdiction and any branch office that supervises one or more non-branch locations at least annually. Branch offices that do not supervise one or more branch locations must be inspected at least every three years, and members must inspect non-branch locations on a regular, periodic schedule depending on the nature and complexity of the securities activities for which the location is responsible and the nature and extent of customer contact.

As part of the inspection, members must test and verify the policies and procedures in several key areas, including the supervision policies and procedures governing: Safeguarding customer funds and securities; maintaining books and records; supervision of accounts serviced by branch office managers; transmittal of funds between customers and registered representatives or other third parties; validation of customer change of address; and validation of customer account information. The findings of the inspection must be reduced to a written report and kept on file for a minimum of three years, unless the next inspection is not due for more than three years, in which case the report must be kept on file until the next inspection report has been written.

The Commission believes that the areas identified in particular by NASD as subject to testing and verification effectively reduce the possibility of fraudulent activity in important aspects of customer account handling, but are not so broad that members will be overly burdened by inspections. Further, the Commission believes that it is appropriate for member firms to retain a written record of the findings of the inspection to help ensure that necessary modifications to policies and procedures are made promptly and in accordance with the findings of the inspection.

Proposed NASD Rule 3010 also dictates who is ineligible to conduct an inspection. Specifically, the proposed rule provides that office inspections may not be conducted by the branch office manager or any person within that office who has supervisory responsibilities or by any individual who is supervised by such a person. After careful consideration of the comments, the Commission believes that these are appropriate limitations on who may conduct office inspections. The Commission believes that these limitations should reduce conflicts of interest and lead to more objective and vigorous inspections because persons who have a significant financial interest in the success of a branch office would be precluded from inspecting it.

In Rule 3010, NASD proposed an exception from the above requirement for firms that are so limited in size and resources that they cannot comply with this limitation. The Commission finds reasonable the NASD's examples of such situations as a member that has only one office or has a business model where small or single-person offices report directly to an OSJ manager who is considered the offices' branch manager. In such cases, a member may have a principal who has the requisite knowledge to conduct an office inspection perform the inspection. NASD, however, proposes to require that any member utilizing this exception document in its office inspection report the factors it has relied upon in

[64] *See* ASC Letter-2.

[65] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[66] 15 U.S.C. 78o–3(b)(6).

determining that it is so limited in size and resources that it has no alternative other than to comply in this manner.

The Commission believes that this exception is warranted for those firms that can demonstrate and document that, as a result of their size and structure, they cannot comply with the proposed rule's limitation on who may conduct office inspections. The Commission, however, expects NASD to closely monitor the use of this exception to be certain that only members for whom the exception is intended take advantage of it and that this exception is not abused.

In NASD Rule 3010, NASD also included a provision requiring heightened office inspection procedures if the person conducting the inspection either works in an office supervised by the branch office manager's supervisor or reports to the branch office manager's supervisor *and* the branch office manager generates 20 percent or more of the revenue of the business units supervised by the branch office manager's supervisor. The Commission expects that this provision will reduce potential conflicts of interest in situations when the individual conducting the inspection, though not reporting to the branch office manager or any individual with supervisory responsibilities in the office being inspected, works in an office that receives substantial revenues from the branch office being inspected. The Commission notes that these ''heightened inspection'' procedures also apply to a member availing itself of the above ''limited size and resources'' exception in proposed NASD Rule 3010(c)(3). The Commission believes that such heightened inspection procedures should help address conflicts of interest with sufficient flexibility so as not to create undue burdens and costs on members. However, the Commission expects NASD to carefully monitor member compliance with such procedures to ensure that members are, in fact, adequately addressing such conflicts.

C. Supervisory Controls (NASD Rule 3012)

The Commission notes that NASD proposed new procedures for ensuring that adequate supervisory control policies are in place. NASD has proposed to require that each member designate one or more principals who would be responsible for establishing, maintaining, and enforcing a system of supervisory controls that, in general, test and verify that the member's supervisory procedures are reasonably designed to achieve compliance with applicable securities laws and regulations and NASD rules. The designated principal or principals must submit to the member's senior management no less than annually, a report detailing each member's system of supervisory controls, the summary of the test results and significant identified exceptions, and any additional or amended supervisory procedures created in response to the test results.

More specifically, the designated principal must establish, maintain, and enforce procedures that are reasonably designed to review and supervise the customer account activity conducted by branch office managers, sales managers, regional or district sales managers, or any person performing a similar supervisory function. NASD proposed that a person who is senior to the producing manager must conduct such supervision, unless the member meets certain criteria [67] and its business is conducted in a manner necessitated by a limitation of resources that includes fewer than two layers of supervisory personnel. In such a case, a person in another office in a position similar to the producing manager may conduct supervisory reviews provided that such person does not have supervisory responsibility over the activity being reviewed, reports to his supervisor his supervision and review of the producing manager, and has not performed a review of the producing manager in the last two years. The Commission believes that these limitations should help assure that supervision of customer account activity is objective and not subject to conflicts of interest, while at the same time accommodating legitimate limitations of small firms.

NASD proposed an additional exception from the requirement that a person who is senior to the producing manager must conduct the supervisory reviews for a member whose size and resources are so limited that it cannot avail itself of the exception. In such situations, a member may have a principal who is sufficiently knowledgeable of the member's supervisory control procedures conduct the reviews required by NASD Rule 3012.[68] The Commission finds reasonable the NASD's examples of such situations as a member with only one office or a member with two offices and an insufficient number of qualified personnel who can conduct reviews on a two-year rotation. However, any such member must document in its supervisory control procedures the factors it relied upon in determining that its size and the resources available to it are so limited that it has no alternative than to comply in this manner. The Commission expects NASD to carefully monitor use of this exception to be certain that only members for whom the exception is intended take advantage of it and that this exception is not abused.

In addition, as with NASD Rule 3010, NASD has included in proposed Rule 3012 a provision requiring heightened supervision over activities of each producing manager who is responsible for generating 20% or more of the revenue of the business units supervised by the producing manager's supervisor. The Commission expects this provision will reduce potential conflicts of interest in situations where the producing branch manager is responsible for generating substantial revenues for the benefit of his supervisor. The Commission believes that such heightened supervisory procedures should help address the potential conflicts of interest with sufficient flexibility so as not to create undue burdens and costs on members. However, the Commission expects NASD to carefully monitor member compliance with such procedures to ensure that members are, in fact, adequately addressing such conflicts.

In sum, the Commission believes that specifically requiring review and supervision of customer account activity conducted by branch office managers, sales managers, regional/district managers or any other supervisory personnel by a person senior to the producing manager, except in limited circumstances, is appropriate so that supervisors do not perform the final review of their own sales activity, nor are they able to put undue or even unintentional pressure on subordinates who might otherwise be responsible for conducting a review.

Further, the Commission believes that the two exceptions delineated by NASD for when a member need not require supervision by someone senior to the producing manager are appropriate to give relief to members whose size and/or structure would make application of the general rule impractical. The Commission, however, expects the NASD to closely monitor the use of these two exceptions to be certain that only members for whom they are intended, in fact, use these exceptions, and that these exceptions are not abused.

[67] The proposed rule text provides that these criteria are that the member does not conduct a public business, has a capital requirement of $5,000 or less, or employs 10 or fewer representatives.

[68] *See Staff Legal Bulletin No. 17: Remote Office Supervision,* Division, Commission, fn 39 (March 19, 2004).

D. Books and Records (NASD Rule 3110)

The Commission believes that NASD's proposal to require that a qualified, designated person approve and document the basis for any change in account name or designation is appropriate. The Commission recognizes that changes in account names and designations in connection with order executions can be subject to abuse and believes that requiring that a designated person authorize changes to account names or designations before they may be made, as well as requiring that the designated person document the essential facts relied upon, should help to protect against such abuse.

The Commission further believes that NASD's proposed requirement that members preserve the documentation of the essential facts relied upon in approving changes for a period of not less than three years, the first two in an easily accessible place, as that term is used in SEC Rule 17a–4, is appropriate. This requirement should enable members to use existing recordkeeping systems, as the proposed requirement is substantially similar to the record retention requirements of Rule 17a–4 under the Act.

E. Customer Account Information (IM–3110)

The Commission believes that NASD's proposal to permit members to hold customer mail only upon the written instructions of a customer, and only for two months if the member is advised that the customer will be on vacation or traveling, and only for three months if the customer is going abroad, is appropriate. The Commission believes that limiting the period of time during which members may hold mail for customers will reduce the risk of customers not receiving account statements or other account documentation for their review at their usual addresses. The Commission believes that the proposed rule change will assist customers in ensuring that the information contained in their account statements or other account documentation is accurate and in accordance with their stated goals.

F. Effective Date of Proposed Rule Change

The Commission notes that NASD has proposed an effective date for the proposed rule change of six months from the date of Commission approval. The Commission recognizes that the proposed rule change may require members to make procedural or systems changes, and therefore believes that it is appropriate to delay the effective date of this proposed rule change for six months. Accordingly, the effective date of the proposed rule change shall be December 17, 2004.

IV. Amendment No. 3

The Commission finds good cause for approving Amendment No. 3 prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. In Amendment No. 3, NASD made clarifying changes to proposed NASD Rules 3010 and 3012 in response to concerns raised by commenters.[69] Further, the Commission believes these change do not significantly alter the original proposal, which was subject to a full notice and comment period.

In addition, in Amendment No. 3, NASD responded to concerns raised by commenters that because of their limited size and resources, they would not be able to comply with the requirements regarding who is eligible to conduct inspections and supervisory reviews. In response to these concerns, NASD proposed alternative means of compliance for members whose size and resources are so limited that they could not comply with the requirements of proposed NASD Rules 3010 and 3012 as proposed in Amendments No. 1 and 2. The Commission believes that NASD's proposed changes in Amendment No. 3 adequately address commenters' concerns and provide a reasonable alternative for members that could otherwise comply with the proposed rules.

Therefore, for all the foregoing reasons and the overall importance of the proposed rules, the Commission finds good cause for granting accelerated approval to Amendment No. 3, and believes that it is consistent with Section 19(b)(2) of the Act.[70]

V. Text of Amendment No. 3

In Amendment No. 3, NASD proposed further amendments to NASD Rules 3010 and 3012. The base text is that proposed in Amendment Nos. 1 and 2 (*i.e.*, how the rule would appear if only Amendment Nos. 1 and 2 were approved by the Commission). Changes made by Amendment No. 3 are in italics; deletions are in brackets.

* * * * *

3010. Supervision

(a) Supervisory System

Each member shall establish and maintain a system to supervise the activities of each registered representative and associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable NASD Rules. Final responsibility for proper supervision shall rest with the member. A member's supervisory system shall provide, at a minimum, for the following:

(1) through (7) No change.

(b) No change.

(c) Internal Inspections

(1) Each member shall conduct a review, at least annually, of the businesses in which it engages, which review shall be reasonably designed to assist in detecting and preventing violations of, and achieving compliance with, applicable securities laws and regulations, and with applicable NASD rules. Each member shall review the activities of each office, which shall include the periodic examination of customer accounts to detect and prevent irregularities or abuses.

(A) Each member shall inspect at least annually every office of supervisory jurisdiction and any branch office that supervises one or more non-branch locations.

(B) Each member shall inspect at least every three years every branch office that does not supervise one or more non-branch locations. In establishing how often to inspect each non-supervisory branch office, the firm shall consider whether the nature and complexity of the securities activities for which the location is responsible, the volume of business done, and the number of associated persons assigned to the location require the non-supervisory branch office to be inspected more frequently than every three years. *If a member establishes a more frequent inspection cycle, the member must ensure that at least every three years, the inspection requirements enumerated in paragraph (c)(2) have been met.* The non-supervisory branch office examination cycle[and], an explanation of the factors the member used in determining the frequency of the examinations in the cycle*, and the manner in which a member will comply with paragraph (c)(2) if using more frequent inspections than every three years* shall be set forth in the member's written supervisory and inspection procedures.

(C) Each member shall inspect on a regular periodic schedule every non-branch location. In establishing such schedule, the firm shall consider the nature and complexity of the securities activities for which the location is responsible and the nature and extent of

[69] *See* Sections III.B. and C., *supra.*

[70] 15 U.S.C. 78s(b)(2).

contact with customers. The schedule and an explanation regarding how the member determined the frequency of the examination schedule shall be set forth in the member's written supervisory and inspection procedures.

Each member shall retain a written record of the dates upon which each review and inspection is conducted.

(2) An office inspection and review by a member pursuant to paragraph (c)(1) must be reduced to a written report and kept on file by the member for a minimum of three years, unless the inspection is being conducted pursuant to paragraph (c)(1)(C) and the regular periodic schedule is longer than a three-year cycle, in which case the report must be kept on file at least until the next inspection report has been written. The written inspection report must also include, without limitation, the testing and verification of the member's policies and procedures, including supervisory policies and procedures in the following areas:

(A) Safeguarding of customer funds and securities;

(B) Maintaining books and records;

(C) Supervision of customer accounts serviced by branch office managers;

(D) Transmittal of funds between customers and registered representatives and between customers and third parties;

(E) Validation of customer address changes; and

(F) Validation of changes in customer account information.

If a member does not engage in all of the activities enumerated above, the member must identify those activities in which it does not engage in the written inspection report and document in the report that supervisory policies and procedures for such activities must be in place before the member can engage in them.

(3) An office inspection by a member pursuant to paragraph (c)(1) may not be conducted by the branch office manager or any person within that office who has supervisory responsibilities or by any individual who is supervised by such person(s). *However, if a member is so limited in size and resources that it cannot comply with this limitation* (*e.g., a member with only one office or a member with a business model where small or single-person offices report directly to an office of supervisory jurisdiction manager who is also considered the offices' branch office manager), the member may have a principal who has the requisite knowledge to conduct an office inspection perform the inspections. The member, however, must document in the office inspection reports the factors it has relied upon in determining that it is so limited in size and resources that it has no other alternative than to comply in this manner.*

A member must have in place procedures that are reasonably designed to provide heightened office inspections if the person conducting the inspection reports to the branch office manager's supervisor or works in an office supervised by the branch manager's supervisor and the branch office manager generates 20% or more of the revenue [income] of the *business units supervised by the* branch office manager's supervisor. For the purposes of this subsection only, the term ''heightened inspection'' shall mean those inspection procedures that are designed to avoid conflicts of interest that serve to undermine complete and effective inspection because of the economic, commercial, or financial interests that the branch manager's supervisor holds in the associated persons and businesses being inspected. *In addition, for the purpose of this section only, when calculating the 20% threshold, all of the revenue generated by or credited to the branch office or branch office manager shall be attributed as revenue generated by the business units supervised by the branch office manager's supervisor irrespective of a member's internal allocation of such revenue. A member must calculate the 20% threshold on a rolling, twelve-month basis.*

* * * * *

(g) Definitions

(1) No change.

(2) (A) ''Branch Office'' means any location identified by any means to the public or customers as a location at which the member conducts an investment banking or securities business, excluding:

(A) through (D) renumbered as (i) through (iv).

(B) Notwithstanding the exclusions provided in paragraph (2)(A), any location that is responsible for supervising the activities of persons associated with the member at one or more non-branch locations of the member is considered to be a branch office.

(3) No change.

3012. Supervisory Control System

(a) General Requirements

(1) Each member shall designate and specifically identify to NASD one or more principals who shall establish, maintain, and enforce a system of supervisory control policies and procedures that (A) test and verify that the member's supervisory procedures are reasonably designed with respect to the activities of the member and its registered representatives and associated persons, to achieve compliance with applicable securities laws and regulations, and with applicable NASD rules and (B) create additional or amend supervisory procedures where the need is identified by such testing and verification. The designated principal or principals must submit to the member's senior management no less than annually, a report detailing each member's system of supervisory controls, the summary of the test results and significant identified exceptions, and any additional or amended supervisory procedures created in response to the test results.

(2) The establishment, maintenance, and enforcement of written supervisory control policies and procedures pursuant to paragraph (a) shall include:

(A) Procedures that are reasonably designed to review and supervise the customer account activity conducted by the member's branch office managers, sales managers, regional or district sales managers, or any person performing a similar supervisory function. A person who is senior to the producing manager must perform such supervisory reviews. However, if a member *(i)* does not conduct a public business, *(ii)* or has a capital requirement of $5,000 or less, or *(iii)* employs 10 or fewer representatives, and, *in the case of (i) through (iii),* its business is conducted in a manner necessitated by a limitation of resources that includes fewer than two layers of supervisory personnel, a person in another office *of the member* who is in the same or similar position to the producing manager may conduct the supervisory reviews, provided that the person in the same or similar position does not have supervisory responsibility over the activity being reviewed, reports to his supervisor his supervision and review of the producing manager, and has not performed a review of the producing manager in the last two years. *If a member is so limited in size and resources that it cannot avail itself of this exception* (*e.g., a member with only one office or a member with two offices and an insufficient number of qualified personnel who can conduct reviews on a two-year rotation), a member may have a principal who is sufficiently knowledgeable of the member's supervisory control procedures conduct these reviews. The member, however, must document in its supervisory control procedures the factors it has relied upon in determining that its size and resources available to it are so limited that the member has no*

other alternative than to comply in this manner;

(B) Procedures that are reasonably designed to review and monitor the following activities:

(i) All transmittals of funds (*e.g.*, wires or checks, etc.) or securities from customers and third party accounts (*i.e.*, a transmittal that would result in a change of beneficial ownership); from customer accounts to outside entities (*e.g.*, banks, investment companies, etc.); from customer accounts to locations other than a customer's primary residence (*e.g.*, post office, ''in care of'' accounts, alternate address, etc.); and between customers and registered representatives, including the hand-delivery of checks;

(ii) Customer changes of address and the validation of such changes of address; and

(iii) Customer changes of investment objectives and the validation of such changes of investment objectives.

The policies and procedures established pursuant to paragraph (a)(2)(B) must include a means or method of customer confirmation, notification, or follow-up that can be documented. *If a member does not engage in all of the activities enumerated above, the member must identify those activities in which it does not engage in its written supervisory control policies and procedures and document in those policies and procedures that additional supervisory policies and procedures for such activities must be in place before the member can engage in them*; and

(C) Procedures that are reasonably designed to provide heightened supervision over the activities of each producing manager who is responsible for generating 20% or more of the [income] *revenue* of the *business units supervised by the* producing manager's supervisor. For the purposes of this subsection only, the term ''heightened supervision'' shall mean those supervisory procedures that evidence supervisory activities that are designed to avoid conflicts of interest that serve to undermine complete and effective supervision because of the economic, commercial, or financial interests that the supervisor holds in the associated persons and businesses being supervised. *In addition, for the purpose of this section only, when calculating the 20% threshold, all of the revenue generated by or credited to the branch office or branch office manager shall be attributed as revenue generated by the business units supervised by the branch office manager's supervisor irrespective of a member's internal allocation of such revenue. A member must calculate the 20% threshold on a rolling, twelve-month basis.*

(b) Dual Member

Any member in compliance with substantially similar requirements of the New York Stock Exchange, Inc. shall be deemed to be in compliance with the provisions of this Rule.

* * * * *

VI. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment No. 3 is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (http://www.sec.gov/rules/sro.shtml); or

Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASD–2002–162 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–NASD–2002–162. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal offices of the NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASD–2002–162 and should be submitted on or before July 14, 2004.

VII. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[71] that the proposed rule change (SR–NASD–2002–162), as amended, be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[72]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–14232 Filed 6–22–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49857; File No. SR–NASD–2004–078]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. To Establish Certain Qualification Requirements for Supervisors of Research Analysts

June 15, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 10, 2004, the National Association of Securities Dealers, Inc. (''NASD''), filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD. 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

NASD is proposing a rule change to amend NASD Rule 1022 to establish certain qualification requirements for supervisors of research analysts. More specifically, the proposed rule change would require supervisors of research analysts to pass the regulatory part (Series 87) of the Research Analyst Qualification Examination or the Series 16 Supervisory Analyst Examination administered by the New York Stock Exchange (''NYSE'').

[71] 15 U.S.C. 78s(b)(2).

[72] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Below is the text of the proposed rule change. Proposed new language is in italics.

1022. Categories of Principal Registration

(a) General Securities Principal

(1) through (4) No change.

(5) A person registered solely as a General Securities Principal shall not be qualified to supervise the conduct of a ''research analyst'' as defined in Rule 1050, or a supervisory analyst qualified pursuant to Rule 344 of the New York Stock Exchange who approves research reports on equity securities as permitted by Rule 2210(b)(1), unless such principal has passed a Qualification Examination as specified by the Board of Governors.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD 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. NASD 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

(a) Purpose

New NASD Rule 1050, which became effective on March 30, 2004, requires all persons associated with a member who are to function as research analysts to be registered as such with NASD and pass a qualification examination.[3] Those individuals required to be registered as research analysts must pass the new Research Analyst Qualification Examination (Series 86/87) or qualify for an exemption. NASD and the NYSE jointly developed the new examination, which consists of two parts: an analysis part (Series 86) that tests fundamental analysis and valuation of equity securities and a regulatory part (Series 87) that tests knowledge of applicable rules, including Rule 2711, NYSE Rule 344 and SEC Regulation AC.

Prior to taking either the Series 86 or 87, a candidate also must have passed the General Securities Registered Representative Examination (Series 7), the Limited Registered Representative (Series 17), or the Canada Module of Series 7 (Series 37 or 38). Individuals who have passed Level II of the Charter Financial Analyst Examination administered by the Association for Investment Management and Research can apply for an exemption from the Series 86. Those persons who were functioning as research analysts on the effective date have been granted a one-year grace period within which to meet the registration requirements. There is no ''grandfather'' provision for this new qualification requirement.

In light of the new research analyst registration requirement and the scope and importance of the comprehensive analyst conflict rules that have been implemented recently, NASD believes it appropriate for supervisors of research analysts to have particular knowledge of this new regulatory environment. Accordingly, NASD is proposing to amend Rule 1022 to require supervisors of research analysts to pass the regulatory part (Series 87) of the Research Analyst Qualification Examination or, for dual NASD–NYSE members, the NYSE Supervisory Analyst Examination (Series 16).

For dual members, NASD currently permits either a Series 16 supervisory analyst or a Series 24 General Securities Principal to supervise the content of research reports under the advertising rule (Rule 2210) and to review research reports for the applicable conflict of interest disclosures required by Rule 2711(h). NASD requires a Series 24 General Securities Principal to supervise all other conduct of an individual who functions as a research analyst. For NASD-only members, a Series 24 General Securities Principal currently is required to supervise both the content of research reports and research analysts.

Under the proposed rule change, dual members would be required to have a principal who has passed either the Series 24 and the Series 87 or the Series 16 to supervise the content of research. If the member elects to have a Series 16 be responsible for supervising the content of research, then a Series 24 principal who has also passed either the Series 87 or the Series 16 would be responsible for supervising the conduct of both the Series 16 supervisory analyst and the research analyst.[4] This proposed rule change would provide dual members some flexibility in their supervisory structure for research analysts. NASD-only members would be required to have a principal who has passed the Series 24 and the Series 87 supervise both the content of research reports and the conduct of registered research analysts.

NASD believes that this approach will promote investor protection by ensuring that persons responsible for either reviewing and approving research reports and for providing general supervision of the conduct of research analysts have demonstrable knowledge of Rule 2711 and related analyst conflict of interest laws, rules and regulations. At the same time, the proposal would preserve the longstanding NASD requirement that a General Securities Principal be responsible for the general conduct of a registered person.

NASD does not anticipate providing a ''grandfather'' provision for current supervisors of research analysts. However, NASD would provide a reasonable amount of time for those supervisors to meet the requirements of the proposed rule changes, so as not to disrupt a member's research business.

(b) Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6)[5] of the Act, which requires, among other things, that NASD rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD believes that the proposed rule change is consistent with the provisions of the Act because it will better protect investors by ensuring that those who supervise research analysts demonstrate particularized knowledge of the research analyst conflict of interest laws, rules and regulations.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NASD 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.

[3] For the purposes of this registration requirement, a research analyst is ''an associated person who is primarily responsible for the preparation of the substance of a research report or whose name appears on a research report.'' To be consistent with Rule 2711, Research Analysts And Research Reports, the registration requirement applies only to equity research analysts; fixed income analysts do not need to be registered as research analysts at this time.

[4] NYSE has represented to NASD that it will conform the Series 16 examination to include applicable NASD rules by December 31, 2004. Based on that representation, NASD has agreed to recognize the Series 16 in lieu of the Series 87 until at least year-end, at which point NASD will reassess the applicability of the Series 16 for NASD members.

[5] 15 U.S.C. 78o–3(b)(6).

(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

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 self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NASD–2004–078 on the subject line.

Paper Comments:

• Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File No. SR–NASD–2004–078. This file number should be included on the subject line if e-mail is used. To help us process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of NASD. All submissions should refer to file number SR–NASD–2004–078 and should be submitted by July 14, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 04–14235 Filed 6–22–04; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49882; File No. SR–NYSE–2002–36]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendments No. 1, 2, and 3 by New York Stock Exchange, Inc. Relating to Internal Controls and Supervisory Control Amendments and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 4

June 17, 2004.

I. Introduction

On August 16, 2002, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change relating to the establishment, maintenance, and testing of internal controls and supervision of NYSE members. The NYSE submitted Amendment No. 1 to the proposed rule change on November 20, 2002.[3] The proposed rule change, as amended, was published for comment in the **Federal Register** on November 27, 2002.[4] The Commission received five comment letters in response to proposed rule change.[5] In response, on April 28, 2003, the NYSE filed Amendment No. 2 to the proposed rule change.[6] On August 7, 2003, the NYSE submitted Amendment No. 3 to the proposed rule change.[7] On August 13, 2003, the Commission published Amendments No. 2 and 3 for comment in **Federal Register**.[8] The Commission received four comment letters in response to these Amendments.[9] These comment letters and the NYSE's response in Amendment No. 4,[10] submitted on April 16, 2004, are summarized below. This Order approves the proposed rule, as

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[6] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Darla Stuckey, Corporate Secretary, NYSE, to Nancy Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated November 18, 2002 (''Amendment No. 1''). In Amendment No. 1, the NYSE added ''customer changes of investment objectives'' to the list of enumerated activities with regard to which Exchange members must maintain written policies and procedures.

[4] *See* Securities Exchange Act Release No. 46858 (November 20, 2002), 67 FR 70994. On December 18, 2002, the Commission extended the 21-day comment period for an additional 30 days. *See* Securities Exchange Act Release No. 47021, 67 FR 78840 (December 26, 2002).

[5] *See* letters from Arthur F. Grant, President, Cadaret, Grant & Co., Inc., to Jonathan G. Katz, Secretary, Commission, dated December 17, 2002 (''Cadaret Grant Letter''); Christopher R. Franke, Chairman, Self-Regulation and Supervisory Practices Committee, Securities Industry Association, to Jonathan G. Katz, Secretary, Commission, dated December 18, 2002 (''Franke SIA Letter''); Kimberly H. Chamberlain, Vice President and Counsel, State Government Affairs, Securities Industry Association, to Secretary, Commission, dated December 23, 2002 (''Chamberlain SIA Letter''); Brian C. Underwood, Senior Vice President and Director of Compliance, A.G. Edwards & Sons, Inc., to Jonathan G. Katz, Secretary, Commission, dated December 18, 2002 (''A.G. Edwards Letter''); and Selwyn J. Notelovitz, Senior Vice President, Global Compliance, Charles Schwab & Co., Inc., to Jonathan G. Katz, Secretary, Commission, dated February 25, 2003 (''Schwab Letter'').

[6] *See* letter from Darla Stuckey, Corporate Secretary, NYSE, to Nancy Sanow, Assistant Director, Division, Commission, dated April 25, 2003 (''Amendment No. 2''). In Amendment No. 2, the Exchange submitted a response to comments that it had received in response to the Original Notice. In addition, the Exchange amended portions of the proposed rule text to address certain of the commenters' concerns.

[7] *See* letter from Darla Stuckey, Corporate Secretary, NYSE, to Nancy Sanow, Assistant Director, Division, Commission, dated August 6, 2003 (''Amendment No. 3''). Amendment No. 3, which replaced and superceded Amendment No. 2 in its entirety, responded to certain concerns the Commission raised with the NYSE following the Exchange's submission of Amendment No. 2.

[8] *See* Securities Exchange Act Release No. 48299 (August 7, 2003), 68 FR 48431. On September 8, 2003, the Commission extended the 21-day comment period for an additional 30 days. *See* Securities Exchange Act Release No. 48460, 68 FR 54034 (September 15, 2003).

[9] *See* letters from Pamela K. Cavness, Director of Compliance, Edward Jones, to Jonathan G. Katz, Secretary, Commission, dated October 2, 2003 (''Edward Jones Letter''); Barbara Black, Director, Pace University Investor Rights Project, to Secretary, Commission, dated October 2, 2003 (''Pace Letter''); John Polanin Jr., Chairman, Self-Regulation and Supervisory Practices Committee, SIA, dated October 3, 2003 (''Polanin SIA Letter''); and Ralph A. Lambiase, President, North American Securities Administrators Association, and Director, Connecticut Division of Securities, dated October 24, 2003 (''NASAA Letter'').

[10] *See* letter from Darla Stuckey, Corporate Secretary, NYSE, to Nancy Sanow, Assistant Director, Division, Commission, dated April 15, 2004 (''Amendment No. 4''). Amendment No. 4, in response to comments, altered NYSE Rules 342.42, 408.11 and the Interpretation of Rule 342(a)(b)/03.

amended, and accelerates approval of Amendment No. 4.

II. Description

A. Background

1. Purpose for and General Description of Proposal

The NYSE's proposed rule change is designed to address concerns regarding its members' supervisory systems. Many of these concerns were brought to light following an investigation by the Commission into the activities of a branch office manager, Frank Gruttadauria.[11] Over a period of 15 years, Mr. Gruttadauria misappropriated over $100 million from more than 40 clients. Mr. Gruttadauria was able to cover up his fraud by, among other things, providing clients with falsified account statements and by causing the actual brokerage statements for some clients to be mailed, without the knowledge or authorization of these clients, to entities or post office boxes under his control.

In an effort to ensure that members are more effectively supervised going forward, the NYSE has proposed amendments to existing rules to strengthen members' supervisory procedures and internal controls. Proposed amendments to NYSE Rules 342.19, 342.23, 401 and 410 set forth general and specific supervisory control requirements. Amendments to NYSE Rule 342(a)(b)/03 of the Exchange Interpretation Handbook set forth the subjects that an annual inspection must address when evaluating the internal controls present in a particular branch office. In addition, the NYSE proposes to amend Exchange Rule 408 to limit the duration of a member's authority to exercise time and price discretion pursuant to a non-written customer request.

2. General Comments on the Proposed Rule Change

Many commenters urged greater flexibility in the general implementation of the proposed rule changes. For example, two commenters suggested that the proposed rule amendments should be adopted in the form of ''principles for effective supervision'' or ''best practices.'' [12] Most commenters recommended that the NYSE adopt more flexible rules to account for the varied member organization business models.[13] Commenters suggested that the proposed amendments would not be economically feasible for all types of firms.[14] One commenter suggested that the Gruttadauria case was not so much a failure of the current regulatory system, including member firms' internal controls and supervisory practices, as it was the result of a single individual intent on defrauding his customers.[15]

The NYSE responded that it believed the authority carried by changes to Exchange rules and their interpretations was necessary to effectively induce appropriate conduct in this area. The Exchange, however, as discussed in greater detail below, agreed that greater flexibility would address the varied business organization models that its membership represents and provided certain changes to its proposed rules to account for such variation.

B. Independent Supervision of Managers' Activity

1. Original Proposal and Comments Received

NYSE Rule 342.19, as originally proposed, would require that members develop written policies and procedures reasonably designed to independently review and supervise the customer account activity of Sales Managers, Regional/District Sales Managers, Branch Office Managers, or any person performing a similar supervisory function (collectively, ''Producing Managers''). Some commenters sought clarification of the ''independent supervision'' standard.[16] The same commenters suggested that individuals within a firm at equal or higher organizational levels, peripherally involved, or who receive an indirect benefit from the activity being reviewed may, nevertheless, have sufficient independence to supervise Managers.[17]

In Amendment No. 2, the NYSE proposed amendments to its Rule 342.19 to clarify that reviews of Producing Managers' customer account activity may be conducted by a ''qualified person,'' provided such person is senior to the manager (*i.e.*, not any person with the same job function as the manager or any person subordinate to the manager). The proposed rule has also been revised to make clear that the ''qualified person'' standard, in the context of NYSE Rule 342.19, is defined by NYSE Rule 342.13, which, among other things, requires a creditable three-year record as a registered representative or equivalent experience and passing specified supervisory qualification examinations administered by the NASD and acceptable to the NYSE, such as the Series 9/10 or the Series 24 exams.

One commenter suggested, in response to Amendments No. 2 and 3, that the Rule allow for review by ''sufficiently independent'' persons ''at equal levels of seniority,'' such as administrative managers who are ''outside the * * * manager's reporting line'' and, thus, able to act ''without fear of reprisal'' by the Producing Manager.[18] The NYSE responded that customer account activity of Producing Managers is a serious and sensitive regulatory area. Nevertheless, while the Exchange takes the position that there are advantages when a Producing Manager's activity is reviewed by a person senior to that Manager, the Exchange recognizes that such arrangements might not be practical for very small firms. Further, the Exchange agrees that establishing an alternative ''independence'' standard for those supervisory persons designated to review a Producing Managers' customer activity is a reasonable and effective means to provide administrative flexibility.

2. Current Proposal

Thus, in Amendment No. 4 to proposed NYSE Rule 342.19(a), the Exchange proposes to permit supervisory reviews to be conducted by a qualified person who is either senior to or ''otherwise independent'' of the Producing Manager under review. NYSE proposes to define an ''otherwise independent'' person as one who does not report either directly or indirectly to the Producing Manager under review, is not in the same office as the Producing Manager, does not otherwise have supervisory responsibility over the activity being reviewed, and alternates review of the Producing Manager with another qualified person at least every two years.

In addition, the NYSE is proposing to require that ''alternate'' independent supervision of a Producing Manager by another qualified person be established if the person designated to review a Producing Manager receives an override or other income derived from that Producing Manager's customer activity

[11] *See In the Matter of SG Cowen Securities Corporation,* 80 SEC Docket 3154 (September 9, 2003), Securities Exchange Act Release No. 48335 (August 14, 2003) Administrative Proceeding File No. 3–11216. *See also In the Matter of Lehman Brothers, Inc.,* 80 SEC Docket 3173 (September 9, 2003), Securities Exchange Act Release No. 48336 (August 14, 2003) Administrative Proceeding File No. 3–11217.

[12] *See* Franke SIA Letter and A.G. Edwards Letter.

[13] *See* Franke SIA Letter; A.G. Edwards Letter, Cadaret Letter, and Schwab Letter.

[14] *See* Cadaret Letter, Franke SIA Letter, and A.G. Edwards Letter.

[15] *See* Franke SIA Letter.

[16] *See* Franke SIA Letter; A.G. Edwards; and Schwab Letter.

[17] *Id.*

[18] *See* Polanin SIA Letter.

that represents more than 10% of the designated person's gross income derived from the member over the course of a rolling 12-month period.

Finally, in Amendment No. 4 to Exchange Rule 342.19(b), NYSE proposes an exception for members so limited in size and resources that there is no qualified person senior to, or otherwise independent of, the Producing Manager to conduct the review. In such a situation, the NYSE proposes to allow another person who is a ''qualified person,'' but not senior to or otherwise independent of the Producing Manager, to conduct the review in compliance with the Rule's independence provisions to the extent practicable. As provided in proposed Exchange Rule 342.19(c), if a member needs to rely on the exception in NYSE Rule 342.19(b), the member must document all the factors used to determine why complete compliance with the Rule is not possible and that the procedures in place comply with the Rule to the extent practicable.[19]

C. Internal Controls

1. Original Proposal and Comments Received

Proposed NYSE Rule 342.23 requires members and member organizations to develop and maintain adequate internal controls over each of their business activities. The proposed rule further requires that such controls provide for the establishment of procedures for independent verification and testing of those business activities. Some commenters sought clarification as to who would be sufficiently ''independent'' to perform these verification and testing functions.[20] While the commenters acknowledged that supervisors lack sufficient independence to verify and test procedures they personally implement, they nonetheless seek regulatory flexibility to accommodate a variety of supervisory structures beyond self-supervision.[21] Commenters contended that senior supervisors in a hierarchal supervisory structure should not be excluded simply because they may derive an indirect benefit from the activity under review.[22]

In response, the Exchange stated that it recognized the far-ranging scope and variety of activities subject to the verification and testing requirements. In Amendment No. 2, the Exchange deleted the requirement that internal control procedures be ''separate and apart from the day-to-day supervision of such functions'' from the proposed amendments to NYSE Rule 342.23 to allow greater flexibility in establishing such internal controls. However, the Exchange stated that firms would be expected to make an informed determination that persons responsible for verification and testing of business activities are sufficiently independent and qualified to do so effectively.

Commenters also sought clarification and assurance that the proposed requirements would not create an obligation for firms to annually test and verify ''every aspect'' of their supervisory procedures, but rather allow for a ''risk-based approach'' based upon ongoing assessments of the firm's business.[23] In Amendment No. 2, the NYSE proposed to revise NYSE Rule 342.23 to allow for an ongoing analysis, based upon appropriate criteria, to assess and prioritize those business activities requiring independent verification and testing.

One commenter recommended that the ''NASD CEO Certification Rule'' be applicable to NYSE firms.[24] The NYSE noted that the NASD did not address the issue of CEO certification in the context of its corresponding proposed rule change addressing internal and supervisory controls.[25] Accordingly, the NYSE will evaluate the appropriateness of a comparable requirement separate and apart from the instant filing.

2. Current Proposal

As amended in response to comments, proposed NYSE Rule 342.23 would require that a member or member organization develop and maintain adequate controls over each of its business activities, including ones that provide for the establishment of procedures for independent verification and testing of those business activities. The member may employ an ongoing analysis, based upon appropriate criteria, to assess and prioritize those business activities that require independent verification and testing at a given time. The member must include a summary of its efforts, including a summary of the tests conducted and significant exceptions identified, in the Annual Report that it submits to its chief executive officer or managing partner, pursuant to Exchange Rule 342.30. In addition, the proposed rule provides an exemption from the independent verification and testing procedures for those members that do not conduct a public business, have a capital requirement of $5,000 or less, or that employ ten or fewer registered representatives. The proposed rule also cross references proposed Exchange Rule 401(b), which would establish certain categories of activities for which members are required to maintain written policies and procedures administered pursuant to proposed NYSE Rule 342.23.

D. Annual Branch Office Inspections

1. Original Proposal and Comments Received

The NYSE originally proposed to amend Rule 342(a)(b)/03 in the NYSE Interpretation Handbook to require that annual branch office inspections be conducted by a person who is ''independent'' of the direct supervision or control of the branch office, including Branch Office Manager, Sales Managers, District/Regional Managers assigned to the office, or any other person performing a similar supervisory function.

One commenter suggested that imposing this amendment would be economically burdensome to firms, possibly leading firms to hire supervisors or outsource the inspection function at significant cost to the firm.[26] In addition, commenters sought clarification as to who would be sufficiently independent to conduct the annual inspections.[27] Commenters suggested that supervisors, who are part of the direct supervision or control of the branch office and are the most familiar with registered representatives and activities located at particular offices, are in the best position to review the activities of a branch office, identify weaknesses, and take corrective action.[28] One commenter noted that the size and structure of some firms may mean that no individual within the firm could be considered ''independent.''[29] Some commenters suggested that scenarios involving inspection by supervisory personnel in a hierarchical supervisory system may be sufficiently outside the day-to-day chain of command to meet the ''independence''

[19] For example, the review of a Producing Manager may not be conducted by a qualified non-senior person in the Producing Manager's office if a qualified senior, or otherwise independent, person is available in another office of the member organization.

[20] *See* Franke SIA Letter; Schwab Letter; and A.G. Edwards Letter.

[21] *Id.*

[22] *See* Franke SIA Letter; and Schwab Letter.

[23] *See* Franke SIA Letter; and A.G. Edwards Letter.

[24] *See* NASAA Letter.

[25] *See* Exchange Act Release No. 48298 (August 7, 2003), 68 FR 48421 (August 13, 2003) (SR–NASD–2002–162) (notice of filing of Amendment Nos. 1 and 2 by the NASD relating to supervisory control amendments).

[26] *See* Pace Letter.

[27] *See* Franke SIA Letter; Schwab Letter; and A.G. Edwards Letter.

[28] *See* Schwab Letter, and Franke SIA Letter.

[29] *See* Franke SIA Letter.

standard.[30] Another commenter suggested that firms should have the flexibility to design internal control systems that conform to the nature of the business conducted by the member.[31] In addition, a commenter asserted that business line supervisors' auditing of branch and satellite offices serves to reinforce their accountability for the registered representatives' actions.[32]

In response to the commenters' concerns, the NYSE stated its belief that in order for a branch inspection program to be effective, it needs to include reasonable guidelines to minimize conflicts of interest. The Exchange also suggested that such guidelines should not exclude all participants at every level of a branch office's hierarchal supervisory structure, but that it was reasonable to exclude the branch manager and any person to whom the branch manager directly reports.

Accordingly, in Amendment Nos. 2 and 3, the NYSE amended Rule 342(a)(b)/03 in the NYSE Interpretation Handbook to delete the characterization of Sales Managers, District/Regional Managers assigned to an office, or any other person performing similar supervisory function as individuals not independent of the direct supervision or control of the branch office, but retained the characterization of Branch Office Managers as not being independent. The Exchange also added persons who report to a Branch Office Manager, and any person to whom such manager directly reports, to the list of people who are deemed not ''independent'' for the purposes of NYSE Rule 342(a)(b)/03 in the Exchange Interpretation Handbook.

Commenters raised the concern that the proposed amendments, in conjunction with a pending NYSE rule proposal [33] to amend the definition of ''branch office,'' would increase the burden with respect to annual inspections for firms with far-reaching branch networks.[34] The Exchange currently requires, absent a specific waiver, annual inspections of each branch office location.[35] The Exchange responded that pending NYSE Rule amendments relating to the definition of a ''branch office'' would significantly reduce the types of locations required to be registered as branch offices. Accordingly, the NYSE believes that the number of branch office inspections required of each member organization would be reduced. NASAA also requested clarification that a person conducting a branch office inspection cannot be a person who directly *or indirectly* reports to the sales manager of the office.[36] The NYSE agreed and is adding this clarification to the Interpretation of the Rule in Amendment No. 4. The NYSE represents that the wording ''any person who reports to such Manager'' is intended to be broadly construed to encompass all persons who report, directly or indirectly, to a Manager.

Finally, NASAA suggests requiring all branch office inspection reports be sent to the member organization's compliance department directly and then delivered to the branch office.[37] The Exchange does not intend to amend the proposed rule in this regard as it believes that each member organization should address to whom within the firm an inspection report must be sent in its policy and procedures manual.

2. Current Proposal

Thus, the NYSE proposes to amend Rule 342(a)(b)/03 in the NYSE Interpretation Handbook to require that the branch office inspections that are to be conducted at least annually be conducted by a person who is ''independent'' of the direct supervision or control of the branch office, including the Branch Office Manager, any person who reports directly or indirectly to such Manager, or any person to whom such Manager directly reports. Accordingly, the Exchange is amending Rule 342(a)(b)/03 in the NYSE Interpretation Handbook to clarify that the person conducting the inspection may not be someone that directly or indirectly reports to a Manager. The NYSE proposes that members conduct inspections at least annually, absent a demonstration to the satisfaction of the Exchange that because of proximity, special reporting or supervisory practice, other arrangements may satisfy the supervisory requirements provided for in the NYSE Rule 342. The proposed rule change, as amended, also provides that a written authorization by the Exchange of an alternative arrangement to the annual inspections would suffice for recordkeeping purposes.

In addition, the NYSE proposes to require that office inspections include, without limitation, the testing and independent verification of the member's internal controls in the areas of: Safeguarding customer funds and securities; maintaining books and records; supervision of customer accounts serviced by branch office managers; transmittal of funds between customers and registered representatives and between customers and third parties; validation of customer address changes; and validation of changes in customer account information.

E. Written Policies and Procedures for Certain Customer Activities

1. Original Proposal and Comments Received

Proposed NYSE Rule 401(b) requires each member and member organization to maintain written policies and procedures, administered pursuant to the internal control requirements prescribed under proposed NYSE Rule 343.23, that specifically address transmittals of customer funds or securities between accounts, changes in investment objectives, and changes of address. These designated policies and procedures must include a method of customer confirmation, notification, or follow-up that can be documented.

One commenter requested that these requirements apply only to retail accounts.[38] An ''institutional carve-out'' was sought on the grounds that much institutional business is done ''delivery versus payment,'' ''receipt versus payment,'' or through prime brokerage accounts. Another commenter suggested that, since institutional trading processes, systems, and controls are so distinct from retail account servicing, the proposed Rule 401 requirements should apply to retail activity but have ''limited, if any, application to institutional business.'' [39]

The Exchange believes that an exemption for institutional accounts is inappropriate, notwithstanding the concerns raised in the comment letters. The NYSE states that in order for an internal controls policy to be effective, it must be comprehensive. Accordingly, the Exchange believes that it is reasonable and appropriate that regulatory oversight in the sensitive areas designated in proposed NYSE Rule 401(b) should extend to institutional account activity.

[30] *See* Franke SIA Letter; and A.G. Edwards Letter.

[31] *See* Schwab Letter.

[32] *Id.*

[33] The NYSE submitted a proposed rule change amending the definition of ''branch office' to include, with certain limited exceptions, any location, other than a main office, where one or more associated persons of a member organization regularly conduct the business of effecting any transactions in or inducing or attempting to induce the purchase or sale of any security, or is held out as such. *See* Securities Exchange Act Release No. 46888 (November 22, 2002), 67 FR 72257 (December 4, 2002) (SR–NYSE–2002–34).

[34] *See* A.G. Edwards Letter, Franke SIA Letter and Chamberlain SIA Letter.

[35] *See* Rule 342(a)(b)/03 in the NYSE Interpretation Handbook.

[36] *See* NASAA Letter.

[37] *Id.*

[38] *See* Franke SIA Letter.

[39] *See* Polanin SIA Letter.

2. Current Proposal

Thus, the proposed amendments to NYSE Rule 401 would require members and member organizations to maintain written policies and procedures, administered pursuant to the internal control requirements prescribed under NYSE Rule 342.23, specifically with respect to transmittals of customer funds or securities, customer changes of address, and customer changes of investment objective. The policies and procedures must include a means/method of customer confirmation, notification, or follow-up that can be documented.

F. Discretionary Accounts

1. Original Proposal and Comments Received

As originally proposed, changes to existing NYSE Rule 408(d) provided that a member retains time and price discretion on behalf of its customer until the end of the day on which the order was given to the member, absent written authorization to the contrary. Several commenters suggested that the one-day time and price discretionary authority should be limited only to retail accounts and that NYSE should craft an exemption for institutional accounts.[40] Commenters argued that large orders for institutional accounts are ''worked'' over more than a day on a good-till-cancelled/not-held basis.

NYSE responded that it believes that a general institutional exemption is inappropriate. However, the Exchange responded to the comments by revising its Rule to provide that written authorization need not be obtained for the exercise of time and price discretion beyond the day a customer grants such discretion, for orders handled by floor brokers pursuant to valid good-till-cancelled instructions issued on a ''not held'' basis.

One commenter requested that NYSE clarify that the requirement to obtain written instructions for the exercise of time and price discretion beyond the business day it was granted allows customers to issue general ''standing'' instructions, rather than issuing written instructions on an order-by-order basis.[41] The NYSE responded that Exchange Rule 408(d) clearly limits the exercise of time and price discretion to a single transaction and that customers may grant more extensive discretionary authority by executing a trading authorization with their registered representative. Another commenter noted that by limiting the institutional exemption to ''floor broker'' orders, the NYSE may inappropriately be its own market, and creating a regulatory disincentive for firms to access other marketplaces.[42] In response, the Exchange stated in Amendment No. 4 that it agreed the institutional exemption need not apply solely to NYSE floor brokers.

2. Current Proposal

Accordingly, the NYSE proposes to amend NYSE Rule 408(d) so that the limitation would not apply to time and price discretion exercised in an ''institutional account'' pursuant to valid good-till-cancelled instructions issued on a not-held basis and to remove the limitation of the exemption to situations where ''floor brokers'' exercise such price and time discretion. The Exchange also proposes to require that any exercise of time and price discretion be reflected on the order ticket. This would provide an exception to the general rule that restricts a broker's authority to exercise time and price discretion until the end of the business day on which the customer granted such discretion, absent a specific, written contrary indication signed and dated by the customer.

In Amendment No. 4, the Exchange proposes to define an ''institutional account'' to mean ''the account of (i) a bank (as defined in Section 3(a)(6) of the Securities Exchange Act of 1934), (ii) a savings association (as defined in Section 3(b) of the Federal Deposit Insurance Act), the deposits of which are insured by the Federal Deposit Insurance Corporation, (iii) an insurance company (as defined in Section 2(a)(17) of the Investment Company Act of 1940), (iv) an investment company registered with the Securities Exchange Commission under the Investment Company Act of 1940, (v) a state or a political subdivision thereof, (vi) a pension or profit sharing plan, subject to ERISA, with more than $25,000,000 total assets under management, or of an agency of the United States or of a political subdivision thereof, (vii) any person that has a net worth of at least forty-five million dollars and financial assets of at least forty million dollars, or (viii) an investment adviser registered under Section 203 of the Investment Advisers Act of 1940.''

One commenter suggests a means of communicating this time and price discretion restriction to clients to create ''an additional safeguard against potential abuse,'' since client awareness of the restriction would allow them to ''check the behavior of member associates.''[43] The NYSE responded that, as a practical matter, brokers will need to inform clients who grant time and price discretionary authority that a ''same-day'' restriction is in effect with respect to that authority. The Exchange believes that the Information Memorandum to be issued in conjunction with an approval of the proposals will remind registered representatives and firms of their obligations in this regard.

G. Maintenance of ''Account Designation Change'' Documentation

1. Original Proposal and Comments Received

The proposed amendments to NYSE Rule 410 would enhance the recordkeeping requirements for orders that members receive. Currently, Exchange Rule 410 requires members and member organizations to preserve a record of certain information about every order transmitted or carried to the floor of the Exchange and prescribes procedures for administering changes in account name or designation.

In addition to certain technical changes, the original proposed amendments to NYSE Rule 410 would expand the application of the Rule to orders sent to all marketplaces, not just the floor of the Exchange. The original proposal also would require that any person who approves account name or designation changes be qualified by passing an examination acceptable to the Exchange, such as the NASD Series 9/10 or the Series 14. In addition, the original proposed rule change would clarify that the Rule applies to all account name and designation changes, including related accounts and error accounts. Furthermore, the proposal would require written documentation of the essential facts relied upon when approving an account name or designation change and that such documentation is to be maintained in a ''central location.'' One commenter sought clarification that such documentation be maintained ''in a location where the determination and approval occurs, not in the Home Office'' so as to avoid a ''duplicate record.''[44]

The Exchange responded that it believes that the determination of where such documentation should be retained would depend on the supervisory structure of the firm. Typically, the ''central location'' would be where the account name or designation change

[40] *See* A.G. Edwards Letter, Schwab Letter, and Franke SIA Letter.

[41] *See* Franke SIA Letter.

[42] *See* Polanin SIA Letter.

[43] *See* Pace Letter.

[44] *See* A.G. Edwards Letter.

was approved. However, the NYSE believes that the proposed rule amendments should not be construed to be determinative of precisely where such records should be maintained, nor discourage maintenance of records in more than one location if regulatory purposes are well served by doing so.

2. Current Proposal

In response to the comment, the Exchange has proposed to delete the requirement that relevant documentation be maintained in ''a central location'' and to replace the phrase with the requirement that such documentation be maintained for three years, the first two in an ''easily accessible place,'' consistent with the meaning of that term in Rule 17a–4 under the Act.[45] The remainder of the current proposal to amend NYSE Rule 410 remains the same as the original proposal.

H. Effective Date

Commenters expressed concern that the effective date of any new requirements allow adequate time to enable firms to make necessary systems changes in an efficient and cost-effective manner.[46] Accordingly, the Exchange intends to establish an effective date six months from Commission approval of the proposed rule change, as amended, to allow members and member organizations sufficient time to address any necessary procedural or systems changes.

III. Discussion

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[47] In particular, the Commission finds that the proposal, as amended, is consistent with the provisions of section 6(b)(5) of the Act,[48] which requires, among other things, that a national securities exchange's rules be designed, to prevent fraud and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and to perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Commission finds that the NYSE proposal, as amended, is designed to accomplish these ends by requiring members to monitor certain conduct of employees that handle customer accounts, to establish more extensive supervisory and internal control procedures for customer accounts, and to enhance the annual inspection requirements that members undertake. The Commission also believes that the proposed rule change, as amended, may reduce the potential for customer fraud and theft of customers' identities and funds.

A. Independent Supervision of Producing Managers' Activity

Proposed Exchange Rule 342.19 is designed to provide for the independent supervision of the customer account activity that is effected by Producing Managers. In response to commenters' requests for clarity as to who would be considered ''independent'' of a Producing Manager for purposes of performing the supervisory reviews, the NYSE specified in Amendment No. 3 that someone ''qualified'' as a supervisor pursuant to NYSE Rule 342.13[49] that is senior to the Producing Manager under review would be sufficiently independent of the Producing Manager. In response to comments to proposed NYSE Rule 342.19 that advocated non-senior, but independent peer managers to be able to conduct supervisory reviews, the NYSE adopted a more flexible approach where a person who is senior or ''otherwise independent'' of the Producing Manager could conduct the review of the Manager. The Exchange also provided that if the senior or otherwise independent person received more than 10% of his or her gross income from the Producing Manager under review through overrides or other income derived from the Producing Manager's customer activity, the member must provide that an alternate independent qualified person supervise the Producing Manager. In addition, the Exchange established an exception for firms that, by reason of limitations in size and/or resources, could not provide a supervisor who is ''senior to or otherwise independent of'' the Producing Manager or a supervisor that receives 10% or less of his or her income as commission overrides from the Producing Manager (*e.g.*, if the firm has only one office, or an insufficient number of qualified personnel who can conduct reviews on a two-year rotation).[50] If a firm relies on this exception, it must document the factors used to determine that complete compliance is not possible, and in any event it must comply with the senior or otherwise independent standard to the extent practicable.[51] The Commission expects the NYSE to carefully monitor member compliance with the requirements for invoking this exception.

The Commission believes that the supervision of managers is an important component to an effective internal control system that seeks to monitor the business activity of a member. Because managers often conduct the day-to-day supervision of their branch, division, or region, the Commission believes that it is important that they are themselves monitored for their dealings with customer accounts. The Commission believes that a ''qualified'' supervisor under NYSE Rule 342.13—such as a person registered as a Sales Supervisor (NASD Series 9/10) or Principal (NASD Series 24)—possesses a sufficiently high level of expertise to understand the issues that arise during the reviews. Moreover, the Commission believes that Exchange's requirement that the supervisor be ''senior to or otherwise independent of'' the Producing Manager, and the standards proposed to define ''otherwise independent,'' should diminish the likelihood that the supervisory review would be conducted less than vigorously because of the self-interest of the reviewer. In addition, the Commission believes that the NYSE's proposed documentation requirement, for members desiring to rely on the ''small firm'' exception, should encourage members to attempt earnestly to comply with the requirement that the supervisor be senior to or otherwise independent of the Producing Manager under review.

B. Supervisory Controls and Independent Testing and Verification and Written Polices and Procedures for Certain Customer Activities

The NYSE proposes to require that its members develop and maintain adequate controls over each of their business activities. Under proposed Exchange Rule 342.23, these controls must provide for procedures for the independent verification and testing of

[45] *See* 17 CFR 240.17a–4.

[46] *See* Franke SIA Letter and A.G. Edwards Letter.

[47] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[48] 15 U.S.C. 78f(b)(5).

[49] NYSE Rule 342.13 provides, *inter alia*, that a person may qualify as a supervisor if he or she passes the NASD Sales Supervisor Qualification Examination (Series 9/10) or another examination or the NASD General Securities Principal Examination (Series 24).

[50] *SeeStaff Legal Bulletin No. 17: Remote Office Supervision,* Division, Commission, fn 39 (March 19, 2004).

[51] For example, the supervisory review of a Producing Manager may not be conducted by a qualified non-senior person in the Producing Manager's office if a qualified senior, or otherwise independent, person is available in another office of the member organization.

their business activities. The portion of the original proposal that required that the internal control procedures be ''separate and apart from the day-to-day supervision of such functions'' has been removed from the proposal. In response to commenters' concerns, the Exchange added a provision to enable members to perform an analysis on an ongoing, risk-based basis, to assess and prioritize those business activities requiring independent verification and testing, apart from the ongoing supervision that results from such procedures. The proposed rule also provides an exemption from the independent verification and testing procedures for those members who do not conduct a public business, have a capital requirement of $5,000 or less, or that employ ten or fewer registered representatives. Each member must include a summary of its efforts in the Annual Report that it files with its chief executive officer or managing partner, pursuant to Exchange Rule 342.30.

Further, proposed NYSE Rule 401(b) would require that members maintain written polices and procedures, administered pursuant to the internal control requirements of NYSE Rule 342.23, that address specified types of business conduct (transmittals of funds or securities from customer accounts or between customers and registered representatives, customer changes of address, and customer changes of investment objectives). The policies and procedures for these specified activities must include a method of customer confirmation, notification, or follow-up that can be documented. The Exchange, in response to comments, affirmed that the proposed rule would apply to business conduct affecting both institutional and retail accounts.

The Commission believes that proposed Exchange Rule 342.23, requiring NYSE members to develop adequate controls of their business activities, will enhance the quality of members' supervision and that such enhancement is appropriate. Because members are specifically required to maintain adequate controls over each of their business activities, members should be compelled to develop a supervisory system that, among other things, monitors the areas of business conduct that present a particular risk for the misappropriation of a customer's funds, securities, or account information. In this regard, the Commission notes that members would be required to maintain written policies and procedures for the activities that proposed NYSE Rule 401(b) identifies. The Commission believes that the proposed rules should help to make customers less vulnerable to members' misappropriating their funds, securities or account information. The Commission further believes that applying the requirements of NYSE Rule 401(b) to institutional account activity is appropriate because the Commission believes a broker's representation of an institutional customer's account also presents a risk of the broker's mishandling of the account. The Commission also believes that the proposed rules provide sufficient flexibility to tailor different control procedures for different types of business activity, should circumstances warrant.

The Commission believes that enabling members to employ an ongoing analysis to assess and prioritize those business activities requiring independent verification and testing provides member firms with sufficient flexibility to make risk-based judgments. Further, the Commission believes that the Exchange's removal of the requirement in the original proposal that the internal control procedures be ''separate and apart from the day-to-day supervision of [business activities]'' should provide adequate flexibility for firms to establish internal controls. The Commission notes that the NYSE and the Commission expect members to make an affirmative, informed determination that persons responsible for verification and testing of all business activities are sufficiently independent and qualified to effectively conduct such verification and testing note. The Commission acknowledges that some firms lack the size and/or resources to establish procedures without undue hardship. Accordingly, the Commission believes that excepting members and member associations that do not conduct a public business or that employ ten or fewer registered representatives, is appropriate.

C. Annual Branch Office Inspections

The Commission believes that the NYSE's proposal to enhance the requirements for annual internal branch office inspections in Rule 342(a)(b)/03 of the NYSE Interpretation Handbook should increase the likelihood that fraudulent activity with respect to handling customer accounts will be detected in a timely manner. To this end, the NYSE proposed to require that the person conducting the annual branch office inspections to be ''independent'' of the direct supervision or control of the branch office, including the Branch Office Managers, Sales Managers, District/Regional Mangers assigned to the office, or any other person performing a similar supervisory function. In response to comment letters expressing concern about the breadth of the proposed ''independence'' standard, the Exchange amended the proposal to narrow those excluded from being independent inspectors to the Branch Office Manager, any person who directly or indirectly reports to such manager, or any person to whom such manager directly reports.

The Commission believes that prohibiting persons who are under the direct supervision or control of the branch office from conducting annual inspections of those same offices should reduce conflicts of interest and lead to more objective and vigorous inspections because persons who have a significant financial interest in the success of a branch office would be precluded from inspecting it. The Commission further believes that the NYSE's proposed changes in response to commenters' concerns about the independence standard clarify which persons are eligible to conduct an annual inspection.

As part of the annual branch office inspection, the NYSE proposes that its members must independently verify and test the internal controls in several key areas including: safeguarding customer funds and securities, maintaining books and records, supervision of accounts serviced by branch office managers, transmittal of funds between customers and registered representatives or other third parties, validation of customer address changes, and validation of changes in customer account information.

The Commission believes that the areas identified in particular by the NYSE as subject to testing and verification effectively reduce the possibility of fraudulent activity in important aspects of customer account handling, but are not so broad that members will be overly burdened by inspections. In forming this belief, the Commission notes that the areas specified for internal controls testing include two types of events (transmittal of funds between a customer and a registered representative or a third party, and customer change of address) that the NYSE has proposed to require in the annual branch office inspection in proposed Exchange Rule 401(b). The Commission also believes that testing of internal controls in the remaining categories should further protect customers' funds and securities, particularly from fraudulent transfer. Finally, the Commission believes that Exchange members can adequately address to whom within a firm an inspection report must be sent in its policy and procedures manual, as the

NYSE suggests in response to NASAA's comments.

D. Discretionary Accounts

Currently, NYSE Rule 408(d) permits Exchange members to exercise discretion as to the time and price at which a customer order is executed beyond the day on which the customer grants the broker time and price discretion, without specific written authorization from the customer. The Commission believes that the NYSE's proposal to limit the time for such discretion to the end of the business day on which it was granted, absent a signed authorization from the customer to extend the authority beyond the business day, is appropriate. Such a requirement should limit the opportunity for misapplication of discretionary authority, thus furthering investor protection. The Commission also believes that this change will clarify for members and customers the length of time for which discretionary authority is granted in the ordinary course. Further, the Commission agrees with the NYSE that Exchange members must inform their customers that their authority to exercise time and price discretion terminates at the end of the day on which such discretion is granted, absent a signed authorization. The NYSE's Information Memorandum issued conjunction with this approval order is designed to remind members of this obligation.

Commenters argued that the limited duration for the exercise of time and price discretion should be applied only retail accounts, not institutional accounts. NYSE chose not to include a general institutional exemption, but instead amended NYSE Rule 408 to provide a limited exception from the requirement to obtain written authorization for good-till-cancelled orders for institutional accounts where discretion is exercised on a ''not held'' basis. The Commission believes that this exception from the general rule will provide members handling institutional accounts the flexibility they require while still providing adequate protection over client accounts. The Commission further believes that modifying the amendment to extend the institutional exception to include marketplaces other than the NYSE is consistent with principles of fair competition.

E. Maintenance of ''Account Designation Change'' Documentation

The Commission believes that the proposed amendments to Exchange Rule 410 will enhance the quality of the records that members maintain relating to customer orders and changes in customer account names or designation. The Commission believes that requiring members to preserve records of all orders for at least three years will provide an examiner with a more complete record of the orders that a member receives, not limited to just those orders transmitted to or carried by the member to the Floor of the Exchange.

The Commission also believes that enhancing the recordkeeping standards and qualification standards for the review of customer account name and designation changes is consistent with the protection of investors and the public interest. The Commission believes that requiring the qualified person to memorialize the reasons why he or she approved such a change should enhance the scrutiny that the qualified person exercises when reviewing the underlying facts giving rise to an account designation change. The Commission further believes that requiring the record of such approval to be maintained for two years in an ''easily accessible place,'' as that term is used in Rule 17a–4 under the Act, clarifies the appropriate repository for such records. Finally, the Commission believes that specifying that only persons passing an examination acceptable to the Exchange is appropriate and clarifies what types of persons can approve such a change.

F. Effective Date of Proposed Rule Change

The Commission notes that NYSE has proposed an effective date for the proposed rule change of six months from the date of Commission approval. The Commission recognizes that the proposed rule change may require members to make procedural or systems changes, and therefore believes that it is appropriate to delay the effective date of this proposed rule change for six months. Accordingly, the effective date of the proposed rule change shall be December 17, 2004.

IV. Amendment No. 4

The Commission finds good cause for approving Amendment No. 4 prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. In Amendment No. 4, the NYSE proposed further amendments to NYSE Rules 342.19, 408(d), 408.11, and Rule 342(a)(b)/.03 in the NYSE Interpretation Handbook in response to concerns raised by commenters.[52] In Amendment No. 4, NYSE made certain technical changes, in response to commenters, to the requirements related to the supervision of managers under proposed Exchange Rule 342.19 to allow flexibility for ''independent'' but ''non-senior'' persons to conduct supervisory reviews of Producing Managers.[53] In the Amendment, the NYSE provided that both senior and ''otherwise independent'' persons may conduct supervisory reviews of Producing Managers, defined the term ''otherwise independent,'' and precluded supervisory reviews by persons earning more than 10% of their gross income from the production of the Producing Manager under review. Further, in response to commenters, the NYSE created a small firm exception to these standards for cases where the member is demonstrably so limited in size and resources, that there is no qualified person senior to, or otherwise independent of, the manager to conduct the supervisory reviews. The Commission, however, expects the NYSE to closely monitor the use of this exception to be certain that only members for whom the exception is intended take advantage of it and this exception is not abused. The Commission believes that the proposed changes in Amendment No. 4 provide for an appropriate level of enhanced flexibility for those firms that, because of size or structure, cannot appropriately designate a senior person to conduct supervisory reviews of a Producing Manager. The Commission further believes that precluding supervisory reviews from being conducted by a person who receives a greater than 10% of his or her income as an ''override'' from the activity of the Producing Manager under review appropriately balances the interest of customer protection and the efficiency of the supervision process.

In addition, in response to commenters, the Exchange, in Amendment No. 4, broadened the applicability of the exception to the proposed limitations on time and price discretion pursuant to the Exchange Rule 408(d) amendments to apply to any member that receives valid good-till-cancelled instructions issued on a ''not-held'' basis for an institutional account. The Commission believes that extending the exemption to marketplaces other than the NYSE is consistent with principles of fair competition.

Finally, in response to comments, the NYSE amended its annual branch office inspection rule to clarify that any person who directly or indirectly reports to a Branch Office Manager cannot conduct an annual inspection of

[52] *See* Section II, *supra*.

[53] *See* Polanin SIA Letter.

that member. The Commission believes that this amendment to Rule 342(a)(b)/03 in the NYSE Interpretation Handbook appropriately clarifies that branch office inspections may not be conducted by persons who indirectly report to the Branch Office Manager of the branch office under review. Therefore, for all of the foregoing reasons and the overall importance of the proposed rules, the Commission finds good cause for granting accelerated approval to Amendment No. 4 and believes that it is consistent with section 19(b)(2) of the Act.[54]

V. Text of Amendment No. 4

In Amendment No. 4, the NYSE proposed further amendments to NYSE Rules 342.19, 408(d) and 408.11, and Rule 342(a)(b)/03 in the NYSE Interpretation Handbook. The base text is that proposed in Amendment Nos. 1, 2, and 3 (*i.e.*, how the rule would appear if only Amendment Nos. 1, 2 and 3 were approved by the Commission). Changes made by Amendment No. 4 are in italics; deletions are in brackets.

* * * * *

Offices—Approval, Supervision and Control

Rule 342. (a) through (e) unchanged.

Supplementary Material.

.10 through .18 (No Change.)

.19 Supervision of *Producing* Managers.—Members and member organizations must develop and implement written policies and procedures reasonably designed to independently review and supervise customer account activity conducted by each Branch Office Manager, Sales Manager, Regional/District Sales Manager, or by any person performing a similar supervisory function. Such supervisory reviews must be performed by a qualified person pursuant to Rule 342.13 who*:* [is senior to the Manager under review.]

(a) *is either senior to, or otherwise independent of, the Producing Manager under review. For purposes of this Rule, an ''otherwise independent'' person: may not report either directly or indirectly to the Producing Manager under review; must be situated in an office other than the office of the Producing Manager; must not otherwise have supervisory responsibility over the activity being reviewed; and must alternate such review responsibility with another qualified person every two years or less. Further, if a person designated to review a Producing Manager receives an override or other income derived from that Producing Manager's customer activity that represents more than 10% of the designated person's gross income derived from the member or member organization over the course of a rolling twelve-month period, the member or member organization must establish alternate senior or otherwise independent supervision of that Producing Manager to be conducted by a qualified person, pursuant to Rule 342.13, other than the designated person receiving the income.*

(b) *If a member or member organization is so limited in size and resources that there is no qualified person senior to, or otherwise independent of, the Producing Manager to conduct the reviews pursuant to (a) above (for instance, the member or member organization has only one office, or an insufficient number of qualified personnel who can conduct reviews on a two-year rotation), the reviews may be conducted by a person, qualified pursuant to Rule 342.13, in compliance with (a) to the extent practicable.*

(c) *A member or member organization relying on (b) above must document the factors used to determine that complete compliance with all of the provisions of (a) is not possible, and that the required supervisory systems and procedures in place with respect to any Producing Manager comply with the provisions of (a) to the extent practicable.*

Discretionary Power in Customers' Accounts

Rule 408

(a) through (c) unchanged.

(d) The provisions of this rule shall not apply to discretion as to the price at which or the time when an order given by a customer for the purchase or sale of a definite amount of a specified security shall be executed. The authority to exercise time and price discretion will be considered to be in effect only until the end of the business day on which the customer granted such discretion, absent a specific, written, contrary indication signed and dated by the customer. This limitation shall not apply to time and price discretion exercised [by Floor brokers] *in an institutional account* pursuant to valid Good-Till-Cancelled instructions issued on a ''not-held'' basis. Any exercise of time and price discretion must be reflected on the order ticket.

Supplementary Material.

.10 No Change.

.11 For purposes of this rule, an ''institutional account'' shall mean the account of (i) a bank (as defined in Section 3(a)(6) of the Securities Exchange Act of 1934), (ii) a savings association (as defined in Section 3(b) of the Federal Deposit Insurance Act), the deposits of which are insured by the Federal Deposit Insurance Corporation, (iii) an insurance company (as defined in Section 2(a)(17) of the Investment Company Act of 1940), (iv) an investment company registered with the Securities Exchange Commission under the Investment Company Act of 1940, (v) a state or a political subdivision thereof, (vi) a pension or profit sharing plan, subject to ERISA, with more than $25,000,000 total assets under management, or of an agency of the United States or of a political subdivision thereof, (vii) any person that has a net worth of at least forty-five million dollars and financial assets of at least forty million dollars, or (viii) an investment adviser registered under Section 203 of the Investment Advisers Act of 1940.

Interpretation

Rule 342 Offices—Approval, Supervision and Control

(a)(b)

/03 Annual Branch Office Inspection Branch office inspections by members and member organizations are expected to be conducted at least annually pursuant to this Rule, unless it has been demonstrated to the satisfaction of the Exchange that because of proximity, special reporting or supervisory practice, other arrangements may satisfy the Rule's requirements. All required inspections must be conducted by a person who is independent of the direct supervision or control of the branch office (*i.e.,* not the Branch Office Manager, or any person who *directly or indirectly* reports to such Manager, or any person to whom such Manager directly reports). Written reports of these inspections, or the written authorization of an alternative arrangement, are to be kept on file by the organization for a minimum period of three years.

An annual branch office inspection program must include, but is not limited to, testing and independent verification of internal controls related to the following areas:

(1) Safeguarding of customer funds and securities,

(2) Maintaining books and records,

(3) Supervision of customer accounts serviced by Branch Office Managers,

(4) Transmittal of funds between customers and registered representatives and between customers and third parties,

(5) Validation of customer address changes, and

[54] 15 U.S.C. 78s(b)(2).

(6) Validation of changes in customer account information.

For purposes of this interpretation, ''annually'' means once in a calendar year.

* * * * *

VI. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment No. 4 is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments.

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2002–36 on the subject line.

Paper Comments.

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–NYSE–2002–36. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2002–36 and should be submitted on or before July 14, 2004.

VII. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[55] that the proposed rule change (SR–NYSE–2002–36), as amended, be, and it hereby is, approved, and Amendment No. 4 is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[56]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–14230 Filed 6–22–04; 8:45 am]

BILLING CODE 8010–01–P

[55] 15 U.S.C. 78s(b)(2).

[56] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49865; File No. SR–PCX–2004–38]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to a Proposed Rule Change by the Pacific Exchange, Inc. for the Extension of a Pilot Program Limiting Liability for Trade-Throughs at the End of the Trading Day

June 15, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 26, 2004, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the PCX. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons, and to grant accelerated approval to the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX is proposing to extend a pilot program for limitations on Trade-Through[3] liability pursuant to the Linkage Plan that occur from five minutes before the close of trading of the underlying security to the close of trading in the options class. The pilot program would be extended to January 31, 2005 and would increase the limit on Trade-Through liability during the last seven minutes of the trading day from 10 contracts to 25 contracts per Satisfaction Order.

The text of the proposed rule change is available at the Exchange 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 PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The PCX has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to extend the pilot provision in the PCX Rules that limits Trade-Through liability during the last seven minutes of the trading day.[4] Pursuant to the pilot currently in effect, an Exchange member's Trade-Through liability is limited to 10 contracts per Satisfaction Order[5] for the period

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] A ''Trade-Through'' is defined as a transaction in an options series at a price that is inferior to the national best bid or offer in an options series calculated by a Participant. *See* Section 2(29) of the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage (''Linkage Plan''). A ''Participant'' is defined as an Eligible Exchange whose participation in the Linkage Plan has become effective pursuant to Section 4(c) of the Linkage Plan. *See* Section 2(24) of the Linkage Plan. Currently, the Participants in the Linkage Plan are the International Securities Exchange, Inc., the American Stock Exchange LLC, the Chicago Board Options Exchange, Inc., the PCX, the Philadelphia Stock Exchange, Inc. and the Boston Stock Exchange, Inc.

[4] The PCX has separately filed Joint Amendment No. 12 to the Linkage Plan to implement substantially the same change to the Linkage Plan. *See* Securities Exchange Act Release No. 49692 (May 12, 2004), 69 FR 29956 (May 19, 2004) (Notice of Joint Amendment No. 12). The Commission previously approved the pilot to implement a limitation on Trade-Through liability during the last seven minutes of the trading day on a 120-day temporary basis on January 31, 2003. *See* Securities Exchange Act Release No. 47298, 68 FR 6524 (February 7, 2003). On June 18, 2003, the Commission approved the pilot until January 31, 2004. *See* Securities Exchange Act Release No. 48055, 68 FR 37869 (June 25, 2003) (Order approving Joint Amendment No. 4). The Commission subsequently extended the pilot until June 30, 2004. *See* Securities Exchange Act Release No. 49146 (January 29, 2004), 69 FR 5618 (February 5, 2004) (Order approving Joint Amendment No. 8).

[5] A ''Satisfaction Order'' is defined as an order sent through the Options Intermarket Linkage to notify a member of another Participant of a Trade-Through and to seek satisfaction of the liability

Continued

between five minutes prior to the close of trading in the underlying security and the close of trading in the options class.

This proposal would extend the pilot for an additional seven months, until January 31, 2005. In addition, the proposal would increase the limit on Trade-Through liability during the last seven minutes of the day from 10 contracts to 25 contracts per Satisfaction Order. This increase in the limit on liability would be effective on July 1, 2004, when the current pilot expires. The time period during the trading day in which this limit would apply would remain the same, from five minutes prior to the close of trading in the underlying security until the close of trading in the options class.

As a condition to granting permanent approval of this limitation, the Commission required that the Participants provide the Commission with a report regarding data on the use of the exemption no later than 60 days before seeking permanent approval (the ''Report''). The Participants have provided the Commission with certain information required in the Report, and continue to discuss with Commission staff what additional information the staff may need to evaluate possible permanent approval of the Trade-Through limitation. This extension would allow the limitation to continue in effect, with the increase in liability to 25 contracts per Satisfaction Order, while the Commission staff and the Participants continue to discuss permanent approval.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act [6] in general, and furthers the objectives of Section 6(b)(5) of the Act [7] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PCX 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.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–PCX–2004–38 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–PCX–2004–38. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the PCX. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–PCX–2004–38 and should be submitted on or before July 14, 2004.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[8] In particular, the Commission finds that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act,[9] which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest. The Commission believes that extending the pilot will enable Participants to continue to compile the data necessary for the Commission to determine whether permanent approval of the proposed rule change is appropriate and in the public interest. The Commission further believes that raising the limitation in liability for Satisfaction Orders during the last seven minutes of the trading day from 10 contracts to 25 contracts for this pilot period should help to protect investors and promote the public interest.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice thereof in the **Federal Register**. As noted above, the proposed rule change incorporates changes into the PCX Rules that correspond to changes made to the Linkage Plan through Joint Amendment No. 12, which was published for public comment in the **Federal Register** on May 19, 2004.[10] The Commission received no comments in response to publication of Joint Amendment No. 12. The Commission believes that no new issues of regulatory concern are being raised by PCX's proposed rule change. The Commission believes, therefore, that granting accelerated approval of the proposed rule change is appropriate and consistent with Sections 6 and 19(b) of the Act.[11]

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[12] that the

arising from that Trade-Through. *See* Section 2(16) of the Linkage Plan.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78f(b)(5).

[10] *See supra* note 4.

[11] 15 U.S.C. 78f and 78s(b).

[12] 15 U.S.C. 78s(b)(2).

proposed rule change (SR–PCX–2004–38) is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–14144 Filed 6–22–04; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49864; File No. SR–Phlx–2004–35]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to a Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Extension of a Pilot Limiting Trade-Through Liability at the End of the Options Trading Session

June 15, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 7, 2004, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Phlx. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons, and to grant accelerated approval to the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to amend Exchange Rule 1085(a)(2)(ii)(C) (Order Protection) to correspond to the proposed Joint Amendment No. 12 to the current pilot (the ''pilot'') under the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage (the ''Linkage Plan''), which would extend a pilot program that limits Trade-Through[3] liability during the last seven minutes of the options trading session, until January 31, 2005.[4] The extended pilot would also increase the limit on liability during the last seven minutes of the options trading session from 10 contracts to 25 contracts per Satisfaction Order.[5]

The text of the proposed rule change is available at the Exchange and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Phlx has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to extend the pilot provision contained in Exchange Rule 1085(a)(2)(ii)(C), which limits trade-through liability during the last seven minutes of the options trading session. Currently, under the pilot, an Exchange member's Trade-Through liability is limited to 10 contracts per Satisfaction Order received during the period between five minutes prior to the close of trading in the underlying security and the close of trading in the options class.

The Exchange proposes to extend the pilot for an additional seven months, until January 31, 2005. In addition, the Exchange proposes to increase the limit on Trade-Through liability from 10 contracts to 25 contracts per Satisfaction Order received during the period between five minutes prior to the close of trading in the underlying security and the close of trading in the options class. This increase in the limit on liability would be effective on July 1, 2004, when the current pilot expires.

As a condition to granting permanent approval of this limitation, the Commission required that the Participants provide the Commission with a report regarding data on the use of the exemption no later than 60 days before seeking permanent approval (the ''Report''). The Participants have provided the Commission with certain information required in the Report, and continue to discuss with Commission staff what additional information the staff may need to evaluate possible permanent approval of the Trade-Through limitation. This extension will allow the limitation to continue in effect, with the increase in liability to 25 contracts per Satisfaction Order, while the Commission staff and the Participants continue to discuss permanent approval.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[6] in general, and furthers the objectives of Section 6(b)(5) of the Act[7] in particular, in that it is designed to perfect the mechanisms of a free and open market and the national market system, protect investors and the public interest, and promote just and equitable principles of trade by extending the pilot limiting Trade-Through liability during the period between five minutes prior to the close of trading in the underlying security and the close of trading in the options class until January 31, 2005, and by increasing the limit on Trade-Through liability from 10 contracts to 25 contracts per Satisfaction Order received during the same period.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange 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.

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] ''Trade-Through'' means a transaction in an options series at a price that is inferior to the national best bid or offer in an options series calculated by a Participant. *See* Section 2(29) of the Linkage Plan. A ''Participant'' is defined as an Eligible Exchange whose participation in the Linkage Plan has become effective pursuant to Section 4(c) of the Linkage Plan. *See* Section 2(24) of the Linkage Plan. Currently, the Participants in the Linkage Plan are the International Securities Exchange, Inc., the American Stock Exchange LLC, the Chicago Board Options Exchange, Inc., the Pacific Exchange, Inc., the Phlx and the Boston Stock Exchange, Inc.

[4] The Phlx has separately filed Joint Amendment No. 12 to the Linkage Plan to implement substantially the same change to the Linkage Plan. *See* Securities Exchange Act Release No. 49692 (May 12, 2004), 69 FR 29956 (May 19, 2004) (Notice of Joint Amendment No. 12). The Commission previously approved the pilot to implement a limitation on Trade-Through liability during the last seven minutes of the trading day on a 120-day temporary basis on January 31, 2003. *See* Securities Exchange Act Release No. 47298, 68 FR 6524 (February 7, 2003). On June 18, 2003, the Commission approved the pilot until January 31, 2004. *See* Securities Exchange Act Release No. 48055, 68 FR 37869 (June 25, 2003) (Order approving Joint Amendment No. 4). The Commission subsequently extended the pilot until June 30, 2004. *See* Securities Exchange Act Release No. 49146 (January 29, 2004), 69 FR 5618 (February 5, 2004) (Order approving Joint Amendment No. 8).

[5] A ''Satisfaction Order,'' is defined as an order sent through the Options Intermarket Linkage to notify a member of another Participant Exchange of a Trade-Through and to seek satisfaction of the liability arising from that Trade-Through. *See* Section 2(16) of the Linkage Plan.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form *(http://www.sec.gov/rules/sro.shtml)*; or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2004–35 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–Phlx–2004–35. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site *(http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Phlx. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2004–35 and should be submitted on or before July 14, 2004.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[8] In particular, the Commission finds that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act,[9] which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest. The Commission believes that extending the pilot will enable Participants to continue to compile the data necessary for the Commission to determine whether permanent approval of the proposed rule change is appropriate and in the public interest. The Commission further believes that raising the limitation in liability for Satisfaction Orders during the last seven minutes of the trading day from 10 contracts to 25 contracts for this pilot period should help to protect investors and promote the public interest.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice thereof in the **Federal Register**. As noted above, the proposed rule change incorporates changes into the Phlx's Rules that correspond to changes made to the Linkage Plan through Joint Amendment No. 12, which was published for public comment in the **Federal Register** on May 19, 2004.[10] The Commission received no comments in response to publication of Joint Amendment No. 12. The Commission believes that no new issues of regulatory concern are being raised by the Phlx's proposed rule change. The Commission believes, therefore, that granting accelerated approval of the proposed rule change is appropriate and consistent with Sections 6 and 19(b) of the Act.[11]

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[12] that the proposed rule change (SR–Phlx–2004–35) is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–14143 Filed 6–22–04; 8:45 am]

BILLING CODE 8010–01–P

[8] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78f(b)(5).

[10] *See supra* note 4.

[11] 15 U.S.C. 78f and 78s(b).

[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3593]

State of Texas

Tarrant County and the contiguous counties of Dallas, Denton, Ellis, Johnson, Parker, and Wise in the State of Texas constitute a disaster area due to severe thunderstorms and flooding that occurred on June 6 through June 9, 2004. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on August 16, 2004, and for economic injury until the close of business on March 17, 2005, at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 3 Office, 14925 Kingsport Road, Fort Worth, TX 76155–2243.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	5.750
Homeowners Without Credit Available Elsewhere	2.875
Businesses with Credit Available Elsewhere:	5.500
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	2.750
Others (Including Non-Profit Organizations) with Credit Available Elsewhere	4.875
For Economic Injury:	
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	2.750

The number assigned to this disaster for physical damage is 359306 and for economic injury the number is 9ZJ700.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: June 17, 2004.

Hector V. Barreto,

Administrator.

[FR Doc. 04–14210 Filed 6–22–04; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 4747]

Discontinuation of Reissuance of Certain Nonimmigrant Visas in the United States

This public notice announces the discontinuation of our domestic visa reissuance service for certain nonimmigrant visas in the United States. Nonimmigrant visas issued under section 101(a)(15) C, E, H, I, L, O and P of the Immigration and Nationality Act will be affected by this suspension. We will accept no new applications from applicants seeking to renew C, E, H, I, L, O or P visas after July 16, 2004. To be processed, applications must be received by our application acceptance facility in St. Louis by July 16, 2004. Any application received after this date will be returned, using the sender's required self-addressed, stamped envelope or pre-paid courier airbill. Please note that we ceased processing applications for reissuance of A–3, G–5 and NATO–7 visas in the United States in September 2002. We will continue to receive applications for reissuance of qualifying diplomatic and official visas in Washington, DC in (classifications A–1, A–2, G–1, G–2, G–3, G–4, NATO–1, NATO–2, NATO–3, NATO–4, NATO–5 and NATO–6).

22 CFR 41.111(b) authorizes the Deputy Assistant Secretary for Visa Services or any other person he or she designates to reissue nonimmigrant visas, in their discretion. The original purpose of this authority was to provide nonimmigrant services to foreign government officials and to international organization employees. Over time, the authority was extended to include reissuances in the C, E, H, I, L, O and P visa classifications. We recognize that the domestic reissuance of business-related visas to applicants in the United States has been a convenience to the international business community. However, we are discontinuing the reissuance of visas in these categories because of increased interview requirements and the requirement of Section 303 of the Enhanced Border Security and Visa Entry Reform Act (Pub. L. 107–173, 116 Stat. 543) that U.S. visas issued after October 26, 2004, include biometric identifiers. It is not feasible for the Department to collect the biometric identifiers in the United States.

In order to mitigate the inconvenience to applicants, we will direct all visa adjudicating posts to accommodate on a priority basis applicants who would have benefited from our visa reissuance services. Visa interview appointments may be made for some posts through Internet sites or by telephone. Additional information regarding posts and visa interview appointment systems may be found at *http://usembassy.state.gov.* We encourage all applicants to apply in their home countries. Our visa adjudicating posts in Mexico and Canada have some capacity to accept nonimmigrant visa applications from stateside applicants. In all cases, applicants should obtain an interview appointment before traveling.

Dated: June 10, 2004.

Maura Harty,

Assistant Secretary for Consular Affairs, Department of State.

[FR Doc. 04–14245 Filed 6–22–04; 8:45 am]

BILLING CODE 4710–06–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. WTO/DS–308]

WTO Dispute Settlement Proceeding Regarding Mexico—Tax Measures on Soft Drinks and Other Beverages

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States Trade Representative (USTR) is providing notice that on June 10, 2004, in accordance with the Marrakesh Agreement Establishing the World Trade Organization (WTO Agreement), the United States requested the establishment of a dispute settlement panel regarding Mexico's tax measures on soft drinks and other beverages as well as on syrups, concentrates, powders, essences or extracts that can be diluted to produce such products (hereinafter ''beverages and syrups'') that use any sweetener other than cane sugar.

USTR invites written comments from the public concerning the issues raised in this dispute.

DATES: Although USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted on or before July 30, 2004 to be assured of timely consideration by USTR.

ADDRESSES: Comments should be submitted (i) electronically, to *FR0420@ustr.gov*, with ''Mexico Soft Drinks (DS308)'' in the subject line, or (ii) by fax, to Sandy McKinzy at (202) 395–3640, with a confirmation copy sent electronically to the electronic mail address above, in accordance with the requirements for submission set out below.

FOR FURTHER INFORMATION CONTACT: Amy Karpel, Assistant General Counsel, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC, (202) 395–5804.

SUPPLEMENTARY INFORMATION: Section 127(b) of the Uruguay Round Agreements Act (URAA) (19 U.S.C. 3537(b)(1)) requires that notice and opportunity for comment be provided after the United States submits or receives a request for the establishment of a WTO dispute settlement panel. Consistent with this obligation, USTR is providing notice that the United States requested establishment of a panel pursuant to the WTO Dispute Settlement Understanding (DSU). If a dispute settlement panel is established pursuant to the DSU, such panel, which would hold its meetings in Geneva, Switzerland, would be expected to issue a report on its findings and recommendations within six to nine months after it is established.

Major Issues Raised by the United States

On June 10, 2004, the United States requested the establishment of a panel regarding Mexico's tax measures on beverages and syrups that use any sweetener other than cane sugar. Those measures include:

(1) Law on the Special Tax on Production and Services (*Ley del Impuesto Especial sobre Producción y Servicios or ''IEPS''*) published on January 1, 2002 and its subsequent amendments published on December 30, 2002 and December 31, 2003; and

(2) any related or implementing measures, including the *Reglamento de la Ley del Impesto Especial sobre Producción y Servicios* published on May 15, 1990, the *Resolucion Miscelanea Fiscal Para 2004* (Title 6) published on April 30, 2004, and the *Resolucion Miscelanea Fiscal Para 2003* (Title 6) published on March 31, 2003 which identify, inter alia, details on the scope, calculation, payment and bookkeeping and recording requirements of the IEPS.

Mexico's tax measures impose a 20 percent tax on beverages and syrups that use sweeteners other than cane sugar. Mexico's tax measures also impose a 20 percent tax on services related to the transfer of beverages and syrups, including the commissioning, mediation, agency, representation, brokerage, consignment and distribution of such products. Beverages and syrups sweetened only with cane sugar, and services related to their transfer, are not

subject to these measures. Mexico's tax measures also impose several bookkeeping and reporting requirements on beverages and syrups, and services related to the transfer of such products, that are not similarly imposed on beverages and syrups sweetened only with cane sugar, or on services related to the transfer of beverages and syrups sweetened only with cane sugar .

The United States considers that Mexico's tax measures discriminate against imported sweeteners other than cane sugar (including high-fructose corn syrup (''HFCS'')), and imported beverages and syrups made with such sweeteners, because Mexico's tax measures do not apply to cane sugar, or beverages and syrups made solely with cane sugar. The United States considers imported sweeteners other than cane sugar, and imported beverages and syrups made with such sweeteners, including HFCS and beverages and syrups made with HFCS, to be like and directly competitive or substitutable with Mexican cane sugar and beverages and syrups made with Mexican cane sugar.

USTR believes the tax measures are inconsistent with Mexico's national treatment obligations under Article III of the GATT 1994, in particular GATT 1994 Article III:2, first and second sentences, and GATT 1994 Article III:4.

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in the dispute. Comments should be submitted (i) electronically, to *FR0420@ustr.gov*, with ''Mexico Soft Drinks (DS308)'' in the subject line, or (ii) by fax, to Sandy McKinzy at (202) 395–3640, with a confirmation copy sent electronically to the electronic mail address above.

USTR encourages the submission of documents in Adobe PDF format, as attachments to an electronic mail. Interested persons who make submissions by electronic mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. Similarly, 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.

Comments must be in English. A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the commenter. Confidential business information must be clearly designated as such and ''BUSINESS CONFIDENTIAL'' must be marked at the top and bottom of the cover page and each succeeding page.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitter believes that information or advice may qualify as such, the submitter—

(1) Must clearly so designate the information or advice;

(2) Must clearly mark the material as ''SUBMITTED IN CONFIDENCE'' at the top and bottom of the cover page and each succeeding page; and

(3) Is encouraged to provide a non-confidential summary of the information or advice.

Pursuant to section 127(e) of the URAA (19 U.S.C. 3537(e)), USTR will maintain a file on this dispute settlement proceeding, accessible to the public, in the USTR Reading Room, which is located at 1724 F Street, NW., Washington, DC 20508. The public file will include non-confidential comments received by USTR from the public with respect to the dispute; if a dispute settlement panel is convened, the U.S. submissions to that panel, the submissions, or non-confidential summaries of submissions, to the panel received from other participants in the dispute, as well as the report of the panel; and, if applicable, the report of the Appellate Body. An appointment to review the public file (Docket WTO/DS–308, Mexico Soft Drinks Dispute) may be made by calling the USTR Reading Room at (202) 395–6186. The USTR Reading Room is open to the public from 9:30 a.m. to noon and 1 p.m. to 4 p.m., Monday through Friday.

Bruce R. Hirsh,

Acting Assistant United States Trade Representative for Monitoring and Enforcement.

[FR Doc. 04–14239 Filed 6–22–04; 8:45 am]

BILLING CODE 3190–W4–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed the Week Ending June 11, 2004

The following agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2004–18031.
Date Filed: June 7, 2004.
Parties: Members of the International Air Transport Association.
Subject: PTC2 EUR 0558 dated June 8, 2004, Mail Vote 379—Resolution 010a, TC2 Special Passenger Amending Resolution Within Europe. Intended effective date: July 1, 2004.

Docket Number: OST–2004–18044.
Date Filed: June 8, 2004.
Parties: Members of the International Air Transport Association.
Subject: PTC COMP 1140 dated June 4, 2004. Resolutions except within Europe and between USA/US Territories and Austria, Belgium, Chile, Czech Republic, Finland, France, Germany, Iceland, Italy, Korea (Rep. of), Malaysia, Netherlands, New Zealand, Panama, Scandinavia, Switzerland r1–r14, PTC COMP 1141 dated June 4, 2004. Resolutions between USA/US Territories and Austria, Belgium, Chile, Czech Republic, Finland, France, Germany, Iceland, Italy, Korea (Rep. of), Malaysia, Netherlands, New Zealand, Panama, Scandinavia, Switzerland r15–r25, PTC COMP 1142 dated June 8, 2004, Technical Correction to Resolution 002rr, PTC COMP 1143 dated June 8, 2004. Intended effective date: July 1, 2004.

Andrea M. Jenkins,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. 04–14195 Filed 6–22–04; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Notice for a Change in Use of Aeronautical Property at Buffalo-Lancaster-Airport, Lancaster, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Request for public comment.

SUMMARY: The FAA is requesting public comment on Lancaster Airport, Inc.'s (airport owner) notice of the proposed release of approximately 9.5 acres of airport property located along Walden Avenue approximately 2000 feet east of Pavement Road, to allow its sale for non-aviation development. This parcel was part of a larger tract, which was purchased by the airport owner for aeronautical use with 90% Federal participation. The subject is planned as a distribution warehouse, or other similar use. Documents reflecting the sponsor's request are available, by

appointment only, for inspection at the Airport Manager's office and the FAA Airports District Office.

FAA's action is to release the land from a deed provision requiring aeronautical use of the property. Lancaster Airport, Inc. has stated that it has no aeronautical use for the parcel now or in the near future according to the Buffalo-Lancaster Airport Layout Plan.

The Fair Market Value of the land will be paid to Lancaster Airport, Inc. to be used for the capital development of the Buffalo-Lancaster Airport.

Any comments the agency receives will be considered as a part of the decision.

DATES: Comments must be received on or before July 23, 2004.

ADDRESSES: Comments on this application may be mailed or delivered to the FAA at the following address: Philip Brito, Manager, FAA New York Airports District Office, 600 Old Country Road, Suite 446, Garden City, New York 11530.

In addition, a copy of any comments submitted to the FAA must be mailed or delivered to Mr. Tom Geles, President, Lancaster Airport, Inc., at the following address: Mr. Tom Geles, President, Lancaster Airport, Inc., 10904 Townline Road, Darian Center, New York 14040.

FOR FURTHER INFORMATION CONTACT: Mr. Philip Brito, Manager, New York Airports District Office, 600 Old Country Road, Suite 446, Garden City, New York 11530; telephone (516) 227–3803; FAX (516) 227–3813; E-Mail *Philip.Brito@faa.gov.*

SUPPLEMENTARY INFORMATION: Section 125 of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR21) requires the FAA to provide an opportunity for public notice and comment before the Secretary may waive a sponsor's Federal obligation to use certain airport land for aeronautical use.

Issued in Garden City, New York on June 14, 2004.

Philip Brito,

Manager, New York Airports District Office Eastern Region.

[FR Doc. 04–14206 Filed 6–22–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Notice for a Change in Aeronautical Use of Airport Property at Sullivan County International Airport, Monticello, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Request for public comment.

SUMMARY: The FAA is requesting public comment on Lancaster Airport, Inc.'s (airport owner) notice of the proposed release of approximately 5 acres of airport property located on the west side of County Road 183 opposite the airport entrance road, to allow for the development of a Bus Garage facility, considered non-aviation development.

This parcel was part of a larger tract, which was purchased by the County for aeronautical use with 50% federal participation. Documents reflecting the sponsor's request are available, by appointment only, for inspection at the Airport manager's office and the FAA Airports District Office.

FAA's action is to release the land from a deed provision requiring aeronautical use of the property. It has been determined that it has no aeronautical use for the parcel now or in the foreseeable future, according to the Sullivan County International Airport Layout Plan.

Since the county remains the owner of the property, no revenue is involved. The airport will benefit from a bus stop at the airport.

Any comments the agency receives will be considered as a part of the discussion.

DATES: Comments must be received on or before July 23, 2004.

ADDRESSES: Comments on this application may be mailed or delivered to the FAA at the following address: Philip Brito, Manager, FAA New York Airports District Office, 600 Old Country Road, Suite 446, Garden City, New York 11530.

In addition, a copy of any comments submitted to the FAA must be mailed or delivered to Mr. Robert LaTratta, President, Sullivan County International Airport, Inc. at the following address: Mr. Robert L. Tratta, Acting Airport Manager, Sullivan County International Airport, 100 North Street, P.B. Box 5012, Monticello, New York 12701–5192.

FOR FURTHER INFORMATION CONTACT: Mr. Philip Brito, Manager, New York Airports District Office, 600 Old Country Road, Suite 446, Garden City, New York 11530; telephone (516) 227–3803; FAX (516) 227–3813; e-mail *Philip.Brito@faa.gov.*

SUPPLEMENTARY INFORMATION: Section 125 of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR21) requires the FAA to provide an opportunity for public notice and comment before the Secretary may waive a sponsor's Federal obligation to use certain airport land for aeronautical use.

Issued in Garden City, New York, on June 14, 2004.

Philip Brito,

Manager, New York Airports District Office, Eastern Region.

[FR Doc. 04–14205 Filed 6–22–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Request Renewal From the Office of Management and Budget (OMB) of Two Current Public Collections of Information

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the FAA invites public comment on two currently approved public information collections which will be submitted to OMB for renewal.

DATES: Comments must be received on or before August 23, 2004.

ADDRESSES: Comments may be mailed or delivered to the FAA at the following address: Ms. Judy Street, Room 613, Federal Aviation Administration, Standards and Information Division, APF–100, 800 Independence Ave., SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Street at the above address or on (202) 267–9895.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, 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. Therefore, the FAA solicits comments on the following current collections of information in order to evaluate the necessity of the collection, the accuracy of the agency's estimate of the burden, the quality, utility, and clarity of the information to be collected, and possible ways to minimize the burden of the collection in preparation for

submission to renew the clearances of the following information collections.

1. 2120–0034, Medical Standards and Certification. The Secretary of Transportation collects model certification information under the authority of 49 U.S.C. 40113, 44510, 44701, 44702, 44703, 44709, 45303, and 80111. The certification program is implemented by Title 14 CFR parts 61 and 67. Part 67 prescribes minimum airman medical standards, and section 61.23 prescribes standards for the duration of a medical certificate. Information collected substantiates the applicant's eligibility. The current estimated annual reporting burden is 707,253 hours.

2. 2120–0040, Aviation Maintenance Technical Schools. Section 44707 (49 U.S.C.) authorizes certification of civil aviation mechanic schools; 14 CFR Part 147 prescribes requirements for certification and operation of aviation mechanic schools. The information collected is needed to determine applicant eligibility and compliance. The current estimated annual reporting burden is 66,134 hours.

Issued in Washington, DC, on June 14, 2004.

Judith D. Street,

FAA Information Collection Clearance Officer, APF–100.

[FR Doc. 04–14204 Filed 6–22–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2004–38]

Petitions for Exemption; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain dispositions of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities.

FOR FURTHER INFORMATION CONTACT: Tim Adams (202) 267–8033, or Sandy Buchanan-Sumter (202) 267–7271, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on June 17, 2004.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Dispositions of Petitions

Docket No.: FAA–2001–10583.
Petitioner: Aero Sports Connection.
Section of 14 CFR Affected: 14 CFR 103.1(a).
Description of Relief Sought/Disposition: To permit Aero Sports Connection to operate unpowered ultralight vehicles with another occupant for the purpose of sport and recreation. *Grant, 5/25/2004, Exemption No. 8330*

Docket No.: FAA–2001–10717.
Petitioner: Westjet Air Center, Inc.
Section of 14 CFR Affected: 14 CFR 61.3(a) and (c).
Description of Relief Sought/Disposition: To permit Westjet Air Center, Inc., to issue to its pilot flight crewmembers written confirmation of an individual Federal Aviation Administration-issued crewmember certificate based on information in Westjet's approved record system. *Grant, 5/28/2004, Exemption No. 8331.*

Docket No.: FAA–2004–17392.
Petitioner: Red Knight Air Shows, Inc.
Section of 14 CFR Affected: 14 CFR 91.319(a)(2).
Description of Relief Sought/Disposition: To permit Red Knight Air Shows, Inc., to operate its Canadair T–33 aircraft, with a special airworthiness certificate in the experimental category, for the purpose of carrying passengers on local flights in return for donations. *Denial, 5/28/2004, Exemption No. 8332.*

Docket No.: FAA–2003–14879.
Petitioner: Xtrajet, Inc.
Section of 14 CFR Affected: 14 CFR 135.152(a).
Description of Relief Sought/Disposition: To permit Xtrajet, Inc., to operate 1 Gulfstream G–1159 airplane (Registration No. N628HC, Serial No. 134) under part 135 without the airplane being equipped with an approved digital flight data recorder. *Grant, 5/27/2004, Exemption No. 8044.*

Docket No.: FAA–2002–11574.
Petitioner: AirNet Systems, Inc.
Section of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/Disposition: To permitAirNet Systems, Inc., to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft. *Grant, 5/27/2004, Exemption No. 6772C.*

Docket No.: FAA–2001–8741.
Petitioner: Cessna Aircraft Company.
Section of 14 CFR Affected: 14 CFR 145.37(b).
Description of Relief Sought/Disposition: To permit owners and operators of Cessna Models 172R, 172S, 182S, 208 Caravan I, and 208B Caravan I airplanes to use Cessna's PhaseCard IP inspection program, rather than completing the required 100-hour inspection. *Grant, 5/18/2004, Exemption No. 6901D.*

Docket No.: FAA–2002–13292.
Petitioner: Southern California Aviation, LLC.
Section of 14 CFR Affected: 14 CFR 145.35(a) and 145.37(b).
Description of Relief Sought/Disposition: To permit Southern California Aviation, LLC, to perform aircraft storage-related maintenance on transport category airplanes without meeting the housing and facility requirements of §§ 145.35 and 145.37. *Denial, 5/19/2004, Exemption No. 8325.*

Docket No.: FAA–2004–17769.
Petitioner: Westwood Aviation Institute.
Section of 14 CFR Affected: 14 CFR 65.71(a)(2).
Description of Relief Sought/Disposition: To permit Ryan Rasberry to the extent necessary, to be eligible for a mechanic certificate and associated ratings although he is hearing impaired and unable to speak the English language. *Grant, 5/18/2004, Exemption No. 8324.*

Docket No.: FAA–2003–15467.
Petitioner: Snecma Services.
Section of 14 CFR Affected: 14 CFR 145.51.
Description of Relief Sought/Disposition: To permit two Snecma Services repair stations (Certification Nos. NM1Y353K and NM12353K) to perform engine maintenance on a regular basis at locations other than the fixed location specified on each repair station certificate. *Denial, 5/18/2004, Exemption No. 8322.*

Docket No.: FAA–2004–17904.
Petitioner: Hawaii Helicopters.
Section of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/Disposition: To permit Hawaii Helicopters to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft. *Grant, 5/25/2004, Exemption No. 8328.*

Docket No.: FAA–2002–11841.
Petitioner: Warbelow's Air Ventures, Inc.
Section of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/Disposition: To permit Warbelow's Air

Ventures, Inc., to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft. *Grant, 5/25/2004, Exemption No. 7344B.*

Docket No.: FAA–2004–17207.
Petitioner: Thrush Aircraft, Inc.
Section of 14 CFR Affected: 14 CFR 61.31(a)(1).
Description of Relief Sought/ Disposition: To permit Thrush Aircraft, Inc., and pilots who serve as pilots in command to operate an Ayres Model S2R–T660 without holding a type rating for that aircraft, subject to conditions and limitations. *Grant, 5/21/2004, Exemption No. 8327.*

Docket No.: FAA–2002–12251.
Petitioner: Priority Air, Inc.
Section of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit Priority Air, Inc., to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft. *Grant, 5/24/2004, Exemption No. 7806A.*

Docket No.: FAA–2002–12104.
Petitioner: Lake and Pen Air, Inc.
Section of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit Lake and Pen Air, Inc., to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft. *Grant, 5/24/2004, Exemption No. 7357B.*

Docket No.: FAA–2004–17667.
Petitioner: Shoreline Helicopters.
Section of 14 CFR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit Shoreline Helicopters to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft. *Grant, 5/24/2004, Exemption No. 8326.*

Docket No.: FAA–2001–10967.
Petitioner: Experimental Aircraft Association.
Section of 14 CFR Affected: 14 CFR 135.251, 135.255, and 135.353, and appendices I and J to part 121.
Description of Relief Sought/ Disposition: To permit Experimental Aircraft Association members to conduct local sightseeing flights at charity or community events, for compensation or hire, without complying with certain antidrug and alcohol misuse prevention requirements of part 135. *Grant, 5/20/2004, Exemption No. 7111C.*

Docket No.: FAA–2002–11591.
Petitioner: Aircraft Owners and Pilots Association.
Section of 14 CFR Affected: 14 CFR 135.251, 135.255, and 135.353, and appendices I and J to part 121.
Description of Relief Sought/ Disposition: To permit Aircraft Owners and Pilots Association members to conduct local sightseeing flights at charity or community events, for compensation or hire, without complying with certain antidrug and alcohol misuse prevention requirements of part 135. *Grant, 5/20/2004, Exemption No. 7112C.*

Docket No.: FAA–2004–17561.
Petitioner: B/E Aerospace, Inc.
Section of 14 CFR Affected: 14 CFR 21.325(b)(3).
Description of Relief Sought/ Disposition: To permit B/E Aerospace, Inc., facilities in Leighton-Buzzard Bedfordshire, England, and Kilkeel County Down, Northern Ireland, to issue U.S. export airworthiness approvals for Class II and Class III products. *Grant, 5/28/2004, Exemption No. 8334.*

Docket No.: FAA–2002–11752.
Petitioner: Peninsula Airways, Inc.
Section of 14 CFR Affected: 14 CFR 91.411(b) and 91.413(c).
Description of Relief Sought/ Disposition: To permit Peninsula Airways, Inc., to perform ATC transponder tests and inspections and altimeter system and altimeter reporting equipment tests and inspections for its 14 CFR part 121 aircraft maintained under a continuous airworthiness maintenance program. *Grant, 5/28/2004, Exemption No. 7770A.*

Docket No.: FAA–2004–17911.
Petitioner: Friends of Allen County Airport.
Section of 14 CFR Affected: 14 CFR 135.251, 135.255, and 135.353, and appendices I and J to part 121.
Description of Relief Sought/ Disposition: To permit Friends of Allen County Airport to conduct local sightseeing flights at the Allen County Airport, Iola, Kansas, for sightseeing flights during June 2004, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135, subject to certain conditions and limitations. *Grant, 6/4/2004, Exemption No. 8337.*

Docket No.: FAA–2004–17708.
Petitioner: Mentone Flying Club.
Section of 14 CFR Affected: 14 CFR 135.251, 135.255, and 135.353, and appendices I and J to part 121.
Description of Relief Sought/ Disposition: To permit Mentone Flying Club to conduct local sightseeing flights at the Round Barn Festival at the Fulton County Airport, during the weekend of June 12–13, 2004, for compensation or hire, without complying with certain anti-drug and alcohol misuse requirements of part 135, subject to certain conditions and limitations. *Grant, 6/3/2004, Exemption No. 8336.*

Docket No.: FAA–2002–12590.
Petitioner: United States Hang Gliding Association.
Section of 14 CFR Affected: 14 CFR 91.309 and 103.1(b).
Description of Relief Sought/ Disposition: To permit United States Hang Gliding Association members to tow unpowered ultralight vehicles (hang gliders) using powered ultralight vehicles. *Grant, 6/3/2004, Exemption No. 4144J.*

Docket No.: FAA–2002–11595.
Petitioner: American Eagle Airlines, Inc.
Section of 14 CFR Affected: 14 CFR 121.434(c)(1)(ii).
Description of Relief Sought/ Disposition: To permit American Eagle Airlines, Inc., to substitute a qualified and authorized check airman in place of a Federal Aviation Administration inspector to observe a qualifying pilot in command while that pilot in command is performing prescribed duties during at least one flight leg that includes a takeoff and a landing when completing initial or upgrade training as specified in § 121.424. *Grant, 6/4/2004, Exemption No. 7252B.*

[FR Doc. 04–14201 Filed 6–22–04; 8:45 am]
BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 04–01–C–00–ELM To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Elmira/Corning Regional Airport, Elmira, 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 and use the revenue from a PFC at Elmira/Corning Regional Airport under the provisions of the 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before July 23, 2004.

ADDRESSES: Comments on this application may be mailed or delivered

in triplicate to the FAA at the following address: New York Airports District Office, 600 Old County Road, Suite 446, Garden City, New York 11530.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Eric M. Johnson, Supervisor of Airport Operations of Chemung County, New York at the following address: Elmira/Corning Regional Airport, 276 Sing Sing Road, Suite 1, Horseheads, New York 14845.

Air carriers and foreign air carriers may submit copies of written comments previously provided to Chemung County, New York under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Philip Brito, Manager, New York Airports District Office, 600 Old Country Road, Suite 446, Garden City, New York 11530, (516) 227–3800. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Elmira/Corning Regional Airport under the provisions of the 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On June 15, 2004, the FAA determined that the application to impose and use the revenue from a PFC submitted by Chemung County, New York 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 October 2, 2004.

The following is a brief overview of the application.

Proposed charge effective date: June 1, 2004.

Proposed charge expiration date: September 1, 2007.

Level of the proposed PFC: $3.00.

Total estimated PFC revenue: $791,873.

Brief description of proposed project(s):

1. Purchase airport sweeper.
2. Rehabilitate and mark Taxiway A, rehabilitate and mark terminal apron.
3. Security vulnerability assessment.
4. Snow removal equipment (SRE) building expansion.
5. Purchase and install passenger boarding bridge.
6. Hazard beacon (obstruction lights) study.
7. Rehabilitate and strengthen Taxiways C, G and H.
8. Construct itinerant aircraft apron.
9. Update/Upgrade airport security access control system.
10. Environmental assessment for the extension of Runway end 6.
11. Install security fence at Schweizer property T-hangar access area and maintenance area.
12. Airfield stormwater drainage study, Phase 1.
13. Rehabilitate Taxiway D.
14. Acquire multi-purpose snow removal equipment.
15. Master plan update.
16. Acquire ARFF command/friction survey vehicle.
17. Runway end 6 extension, Phase 1 (Design).

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Non-Scheduled/On-Demand Air Carriers filing 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, 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 Chemung County, New York (Elmira/Corning Regional Airport).

Dated: Issued in Garden City, New York, on June 15, 2004.

Philip Brito,

Manager, New York Airports District Office, Eastern Region.

[FR Doc. 04–14203 Filed 6–22–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Technical Standard Order—C158, Aeronautical Mobile High Frequency Data Link (HFDL) Equipment

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability and requests for public comment.

SUMMARY: This notice announces the availability of and requests for comments on the proposed Technical Standard Order (TSO)–C158, Aeronautical Mobile High Frequency Data Link (HFDL) Equipment. The proposed TSO tells manufacturers seeking TSO authorization or letter of design approval what minimum performance standards (MPS) their HFDL equipment must first meet for approval and identification with the applicable TSO markings.

DATES: Submit comments on of before. July 23, 2004.

ADDRESSES: Send all comments on the proposed TSO–C158 to: Federal Aviation Administration, Aircraft Certification Service, Aircraft Engineering Division, Avionic Systems Branch, AIR–130, Room 815, 800 Independence Avenue, SW., Washington, DC 20591. ATTN: Mr. David W. Robinson, AIR–130. You may deliver comments to: Federal Aviation Administration, Room 815, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Mr. David W. Robinson, AIR–130, Room 815, Federal Aviation Administration, Aircraft Certification Service, Aircraft Engineering Division, 800 Independence Avenue, SW., Washington, DC 20591, Telephone (202) 385–4650, FAX: (202) 385–4651, or e-mail: *david.w.robinson@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

You are invited to comment on the proposed TSO identified in this notice by submitting written data, views, or arguments to the address listed above. Your comments should identify ''Comments to proposed TSO–C158.'' You may examine all comments revised on the proposed TSO before and after the comment closing date at the Federal Aviation Administration, Room 815, 800 Independence Avenue, SW., Washington, DC 20591, weekdays except Federal holidays, between 8:30 a.m. and 4:30 p.m. The Director of the Aircraft Certification Service will consider all communications received on or before the closing date before issuing the final TSO.

Background

This proposed TSO–C158 contains minimum performance standards for communications systems utilizing High Frequency Data Link (HFDL) equipment for the air-ground communications sub network in an Aeronautical Telecommunications Network (ATN) environment. This proposed TSO is for manufacturers applying for a TSO authorization or letter of design approval. In it, we (the Federal Aviation Administration) tell you what minimum performance standards (MPS) your Aeronautical Mobile Frequency Data Link (HFDL) communications equipment must meet for approval.

How To Obtain Copies

You may get a copy of the proposed TSO from the Internet at: *http://av-info.faa.gov/tso/Tsopro/Proposed.htm.*

You may also request a copy from Mr. David W. Robinson. See the section entitled **FOR FURTHER INFORMATION CONTACT** for the complete address.

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

Susan J.M. Cabler,

Acting Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. 04–14208 Filed 6–22–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Technical Standard Order (TSO)—C159, Avionics Supporting Next Generation Satellite Systems (NGSS)

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability and requests for public comment.

SUMMARY: This notice announces the availability of and requests comments on a proposed Technical Standard Order (TSO) C–159, Avionics Supporting Next Generation Satellite Systems (NGSS). This proposed TSO tells persons seeking a TSO authorization or letter of design approval what minimum performance standards (MPS) their Next Generation Satellite Systems (NGSS) must meet to be identified with the applicable TSO marking.

DATES: Comments must be received on or before July 23, 2004.

ADDRESSES: Send all comments on the proposed technical standard order to: Federal Aviation Administration (FAA), Aircraft Certification Service, Aircraft Engineering Division, Avionic Systems Branch, AIR–130, 800 Independence Avenue, SW, Washington, DC 20591. ATTN: Ms. Dara Gibson. Or deliver comments to: Federal Aviation Administration, Room 815, 800 Independence Avenue, SW, Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Ms. Dara Gibson, AIR–130, Room 815 Federal Aviation Administration, Aircraft Certification Service, Aircraft Engineering Division, 800 Independence Avenue, SW, Washington, DC 20591. Telephone (202) 385–4632, FAX: (202) 385–4651. Or, via e-mail at: *dara.gibson@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on the proposed TSO listed in this notice by submitting such written data, views, or arguments as they desire to the above specified address. Comments received on the proposed TSO may be examined, before and after the comment closing date, in Room 815, FAA Headquarters Building, 800 Independence Avenue, SW, Washington, DC 20591, weekdays except Federal holidays, between 8:30 a.m. and 4:30 p.m. All communications received on or before the closing date will be considered by the Director of the Aircraft Certification Service before issuing the final TSO.

Background

This proposed TSO applies to avionics supporting Next Generation Satellite Systems (NGSS) that provide Aeronautical Mobile Satellite (R) Services. Note that the capability of the NGSS includes the support of both data and voice communications between aircraft and ground-based users. To accomplish this task, the MPS contained in the proposed TSO–C159 will assist manufacturers of NGSS equipment in their compliance with the applicable requirements of RTCA Document Number (RTCA/DO) 262, Minimum Operational Performance Standards (MOPS) for Avionics Supporting Next Generation Satellite Systems, dated December 14, 2000.

How To Obtain Copies

You may get a copy of the proposed TSO from the Internet at: *http://av-info.faa.gov/tso/Tsopro/Proposed.htm.* See section entitled **FOR FURTHER INFORMATION CONTACT** for the complete address if requesting a copy by mail. You may inspect the RTCA document at the FAA office location listed under **ADDRESSES**. Note however, RTCA documents are copyrighted and may not be reproduced without the written consent of RTCA, Inc. You may purchase copies of RTCA, Inc. documents from: RTCA, Inc., 1828 L Street, NW., Suite 815, Washington, DC 20036, or directly from their Web site: *http://www.rtca.org/.*

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

Susan J. M. Cabler,

Assistant Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. 04–14207 Filed 6–22–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Cooperative Procurement Pilot Program

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice; request for proposals.

SUMMARY: This notice announces the establishment of a new Cooperative Procurement Pilot Program (CPPP) and solicits proposals for consideration. Section 166 of the Transportation, Treasury, and Independent Agencies Appropriations Act, 2004 directs the Federal Transit Administration (FTA) to establish a pilot program to determine the benefits of encouraging cooperative procurement of major capital equipment. As specified in the Appropriations Act, the program shall consist of three pilot projects. Under the CPPP, competitively selected grantees, consortiums of grantees, or members of the private sector acting as agents of grantees will develop cooperative specifications and conduct joint procurements. For this program, Congress has raised the Federal share to be provided from 80 percent to 90 percent.

DATES: Proposals (2 copies) and/or comments must be received by August 23, 2004.

ADDRESSES: Proposals and/or comments should be submitted to Rita Daguillard, 400 Seventh Street, SW., Suite 9401, Washington, DC 20590 or *Rita Daguillard@fta.dot.gov* and shall reference CPPP.

FOR FURTHER INFORMATION CONTACT: Rita Daguillard, Office of Research, Demonstration, and Innovation, Federal Transit Administration, (202) 366–4052, or e-mail: *Rita.Daguillard@fta.dot.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Federal Transit Program

The Federal Transit Administration provides grants to State and local government agencies to support public transportation in communities across America. A major portion of these funds is used to purchase major capital equipment (*e.g.*, buses, vans, railcars) used in providing public transit service. FTA's annual budget exceeds $7 billion, of which more than $3 billion is distributed by formula to more than 1,000 grantees nationwide. On average, FTA funds more than half of the bus purchases in any given year in the United States.

The bus industry and FTA have promoted standard contract terms and conditions to try to reduce the number of individualized bus orders. Voluntary standard technical specifications and warranties have been developed and promoted by FTA and the American Public Transportation Association. To date, none of these efforts has reduced the use of individualized designs and specifications. This phenomenon also occurs, perhaps less visibly, in the smaller vehicle groups (vans) and rail vehicles as well. The result is higher prices for vehicles. FTA believes that, in addition to cost savings, cooperative procurements could ease the burden on individual transit agencies and their specification writers, manufacturers, and suppliers, and promote healthy, competitive, and predictable transit-related capital equipment markets. The program may also serve as an opportunity to improve the existing standard bus procurement guidelines.

This document lays out the proposed demonstration elements, as specified in FTA's 2004 Appropriations Act (Pub. L. 108–199), the benefits of the program, the application process, the evaluation criteria, and the technical assistance available. In addition, this notice briefly describes the FTA report to Congress mandated for this demonstration.

The Cooperative Procurement

Section 166 of Pub. L. 108–199 directs FTA to conduct a Cooperative Procurement Pilot Program. The legislation contains specific language concerning the purpose of the pilot program, eligible expenses, maximum Federal share, outreach, and reporting. A summary of the section follows.

Section 166 calls for the Secretary of Transportation to conduct a pilot of three cooperative procurements of major capital equipment under sections 5307 (Urban Formula grants), 5309 (Discretionary Capital grants), and 5311 (Rural Formula grants) of FTA's authorizing legislation. It authorizes a 90 percent Federal share for grants to purchase major capital equipment under this program, compared to the 80 percent otherwise authorized in sections 5307, 5309 and 5311. Title 49 of the United States Code, chapter 53, authorizes FTA to provide grants to governmental agencies to promote the provision of transit services.

The full text of section 166 is as follows:

Sec. 166. (a) In General—The Secretary shall establish a pilot program to determine the benefits of encouraging cooperative procurement of major capital equipment under sections 5307, 5309, and 5311. The program shall consist of three pilot projects. Cooperative procurements in these projects may be carried out by grantees, consortiums of grantees, or members of the private sector acting as agents of grantees.

(b) Federal Share—Notwithstanding any other provision of law, the Federal share for a grant under this pilot program shall be 90 percent of the net project cost.

(c) Permissible Activities—

(1) Developing Specifications—Cooperative specifications may be developed either by the grantees or their agents.

(2) Requests for Proposals—To the extent permissible under State and local law, cooperative procurements under this section may be carried out, either by the grantees or their agents, by issuing one request for proposal for each cooperative procurement, covering all agencies that are participating in the procurement.

(3) Best and Final Offers—The cost of evaluating best and final offers either by the grantees or their agents, is an eligible expense under this program.

(d) Technology—To the extent feasible, cooperative procurements under this section shall maximize use of Internet-based software technology designed specifically for transit buses and other major capital equipment to develop specifications; aggregate equipment requirements with other transit agencies; generate cooperative request for proposal packages; create cooperative specifications; and automate the request for approved equals process.

(e) Eligible Expenses—The cost of the permissible activities under (c) and procurement under (d) are eligible expenses under the pilot program.

(f) Proportionate Contributions—Cooperating agencies may contribute proportionately to the non-Federal share of any of the eligible expenses under (e).

(g) Outreach—The Secretary shall conduct outreach on cooperative procurement. Under this program the Secretary shall: (1) Offer technical assistance to transit agencies to facilitate the use of cooperative procurement of major capital equipment; and (2) conduct seminars and conferences for grantees, nationwide, on the concept of cooperative procurement of major capital equipment.

(h) Report—Not later than 30 days after delivery of the base order under each of the pilot projects, the Secretary shall submit to the House and Senate Committees on Appropriations a report on the results of that pilot project. Each report shall evaluate any savings realized through the cooperative procurement and the benefits of incorporating cooperative procurement, as shown by that project, into the mass transit program as a whole.

Industry Consultation

FTA will hold a pre-proposal meeting with interested parties at FTA headquarters in Washington, DC, on a date to be announced. The purpose of the meeting will be to answer questions related to the CPPP. To receive electronic notice of the time and date of this meeting, as well as any updates FTA issues throughout the program, send an e-mail with your name, contact telephone number, and the e-mail address where you wish to receive this information to *FTACPPP@fta.dot.gov*. Following selection of the pilot projects, FTA will continue to consult with industry representatives throughout this pilot program.

Goals

FTA's goals for the CPPP are to develop, refine, and prove innovative procurement practices that provide significant benefits to the public transit industry, including cost savings compared to a standard procurement (both in initial procurement costs and operational costs over the life of the equipment); improved efficiency of the procurement process; procurement methods that are easily implemented; decreased managerial burden on the organizations involved; and efficient use of Internet-based software technology in developing specifications, aggregating equipment requirements with other transit agencies, and generating cooperative requests for proposal packages.

Initial Issues

By introducing a number of innovative procurement practices, this program could identify and provide significant advantages to the transit industry. We also recognize that the failure to consider the full effects of any particular project could prove disruptive to the transit industry. The major issues related to competition are captured in this section and proposers are asked to address these concerns in their proposals.

- It is important that this program not artificially skew the bus, supplier, or other major capital equipment markets. Sound manufacturing and supply markets are vital to maintaining the availability of high quality, reasonably priced buses and other major capital equipment. In this program, FTA hopes to secure the best available pricing and quality for grantees' major capital equipment purchases and achieve the best value for taxpayer dollars.
- The pilot projects ought to be narrowly tailored (*e.g.,* one project may involve procurement of 40′, 102″-wide, low-floor, clean diesel buses) to enhance the program's viability and our ability to obtain realistic comparisons of the procurement methods employed.
- Because procurements of buses and other rolling stock often extend to five years of requirements, many interested transit agencies may be obligated under the terms of existing multi-year contracts. A transit agency obligated under a current contract may wish to be involved in a pilot project's out-years.

For example, a transit agency obligated to buy buses under a current contract for two more years may wish to join the project for purchases effective in year three (assuming a five-year contract duration under a project). If a transit agency holds an existing option or other right to purchase buses in the future, participation in the CPPP might provide better pricing that would warrant a decision not to exercise the option. A proposal including participants facing this situation should explain how it will address this issue, *e.g.*, forego or assign the option to other non-participants.

• Similarly, current practice allows transit agencies to assign rights to purchase buses to other transit agencies not parties to the original contract, a practice known in the industry as ''piggybacking.'' This practice may be inconsistent with the concept of joint procurement, a potential threat to the market, or otherwise inappropriate in this program. Proposals should address this issue in terms of the intent to allow or not allow assignments.

• One joint procurement model involves designating a lead transit agency to act as the ''contracting officer'' for all project participants, with other participants limited to the role of ''authorized purchaser'' without authority to change, curtail, or extend the single contract. Another model could have all participants in a project cooperate in issuing specifications but independently contract with the supplier(s) selected according to each transit agency's independent analysis of the suppliers' proposals. CPPP proposals should explain how this, or other methods they propose to use, would serve the program's goals and the intent of the individual project.

• Bonding and payment terms, as well as overall risk management and mitigation, are concerns for both transit agencies and suppliers. This program offers an opportunity to foster innovative approaches to these issues that fairly and economically allocate risks.

• The voluntary industry bus specification (the Standard Bus Procurement Guidelines) funded by FTA and issued by the American Public Transportation Association may serve as a baseline for one or more project specifications.

Submission of Proposals

FTA solicits proposals for three pilot CPPP projects. Proposals should present an overview of the proposed project, a preliminary list of the participants, the objectives of the procurement, technological aspects of the proposed project, anticipated costs (not including the purchase price of the equipment to be procured), and a description of how the project meets the selection criteria below and approaches the issues described above. Not all project participants need be identified at the time of the proposal; they may be added to the project once the selection is made.

Selection Criteria

In selecting the pilot CPPP projects, FTA will give preference to proposals aimed primarily at procurements of rolling stock, but will consider cooperative procurement proposals of other major capital equipment as well. FTA's selection will be based on a determination of how to best test different methods of joint procurement, so that FTA can compare and contrast those methods and report the results to Congress and the industry as a guide for future procurement actions. FTA will select the three pilot projects after consideration of:

• *Sound business planning.* Proposals should demonstrate a clear, concise procurement plan, ordering procedures, financial and contractual aspects of their approach, and contract administration techniques.

• *Identification, mitigation, management, and sharing of risk.* This includes approaches to bonding, payment terms, warranties, and other elements of risk that affect pricing.

• *Amount and likelihood of economic benefits.* Proposals should present, to the extent possible, projected costs savings to be garnered through administrative efficiencies, as well as potential savings predicated on volume buying.

• *Administrative efficiency.* This includes streamlining efforts that assist buyers and sellers alike.

• *Innovative techniques.* This includes the use of technology to promote efficiency and/or reduce costs for buyers and sellers, novel approaches to financing, maintenance, parts supplies, or other aspects of total costs of ownership.

• *Approach to the initial issues.* Proposals should explain how they will approach FTA's systemic concerns explained above.

• *Technical capacity.* This refers to the capacity of the proposers to undertake and manage a joint procurement of this nature.

Evaluation Process

FTA staff will evaluate all proposals based on the selection criteria listed above. We may engage in discussions with individual proposers to further define the pilot projects, but reserve the right to select one or more pilot projects based on the original submissions and without discussions. FTA expects to select the three pilot CPPP projects within 90 days of the deadline for submission of proposals provided in this notice.

Program Evaluation and Reporting

Following the award of the procurement contract(s) in each pilot project, FTA will evaluate the procurement process used and the results achieved in each project, and report the findings to Congress. FTA's evaluation will be based on the cost savings compared to a standard procurement; the improvement in the efficiency of the procurement process; the ease of implementing the procurement methods; the decrease in managerial burden on the organizations involved; and the use of Internet-based software technology in developing specifications, aggregating equipment requirements with other transit agencies, and generating cooperative requests for proposal packages. FTA will use the results of this evaluation to formulate guidance for grantees on the use of cooperative procurement methods. Participating entities will be required to cooperate in the information gathering, reporting, and outreach processes.

Issued on: June 18, 2004.

Jennifer L. Dorn,

Administrator.

[FR Doc. 04–14209 Filed 6–22–04; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Ex Parte No. 290 (Sub No. 5) (2004–3)]

Quarterly Rail Cost Adjustment Factor

AGENCY: Surface Transportation Board.

ACTION: Approval of rail cost adjustment factor.

SUMMARY: The Board has approved the third quarter 2004 rail cost adjustment factor (RCAF) and cost index filed by the Association of American Railroads. The third quarter 2004 RCAF (Unadjusted) is 1.071. The third quarter 2004 RCAF (Adjusted) is 0.534. The third quarter 2004 RCAF–5 is 0.509.

EFFECTIVE DATE: July 1, 2004.

FOR FURTHER INFORMATION CONTACT: Mac Frampton, (202) 565–1541. Federal Information Relay Service (FIRS) for the hearing impaired: 1–800–877–8339.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To purchase a copy of the full decision, call ASAP Document Solutions at (301) 577–2600. [Assistance for the hearing impaired is available through FIRS: 1–800–877–8339.]

This action will not significantly affect either the quality of the human environment or energy conservation.

Pursuant to 5 U.S.C. 605(b), we conclude that our action will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Decided: June 17, 2004.

By the Board, Chairman Nober, Commissioner Mulvey, and Commissioner Buttrey.

Vernon A. Williams,

Secretary.

[FR Doc. 04–14236 Filed 6–22–04; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34502]

American Orient Express Railway Company LLC—Petition for Declaratory Order

AGENCY: Surface Transportation Board.

ACTION: Institution of declaratory order proceeding; request for comments.

SUMMARY: The Surface Transportation Board is instituting a declaratory order proceeding and requesting comments on the petition of American Orient Express Railway Company LLC's (AOERC) for an order declaring that AOERC is not a common carrier by rail subject to the Board's jurisdiction.

DATES: Any interested person may file with the Board written comments concerning this issue by July 13, 2004.

ADDRESSES: Send an original and 10 copies of any comments referring to STB Finance Docket No. 34502 to: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, send one copy of any comments to: Robert Bergen, Holland & Knight LLP, 195 Broadway, New York, NY 10007.

FOR FURTHER INFORMATION CONTACT: Eric S. Davis, (202) 565–1608. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at: (800) 877–8339.]

SUPPLEMENTARY INFORMATION: By petition filed on April 30, 2004, AOERC asks the Board to issue an order declaring that it is not a common carrier by rail subject to the Board's jurisdiction.

On February 9, 2001, the Railroad Retirement Board (RRB) issued a decision concluding that AOERC is a covered employer for purposes of the Railroad Retirement Act, 45 U.S.C. 231 *et seq.* (2004), and Railroad Unemployment Insurance Act, 45 U.S.C. 351 *et seq.* (2004) (collectively Railroad Retirement Acts) because it determined that AOERC was a ''reincarnation'' of a previously covered sleeper car carrier. AOERC sought a reconsideration of that decision. The RRB appointed a Hearing Examiner, who, on May 21, 2002, held a hearing on the petition for reconsideration. On May 16, 2003, the Hearing Examiner issued a recommendation to the RRB suggesting that AOERC is a covered employer not because it was a ''reincarnation'' of a covered sleeper car carrier but because it provides common carrier rail transportation and, therefore, is under the Board's jurisdiction. The RRB has not acted on the petition for a reconsideration or on the Hearing Examiner's recommendation because the scope of the Board's jurisdiction over AOERC is the only issue on which the questions of coverage depends. The RRB has stayed its reconsideration proceeding until July 1, 2004, to allow the Board to rule on the question of jurisdiction.

AOERC is a land excursion company that uses restored vintage railroad coaches, diners and sleepers as the central feature of its vacation packages. It does not own or operate any locomotives or railroad track. Rather, it contracts with the National Passenger Railroad Corporation (Amtrak) to provide all railroad related services including locomotive power and train and engine crews (Amtrak Contract). As part of the vacation packages, specially tailored meals, luxury accommodations, on and off the train, and various excursions, including walking tours of historic and natural sites, lectures and live music are included. AOERC operates seasonally and does not have set routes. AOERC's trips and itineraries change annually depending on its negotiations with Amtrak. Additionally, AOERC may cancel a planned excursion if there are not enough customers or it may add a charter trip on a different route. Most of AOERC's employees are part-time seasonal employees, and AOERC states that it does not employ traditional rail workers because it provides only non-railroad amenities and services.

Amtrak does not own most of the track over which it operates; it obtains trackage rights from other railroads to provide service to AOERC. Amtrak pulls AOERC's vintage rail cars pursuant to a schedule for each excursion that meets Amtrak's and the host railroad's (the track owner or operator) availability. AOERC proposes itineraries to Amtrak, usually 2 years in advance, so that Amtrak can determine, based on its own schedule and the availability of the track routes requested, whether they are possible. AOERC cannot offer itineraries that have not been approved by Amtrak. Even if an itinerary has been approved, the Amtrak Contract does not guarantee that the chosen route will be served. Amtrak has the right to cancel or change scheduled routes, stops or entire trips. According to AOERC, Amtrak has exercised this right on more than one occasion.

Under the Amtrak Contract, AOERC is responsible for providing its car consists in good order and on time to meet Amtrak's and host railroads' schedules. Additionally, the train consists must be submitted to Amtrak for inspection at the beginning of each touring season and before each trip. Amtrak may refuse to pull cars that do not pass its inspections.

Under 49 U.S.C. 10501(b), the Board has exclusive jurisdiction over transportation by rail carriers. The term ''rail carrier'' is defined as ''a person providing common carrier railroad transportation for compensation'' under 49 U.S.C. 10102(5). AOERC asserts that it does not meet the definition of a ''railroad'' under 49 U.S.C. 10102(6) because it does not own or operate any of the listed equipment; it does not own or operate any road or railroad right-of-way; and it does not own or operate any of the listed facilities or equipment. AOERC maintains that it cannot be considered a ''rail carrier'' subject to the Board's jurisdiction because it does not meet the definition of a ''railroad.''

Moreover, AOERC argues that it does not fit the definition of a common carrier because it does not hold itself out to the general public as a company engaged in the business of transporting persons or property from place to place for compensation. AOERC maintains that it does not provide scheduled transportation service on a regular basis between points. It claims that, in order to move its cars, it must rely entirely on Amtrak and the railroad owners of the track it uses for permission to travel. Additionally, AOERC asserts that its schedules are based entirely on the availability of Amtrak locomotives and crews and railroad trackage, all of which is determined by Amtrak and the owners of the track.

Finally, AOERC asserts that its excursion business has certain similarities to sleeping car service, express service and car rental companies all of which, AOERC asserts, are outside of the Board's jurisdiction.

Accordingly, by this notice, the Board is requesting comments on this matter.

Board decisions and notices are available on our website at *http://www.stb.dot.gov.*

Decided: June 17, 2004.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 04–14237 Filed 6–22–04; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

June 10, 2004.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before July 23, 2004, to be assured of consideration.

Bureau of the Public Debt (PD)

OMB Number: 1535–0069.

Form Numbers: PD F 5178, 5179, 5179–1, 5180, 5181, 5182, 5188, 5189, 5191, 5201, 5235, 5236, 5261, and 5381.

Type of Review: Extension.

Title: Treasury Direct Forms.

Description: These forms are used to purchase and maintain Treasury Bills, Notes and Bonds.

Respondents: Individuals or households.

Estimated Number of Respondents: 431,632.

Estimated Burden Hours Per Respondent: 10 minutes per form.

Frequency of Response: On occasion.

Estimated Total Reporting Burden Hours: 58,628 hours.

Clearance Officer: Vicki S. Thorpe, (304) 480–6553, Bureau of the Public Debt, 200 Third Street, Parkersburg, West VA 26106–1328.

OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Treasury PRA Clearance Officer.

[FR Doc. 04–13794 Filed 6–22–04; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Treasury Inspector General for Tax Administration; Privacy Act of 1974: Computer Matching Program

AGENCY: Treasury Inspector General for Tax Administration, Treasury.

ACTION: Notice.

SUMMARY: Pursuant to 5 U.S.C. 552a, the Privacy Act of 1974, as amended, notice is hereby given of the agreement between the Treasury Inspector General for Tax Administration (TIGTA) and the Internal Revenue Service (IRS) concerning the conduct of TIGTA's matching program.

DATES: *Effective Date:* June 23, 2004.

ADDRESSES: Comments or inquires may be mailed to the Treasury Inspector General for Tax Administration, 1125 15th Street, NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Disclosure Officer, Treasury Inspector General for Tax Administration, (202) 622–4068.

SUPPLEMENTARY INFORMATION: TIGTA's computer matching program will enable TIGTA to prevent and detect fraud and abuse in the programs and operations of the IRS and related entities. TIGTA's computer matching program is also designed to proactively detect indicators of misconduct and to discourage/deter the perpetration of illegal acts and misconduct by IRS employees. Further, this program will utilize computer matches to identify alleged misconduct and criminal violations. Computer matching is the most feasible method of performing comprehensive analysis of data.

Name of Source Agency: Internal Revenue Service.

Name of Recipient Agency: Treasury Inspector General for Tax Administration.

Beginning and Completion Dates: This program of computer matches is expected to commence on June 1, 2004, but not earlier than the fortieth day after copies of the Computer Matching Agreement are provided to the Congress and OMB unless comments dictate otherwise. The program of computer matches is expected to conclude on February 28, 2006.

Purpose: This program is designed to deter and detect fraud, waste, and abuse in Internal Revenue Service programs and operations, to identify employees who have violated or are violating laws, rules, or regulations, and to protect against attempts to corrupt or threaten the IRS and/or its employees.

Authority: The Inspector General Act of 1978, 5 U.S.C. appendix 3 and Treasury Order 115–01.

Categories of Individuals Covered: Current and former employees of the Internal Revenue Service as well as individuals and entities about whom information is maintained in the systems of records listed below.

Categories of Records Covered: Included in this program of computer matches are records from the following forty-seven (47) Treasury or Internal Revenue Service systems.

a. Treasury Integrated Management Information System (TIMIS) [Treasury/DO.002].

b. FinCEN Data Base [Treasury/DO.200].

c. Treasury Integrated Financial Management and Revenue System [Treasury/DO.210].

d. Suspicious Activity Reporting System [Treasury/DO.212].

e. Bank Secrecy Act Reports System [Treasury/DO.213].

f. Correspondence Files (including Stakeholder Relationship files) and Correspondence Control Files [Treasury/IRS 00.001].

g. Correspondence Files/Inquiries About Enforcement Activities [Treasury/IRS 00.002].

h. Taxpayer Advocate Service and Customer Feedback and Survey Records System [Treasury/IRS 00.003].

i. Foreign Information System (FIS) [Treasury/IRS 22.027].

j. Individual Returns Files, Adjustments and Miscellaneous Documents Files [Treasury/IRS 22.034].

k. Unidentified Remittance File [Treasury/IRS 22.059].

l. Automated Non-Master File (ANMF) [Treasury/IRS 22.060].

m. Information Return Master File (IRMF) [Treasury/IRS 22.061].

n. Combined Account Number File, Taxpayer Services [Treasury/IRS 24.013].

o. Individual Account Number File (IANF) [Treasury/IRS 24.029].

p. CADE Individual Master File (IMF) [Treasury/IRS 24.030].

q. CADE Business Master File (BMF) [Treasury/IRS 24.046].

r. Audit Underreporter Case File [Treasury/IRS 24.047].

s. Debtor Master File (DMF) [Treasury/IRS 24.070].

t. Acquired Property Records [Treasury/IRS 26.001].

u. IRS and Treasury Employee Delinquency [Treasury/IRS 26.008].

v. Lien Files (Open and Closed) [Treasury/IRS 26.009].

w. Offer in Compromise (OIC) File [Treasury/IRS 26.012].

x. Record 21, Record of Seizure and Sale of Real Property [Treasury/IRS 26.014].

y. Returns Compliance Programs (RCP) [Treasury/IRS 26.016].

z. Taxpayer Delinquent Account (TDA) Files [Treasury/IRS 26.019].

aa. Taxpayer Delinquency Investigation (TDI) Files [Treasury/IRS 26.020].

bb. Counsel Automated Tracking System (CATS) Records [Treasury/IRS 90.016].

cc. Audit Trail Lead Analysis System (ATLAS) [Treasury/IRS 34.020].

dd. General Personnel and Payroll Records [Treasury/IRS 36.003].

ee. Medical Records [Treasury/IRS 36.005].

ff. Enrolled Agents and Resigned Enrolled Agents [Treasury/IRS 37.009].

gg. Examination Administrative File [Treasury/IRS 42.001].

hh. Audit Information Management System (AIMS) [Treasury/IRS 42.008].

ii. Internal Revenue Service Employees' Returns Control Files [Treasury/IRS 42.014].

jj. Classification/Centralized and Scheduling Files [Treasury/IRS 42.016].

kk. Compliance Programs and Projects Files [Treasury/IRS 42.021].

ll. Appeals Centralized Data System [Treasury/IRS 44.003].

mm. Criminal Investigation Management Information System [Treasury/IRS 46.002].

nn. Controlled Accounts (Open and Closed) [Treasury/IRS 46.004].

oo. Treasury Enforcement Communications System (TECS) Criminal Investigation Division [Treasury/IRS 46.022].

pp. Automated Information Analysis System [Treasury/IRS 46.050].

Dated: June 15, 2004.

Jesus H. Delgado-Jenkins,

Acting Assistant Secretary for Management.

[FR Doc. 04–14127 Filed 6–22–04; 8:45 am]

BILLING CODE 4810–04–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1098

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1098, Mortgage Interest Statement.

DATES: Written comments should be received on or before August 23, 2004, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Larnice Mack at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3179, or through the Internet at (*Larnice.Mack@irs.gov*).

SUPPLEMENTARY INFORMATION:

Title: Mortgage Interest Statement.

OMB Number: 1545–0901.

Form Number: Form 1098.

Abstract: Section 6050H of the Internal Revenue Code requires mortgagors to report mortgage interest, including points, of $600 or more paid to them during the year by an individual. The form will be used by the IRS to verify that taxpayers have deducted the proper amount of mortgage interest expense or have included the proper amount of mortgage interest refunds in income on their tax returns.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Pubic: Individuals or households and business or other for-profit organizations.

Estimated Number of Respondents: 66,989,155.

Estimated Time Per Respondent: 7 minutes.

Estimated Total Annual Burden Hours: 8,038,699.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (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; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 16, 2004.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 04–14249 Filed 6–22–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8825

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the

Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8825, Rental Real Estate Income and Expenses of a Partnership or an S Corporation.

DATES: Written comments should be received on or before August 23, 2004 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Larnice Mack at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3179, or through the Internet at *(Larnice.Mack@irs.gov).*

SUPPLEMENTARY INFORMATION:

Title: Rental Real Estate Income and Expenses of a Partnership or an S Corporation.

OMB Number: 1545–1186.

Form Number: Form 8825.

Abstract: Partnerships and S corporations file Form 8825 with either Form 1065 or Form 1120S to report income and deductible expenses from rental real estate activities, including net income or loss from rental real estate activities that flow through from partnerships, estate, or trusts. The IRS uses the information on the form to verify that partnerships and S corporations have correctly reported their income and expenses from rental real estate property.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 705,000.

Estimated Time Per Respondent: 8 hours, 55 minutes.

Estimated Total Annual Burden Hours: 6,288,600.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (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; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 16, 2004.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 04–14250 Filed 6–22–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8829

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8829, Expenses for Business Use of Your Home.

DATES: Written comments should be received on or before August 23, 2004, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Larnice Mack at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3179, or through the Internet at *(Larnice.Mack@irs.gov).*

SUPPLEMENTARY INFORMATION:

Title: Expenses for Business Use of Your Home.

OMB Number: 1545–1266.

Form Number: Form 8829.

Abstract: Internal Revenue Code section 280A limits the deduction for business use of a home to the gross income from the business use minus certain business deductions. Amounts not allowed due to the limitations can be carried over to the following year. Form 8829 is used to compute the allowable deduction and any carryover, and the IRS uses the information to verify that these amounts are properly computed.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 4,000,000.

Estimated Time Per Respondent: 2 hr., 36 minutes.

Estimated Total Annual Burden Hours: 10,400,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (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; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 16, 2004.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 04–14251 Filed 6–22–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[INTL–939–86]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing notice of proposed rulemaking, INTL–939–86, Insurance Income of a Controlled Foreign Corporation for Taxable Years beginning After December 31, 1986 (§ 1.953–2(e)(3)(iii), 1.953–4(b), 1.953–5(a), 1.953–6(a), 1.953–7(c)(8), and 1.6046–1).

DATES: Written comments should be received on or before August 23, 2004, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Larnice Mack at Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3179, or through the Internet at *Larnice.Mack@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Insurance Income of a Controlled Foreign Corporation for Taxable Years Beginning After December 31, 1986.

OMB Number: 1545–1142.

Regulation Project Number: INTL–939–86.

Abstract: This regulation relates to the definition and computation of the insurance income of a controlled foreign corporation, and it also contains rules applicable to certain captive insurance companies. The information collection is required by the IRS in order for taxpayers to elect to locate risks with respect to moveable property by reference to the location of the property in a prior period; to allocate investment income to a particular category of insurance income; to allocate deductions to a particular category of insurance income; to determine the amount of those items, such as reserves, which are computed with reference to an insurance company's annual statement; to elect to have related person insurance income treated as income effectively connected with the conduct of a United States trade or business; and to collect the information required by Code section 6046 relating to controlled foreign corporations as defined in Code section 953(c).

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents/Recordkeepers: 500.

Estimated Time Per Respondent/Recordkeeper: 28 hr., 12 min.

Estimated Total Annual Burden Hours: 14,100.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (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; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 15, 2004.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 04–14252 Filed 6–22–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[PS–78–91; PS–50–92; and REG–114664–97]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning existing final regulations, PS–78–91 (TD 8430), Procedure for Monitoring Compliance With Low-Income Housing Credit Requirements; PS–50–92 (TD 8521), Rules To Carry Out the Purposes of Section 42 and for Correcting Administrative Errors and Omissions; and REG–114664–97 (TD 8859), Compliance Monitoring and Miscellaneous Issues Relating to the Low-Income Housing Credit (§§ 1.42–5, 1.42–13, and 1.42–17).

DATES: Written comments should be received on or before August 23, 2004, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6407, 1111 Constitution Avenue,

NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: PS–78–91, Procedure for Monitoring Compliance With Low-Income Housing Credit Requirements; PS–50–92, Rules To Carry Out the Purposes of Section 42 and for Correcting Administrative Errors and Omissions; and REG–114664–97, Compliance Monitoring and Miscellaneous Issues Relating to the Low-Income Housing Credit.

OMB Number: 1545–1357.

Regulation Project Numbers: PS–78–91; PS–50–92; and REG–114664–97.

Abstract:

PS–78–91. This regulation requires State allocation plans to provide a procedure for State and local housing credit agencies to monitor for compliance with the requirements of Code section 42 and report any noncompliance to the IRS. *PS–50–92.* This regulation concerns the Secretary of the Treasury's authority to provide guidance under Code section 42 and allows State and local housing credit agencies to correct administrative errors and omissions made in connection with allocations of low-income housing credit dollar amounts and recordkeeping within a reasonable period after their discovery. *REG–114664–97.* This regulation amends the procedures for State and local housing credit agencies' compliance monitoring and the rules for State and local housing credit agencies' correction of administrative errors or omissions.

Current Actions: There is no change to these existing regulations.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, individual or households, not-for-profit institutions, and State, local or tribal governments.

Estimated Number of Respondents: 22,055.

Estimated Time Per Respondent: 4 hours, 45 minutes.

Estimated Total Annual Burden Hours: 104,899.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (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; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 15, 2004.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 04–14253 Filed 6–22–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[PS–19–92]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, PS–19–92 (TD 8520), Carryover Allocations and Other Rules Relating to the Low-Income Housing Credit (§§ 1.42–6, 1.42–8, and 1.42–10).

DATES: Written comments should be received on or before August 23, 2004, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Carryover Allocations and Other Rules Relating to the Low-Income Housing Credit.

OMB Number: 1545–1102.

Regulation Project Number: PS–19–92.

Abstract: Section 42 of the Internal Revenue Code provides for a low-income housing tax credit. The regulations provide guidance with respect to eligibility for a carryover allocation, procedures for electing an appropriate percentage month, the general public use requirement, the utility allowance to be used in determining gross rent, and the inclusion of the cost of certain services in gross rent. This information will assist State and local housing tax credit agencies and taxpayers that apply for or claim the low-income housing tax credit in complying with the requirements of Code section 42.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals, business or other for-profit organizations, not-for-profit institutions, and State, local or tribal governments.

Estimated Number of Respondents/Recordkeepers: 2,230.

Estimated Time Per Respondent/Recordkeeper: 1 hr., 48 min.

Estimated Total Annual Reporting/Recordkeeping Burden Hours: 4,008.

The following paragraph applies to all of the collections of information covered by this notice.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will

be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (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; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 15, 2004.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 04–14254 Filed 6–22–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[EE–113–90]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

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

Currently, the IRS is soliciting comments concerning existing final and temporary regulations, EE–113–90 (TD 8324), Employee Business Expenses-Reporting and Withholding on Employee Business Expense Reimbursements and Allowances (§ 1.62–2).

DATES: Written comments should be received on or before August 23, 2004, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Employee Business Expenses-Reporting and Withholding on Employee Business Expense Reimbursements and Allowances.

OMB Number: 1545–1148.

Regulation Project Number: EE–113–90.

Abstract: These temporary and final regulations provide rules concerning the taxation of, and reporting and withholding on, payments with respect to employee business expenses under a reimbursement or other expense allowance arrangement. The regulations affect employees who receive payments and payors who make payments under such arrangements.

Current Actions: There is no change to these existing regulations.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, not-for-profit institutions, farms, and Federal, State, local or tribal governments.

Estimated Number of Recordkeepers: 1,419,456.

Estimated Time per Recordkeeper: 30 minutes.

Estimated Total Annual Recordkeeping Hours: 709,728.

The following paragraph applies to all of the collections of information covered by this notice.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (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; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 15, 2004.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 04–14255 Filed 6–22–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 709

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return.

DATES: Written comments should be received on or before August 23, 2004, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to R. Joseph Durbala at (202) 622–3634, or at Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: United States Gift (and Generation-Skipping Transfer) Tax Return.

OMB Number: 1545–0020.

Form Number: 709.

Abstract: Form 709 is used by individuals to report transfers subject to the gift and generation-skipping transfer taxes and to compute these taxes. The IRS uses the information to collect and enforce these taxes, to verify that the taxes are properly computed, and to compute the tax base for the estate tax.

Current Actions: There are no changes being made to Form 709 at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 278,500.

Estimated Time Per Respondent: 5 hours, 47 minutes.

Estimated Total Annual Burden Hours: 1,609,730.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (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; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 15, 2004.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 04–14256 Filed 6–22–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 6627

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 6627, Environmental Taxes.

DATES: Written comments should be received on or before August 23, 2004, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to R. Joseph Durbala at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3634, or through the Internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Environmental Taxes.

OMB Number: 1545–0245.

Form Number: Form 6627.

Abstract: Internal Revenue Code sections 4681 and 4682 impose a tax on ozone-depleting chemicals (ODCs) and on imported products containing ODCs. Form 6627 is used to compute the environmental tax on ODCs and on imported products that use ODCs as materials in the manufacture or production of the product. It is also used to compute the floor stocks tax on ODCs.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and individuals.

Estimated Number of Respondents: 2,894.

Estimated Time Per Respondent: 2 Hours, 25 minutes.

Estimated Total Annual Burden Hours: 6,971.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (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; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 15, 2004.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 04–14257 Filed 6–22–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Small Business/Self Employed—Payroll Committee of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Small Business/Self Employed—Payroll Committee of the Taxpayer Advocacy Panel will be conducted. The TAP will be discussing issues pertaining to increasing compliance and lessoning the burden for Small Business/Self Employed individuals. Recommendations for IRS systemic changes will be developed.

DATES: The meeting will be held Thursday, July 15, 2004 and Friday, July 16, 2004.

FOR FURTHER INFORMATION CONTACT: Mary O'Brien at 1–888–912–1227, or 206 220–6096.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Small Business/Self Employed—Payroll Committee of the Taxpayer Advocacy Panel will be held Thursday, July 15, 2004 from 1 p.m. CDT to 4:30 p.m. CDT and Friday, July 16, 2004 from 8 a.m. CDT to 4 p.m. CDT at 600 North State Street, Chicago, IL 60610. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 206–220–6096, or write to Mary O'Brien, TAP Office, 915 Second Avenue MS W–406, Seattle, WA 98174. Due to limited space, notification of intent to participate in the meeting must be made with Mary O'Brien. Ms. O'Brien can be reached at 1–888–912–1227 or 206–220–6096.

The agenda will include the following: Various IRS issues.

Dated: June 17, 2004.

Tersheia Carter,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 04–14258 Filed 6–22–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 4 Taxpayer Advocacy Panel (Including the States of Illinois, Indiana, Kentucky, Michigan, Ohio, West Virginia, and Wisconsin)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 4 Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, July 27, 2004, 8 a.m. to 3 p.m., and Wednesday, July 28, 8 a.m. to 12 p.m., Central Daylight Time.

FOR FURTHER INFORMATION CONTACT: Mary Ann Delzer at 1–888–912–1227, or (414) 297–1604.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Area 4 Taxpayer Advocacy Panel will be held Tuesday, July 27, 2004, 8 a.m. to 3 p.m., and Wednesday, July 28, 8 a.m. to 12 p.m., Central Daylight Time, at the Seelbach Hilton Louisville Hotel, 500 Fourth Street, Louisville, KY 40202. You can submit written comments to the panel by faxing to (414) 297–1623, or by mail to Taxpayer Advocacy Panel, Stop1006MIL, 310 West Wisconsin Avenue, Milwaukee, WI 53203–2221, or you can contact us at www.improveirs.org. This meeting is not required to be open to the public, but because we are always interested in community input, we will accept public comments. Please contact Mary Ann Delzer at 1–888–912–1227 or (414) 297–1604 for more information.

The agenda will include the following: Various IRS issues.

Dated: June 17, 2004.

Tersheia Carter,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 04–14259 Filed 6–22–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0559]

Agency Information Collection Activities Under OMB Review

AGENCY: National Cemetery Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the National Cemetery Administration (NCA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before July 23, 2004.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail *denise.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900–0559'' in any correspondence.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–7613. Please refer to ''OMB Control No. 2900–0559'' in any correspondence.

SUPPLEMENTARY INFORMATION: *Title:* State Cemetery Data, VA Form 40–0241.

OMB Control Number: 2900–0559.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 40–0241 is used to provide data regarding number of interments conducted at State veterans' cemeteries each year. The State Cemetery Grants Services use the data collected to project the need for additional burial space and to demonstrate to the States (especially those without State veterans' cemeteries) the viability of the program.

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 **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published on March 16, 2004, at page 12395.

Affected Public: Federal Government, and State, local or tribal government.

Estimated Annual Burden: 65 hours.

Estimated Average Burden Per Respondent: 60 minutes.

Frequency of Response: Annually.

Estimated Number of Respondents: 65.

Dated: June 14, 2004.

By direction of the Secretary:

Loise Russell,

Director, Records Management Service.

[FR Doc. 04–14189 Filed 6–22–04; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0365]

Agency Information Collection Activities Under OMB Review

AGENCY: National Cemetery Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the National Cemetery Administration (NCA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment.

The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before July 23, 2004.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail *denise.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900–0365'' in any correspondence.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–7613. Please refer to ''OMB Control No. 2900–0365'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Request for Disinterment, VA Form 40–4970.

OMB Control Number: 2900–0365.

Type of Review: Extension of a currently approved collection.

Abstract: Claimants complete VA Form 40–4970 to request removal of remains from a national cemetery for interment at another location. Interments made in national cemeteries are permanent and final. Disinterment will be permitted for cogent reasons with prior written authorization by the Cemetery Director. Approval can be granted when all immediate family members of the decedent, including the person who initiated the interment, (whether or not he/she is a member of the immediate family) give their written consent. The form is an affidavit that requires signatories to execute the document before a notary. In lieu of submitting VA Form 40–4970, an order from a court of local jurisdiction will be accepted.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on March 16, 2004, at pages 12394–12395.

Affected Public: Individuals or households.

Estimated Annual Burden: 55 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: On Occasion.

Estimated Number of Respondents: 329.

Dated: June 14, 2004.

By direction of the Secretary:

Loise Russell,

Director, Records Management Service.

[FR Doc. 04–14190 Filed 6–22–04; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; System of Records

AGENCY: Department of Veterans Affairs (VA).

ACTION: Notice of system of records: ''Spinal Cord Dysfunction-Registry—VA''.

SUMMARY: The Privacy Act of 1974 (5 U.S.C. 552a(e)(4)) requires that all agencies publish in the **Federal Register** a notice of the existence and character of their system of records. Notice is hereby given that the Department of Veterans Affairs (VA) is amending the system of records entitled ''Spinal Cord Dysfunction-Registry (SCD–R)–VA'' (108VA11S) as set forth in the **Federal Register** 66 FR 29209–29212 dated May 29, 2001. VA is amending the Routine Uses of Records Maintained in the System, including Categories of Users and the Purposes of Such Uses, the Policies and Practices for Storing, Retrieving, Accessing, Retaining and Disposing of Records in the System, and System Manager(s) and Address. VA is republishing the system notice in its entirety.

DATES: Comments on the amendment of this system of records must be received no later than July 23, 2004. If no public comment is received, the new system will become effective July 23, 2004.

ADDRESSES: Written comments concerning the proposed amended system of records may be submitted by: mail or hand-delivery to Director, Regulations Management (00REG1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Room 1068, Washington, DC 20420; fax to (202) 273–9026; or e-mail to *VAregulations@mail.va.gov.* All comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 273–9515 for an appointment.

FOR FURTHER INFORMATION CONTACT: Veterans Health Administration (VHA) Privacy Act Officer, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, telephone (727) 320–1839.

SUPPLEMENTARY INFORMATION: The Spinal Cord Dysfunction (SCD)–Registry provides a registry of veterans with spinal cord injury and disorders (SCI&D). This registry contains pertinent information on veterans with SCI&D and enables better coordination of care among VHA staff. The purpose of the registry is to assist clinicians, administrators, and researchers in identifying and tracking services for veterans with spinal cord dysfunction resulting from trauma or diseases. The SCD–Registry can also facilitate clinical, administrative, and research reports for medical center use. Local Veterans Health Information System and Technology Architecture (VistA) SCD–Registries provide aggregate data to the National SCD–Registry database at the Austin Automation Center (AAC). This centralized AAC registry is used to provide a VA-wide review of veteran demographics and clinical aspects of injury and disorders for administrative and research purposes.

VHA's Health Services Research and Development Service (HSR&D) and the congressionally-chartered Paralyzed Veterans of America (PVA) originally developed the SCD–Registry. However, these records are maintained exclusively by VA.

The Routine Uses of Records Maintained in the System, including Categories of Users and the Purposes of Such Uses are amended as described below.

- Routine use number seven (7) has been amended in its entirety. VA must be able to comply with the requirements of agencies charged with enforcing the law and conducting investigations. VA must also be able to provide information to state or local agencies charged with protecting the public's health as set forth in state law. The routine use will be as follows: On its own initiative, VA may disclose information, except for the names and home addresses of veterans and their dependents, to a Federal, state, local, tribal or foreign agency charged with the responsibility of investigating or prosecuting civil, criminal or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, rule or order issued pursuant thereto. On its own initiative, VA may also disclose the names and addresses of veterans and their dependents to a Federal agency charged with the responsibility of investigating or prosecuting civil, criminal or regulatory violations of law, or charged with enforcing or implementing the

statute, regulation, rule or order issued pursuant thereto.

The Privacy Act permits VA to disclose information about individuals without their consent for a routine use when the information will be used for a purpose that is compatible with the purpose for which we collected the information. In all of the routine use disclosures described, the recipient of the information will use the information in connection with a matter relating to one of VA's programs, will use the information to provide a benefit to VA, or disclosure is required by law.

Under section 264, Subtitle F of Title II of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) Public Law 104–191, 100 Stat. 1936, 2033–34 (1996), the United States Department of Health and Human Services (HHS) published a final rule, as amended, establishing Standards for Privacy of Individually-Identifiable Health Information, 45 CFR Parts 160 and 164. VHA may not disclose individually-identifiable health information (as defined in HIPAA, 42 U.S.C. 1320(d)(6), and Privacy Rule, 45 CFR 164.501) pursuant to a routine use unless either: (a) The disclosure is required by law, or (b) the disclosure is also permitted or required by the HHS Privacy Rule. The disclosures of individually-identifiable health information contemplated in the routine uses published in this amended system of records notice are permitted under the Privacy Rule. However, to also have authority to make such disclosures under the Privacy Act, VA must publish these routine uses. Consequently, VA is publishing these routine uses and is adding a preliminary paragraph to the routine uses portion of the system of records notice stating that any disclosure pursuant to the routine uses in this system of records notice must be either required by law or permitted by the Privacy Rule before VHA may disclose the covered information.

The Safeguards section of Policies and Practices for Storing, Retrieving, Accessing, Retaining and Disposing of Records in the System has been amended to reflect the change in reference from VA Headquarters to VA Central Office.

System Manager(s) and Address has been amended to indicate that the SCD–Registry Coordinator is the official responsible for Spinal Cord Dysfunction ''Registry design, development, and maintenance.

The Report of Intent to Publish an Amended System of Record Notice and an advance copy of the system notice have been sent to the appropriate Congressional committees and to the Director of Office of Management and Budget (OMB) as required by 5 U.S.C. 552a(r) (Privacy Act) and guidelines issued by OMB (65 FR 77677), December 12, 2000.

Approved: June 7, 2004.

Anthony J. Principi,

Secretary of Veterans Affairs.

108VA11S

SYSTEM NAME:

Spinal Cord Dysfunction-Registry (SCD–R)–VA.

SYSTEM LOCATION:

All electronic and paper records are maintained at the Austin Automation Center (AAC), Department of Veterans Affairs (VA), 1615 Woodward Street, Austin, Texas 78772, and at VA health care facilities listed in VA Appendix 1 of the biennial publication of VA's Systems of Records. Each local medical center facility has a Veterans Health Information System and Technology Architecture (VistA)-based SCD–Registry software package. Data transmissions between VA health care facilities and the VA databases housed at the AAC are accomplished using the Department's wide area network.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Veterans identified with spinal cord injury and disorders that have applied for VA health care services are included in the system. Occasionally, non-veterans who have received VA health care or rehabilitation services under sharing agreements, contracted care, or humanitarian emergencies will also have information recorded in the Spinal Cord Dysfunction (SCD)–Registry.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain identifying information including name, social security number, date of birth, and registration date in the SCD–Registry. SCD–Registry registration information may include information about whether individuals are receiving services from VA's spinal cord system of care, neurologic level of injury, etiology, date of onset, type of cause, completeness of injury, and annual evaluation dates offered and received. The Outcomes File of the SCD–Registry has data fields for storing measures of impairment, activity, social role participation, and satisfaction with life. A registrant may have multiple entries in this file.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 38, United States Code, Sections 501 and 7304.

PURPOSE(S):

The SCD–Registry provides a registry of veterans with spinal cord injury and disorders (SCI&D). This registry contains pertinent information on veterans with SCI&D and enables better coordination of care among VHA staff. The purpose of the registry is to assist clinicians, administrators, and researchers in identifying and tracking services for veterans with spinal cord dysfunction resulting from trauma or diseases. The SCD–Registry can also facilitate clinical, administrative, and research reports for medical center use. Local VistA SCD–Registries provide data extracts to the National SCD–Registry database at the AAC. This centralized AAC registry is used to provide a VA-wide review of veteran demographics and clinical aspects of injuries and disorders.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

VA may disclose protected health information pursuant to the following routine uses where required by law, or required or permitted by 45 CFR Parts 160 and 164.

1. The record of an individual who is covered by this system may be disclosed to a member of Congress or staff person, acting for the member, when they request the record on behalf of, and at the written request of, that individual.

2. Disclosure of records covered by this system, as deemed necessary and proper to named individuals serving as accredited veterans service organization representatives, and other individuals named as approved agents or attorneys for a documented purpose and period of time. These agents/attorneys must be aiding beneficiaries in the preparation/presentation of their cases during verification and/or due process procedures or in the presentation/prosecution of claims under laws administered by VA.

3. A record containing the name(s) and address(es) of present or former members of the armed services and/or their dependents may be released from this system of records under certain circumstances:

a. To any nonprofit organization if the release is directly connected with the conduct of programs and the utilization of benefits under Title 38, and

b. To any criminal or civil law enforcement governmental agency or instrumentality charged under applicable law with the protection of the public health or safety if a qualified representative of such organization, agency or instrumentality has made a written request that such name(s) or

address(es) be provided for a purpose authorized by law; provided, further, that the record(s) will not be used for any purpose other than that stated in the request and that the organization, agency or instrumentality is aware of the penalty provision of 38 U.S.C. 5701(f).

4. Disclosure may be made to the National Archives and Records Administration (NARA) in records management inspections conducted under authority of Title 44 United States Code.

5. Disclosure of information, excluding name and address (unless name and address is furnished by the requester) for research purposes determined to be necessary and proper, to epidemiological and other research facilities approved by the Under Secretary for Health.

6. In order to conduct Federal research necessary to accomplish a statutory purpose of an agency, at the written request of the head of the agency, or designee of the head of that agency, the name(s) and address(es) of present or former personnel or the armed services and/or their dependents may be disclosed;

a. to a Federal department or agency; or

b. directly to a contractor of a Federal department or agency. When a disclosure of this information is to be made directly to the contractor, VA may impose applicable conditions on the department, agency, and/or contractor to ensure the appropriateness of the disclosure to the contractor.

7. VA may disclose on its own initiative any information in this system, except the names and home addresses of veterans and their dependents, which is relevant to a suspected or reasonably imminent violation of law, whether civil, criminal or regulatory in nature, and whether arising by general or program statute or by regulation, rule or order issued pursuant thereto, to a Federal, State, local, tribal, or foreign agency charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, regulation, rule or order. On its own initiative, VA may also disclose the names and addresses of veterans and their dependents to a Federal agency charged with the responsibility of investigating or prosecuting civil, criminal or regulatory violations of law, or charged with enforcing or implementing the statute, regulation, rule or order issued pursuant thereto.

8. For program review purposes and the seeking of accreditation and/or certification, disclosure may be made to survey teams of the Rehabilitation Accreditation Commission, Joint Commission on Accreditation of Healthcare Organizations (JCAHO), College of American Pathologists, American Association of Blood Banks, and similar national accreditation agencies or boards with whom VA has a contract or agreement to conduct such reviews, but only to the extent that the information is necessary and relevant to the review.

9. Records from this system of records may be disclosed in a proceeding before a court, adjudicative body, or other administrative body when the Department, or any Department component or employee (in his or her official capacity as a VA employee), is a party to litigation; when the Department determines that litigation is likely to affect the Department, any of its components or employees, or the United States has an interest in the litigation, and such records are deemed to be relevant and necessary to the legal proceedings; provided, however, that the disclosure is compatible with the purpose for which the records were collected.

10. Disclosure of relevant information may be made to individuals, organizations, private or public agencies, etc., with whom VA has a contract or agreement to perform such services as VA may deem practicable for the purposes of laws administered by VA, in order for the contractor or subcontractor to perform the services of the contract or agreement.

11. Relevant information may be disclosed to the Department of Justice and United States Attorneys in defense or prosecution of litigation involving the United States, and to Federal agencies upon their request in connection with review of administrative tort claims filed under the Federal Tort Claims Act, 28 U.S.C. 2672.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic tapes/disks and optical discs. Electronic data are maintained on Direct Access Storage Devices at the AAC. The AAC stores registry tapes for disaster backup at a secure, off-site location.

RETRIEVABILITY:

Records are indexed by name of veteran, social security number, and unique patient identifiers.

SAFEGUARDS:

1. Data transmissions between VA health care facilities and the VA databases housed at the AAC are accomplished using the Department's wide area network. The SCD–Registry program and other programs at the respective facilities automatically flag records or events for transmission based upon functionality requirements. VA health care facilities control access to data by using VHA's VistA software modules. The Department's Telecommunications Support Service has oversight responsibility for planning, security, and management of the wide area network.

2. Access to records at VA health care facilities is only authorized to VA personnel on a ''need-to-know'' basis. Records are maintained in staffed rooms during working hours. During non-working hours, there is limited access to the building with visitor control by security personnel. Access to the AAC is generally restricted to AAC staff, VA Central Office employees, custodial personnel, Federal Protective Service, and authorized operational personnel through electronic locking devices. All other persons gaining access to the computer rooms are escorted. Backup records stored off-site for both the AAC and VA Central Office are safeguarded in secured storage areas.

3. Strict control measures are enforced to ensure that access to and disclosure from all records including electronic files and veteran-specific data elements are limited to VHA employees whose official duties warrant access to those files. The automated record system recognizes authorized users by keyboard entry of unique passwords, access, and verify codes.

RETENTION AND DISPOSAL:

Records will be maintained and disposed of in accordance with record disposition authority approved by the Archivist of the United States. Depending on the record medium, records are destroyed by either shredding or degaussing. Optical disks or other electronic media are deleted when no longer required for official duties.

VA has submitted a request for records disposition authority to the National Archives and Records Administration (NARA) for approval. Upon approval by NARA, VA will publish an amendment to this System of Records. In the interim, no records will be destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Official responsible for Spinal Cord Dysfunction—Registry design, development, and maintenance: SCD–Registry Coordinator (128N), 3350 La Jolla Village Drive, San Diego, California

92161. Official responsible for policies and procedures: Chief Consultant, Spinal Cord Injury and Disorders Strategic Healthcare Group (128N), 1660 South Columbian Way, Seattle, Washington 98108.

NOTIFICATION PROCEDURE:

An individual who wishes to determine whether a record is being maintained in this system under his or her name or other personal identifier, or wants to determine the contents of such record, should submit a written request or apply in person to the last VA facility where medical care was provided or submit a written request to the Chief Consultant, Spinal Cord Injury and Disorders Strategic Healthcare Group (128N), 1660 South Columbian Way, Seattle, Washington 98108. Inquiries should include the veteran's name, social security number, and return address.

RECORD ACCESS PROCEDURES:

An individual who seeks access to records maintained under his or her name may write or visit the nearest VA facility or write to the Chief Consultant, Spinal Cord Injury and Disorders Strategic Healthcare Group (128N), 1660 South Columbian Way, Seattle, Washington 98108.

CONTESTING RECORDS PROCEDURES:

(*See* Record Access Procedures.)

RECORD SOURCE CATEGORIES:

Various automated record systems providing clinical and managerial support to VA health care facilities, the veteran, family members, accredited representatives or friends, and ''Patient Medical Records—VA'' (24VA19) system of records.

[FR Doc. 04–14188 Filed 6–22–04; 8:45 am]

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Corrections

Federal Register

Vol. 69, No. 120

Wednesday, June 23, 2004

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF DEFENSE

Office of the Secretary

Notice of Funding Availability for Advance Planning Grants–Request for Grant Proposals

Correction

In notice document 04–13612 beginning on page 33887 in the issue of Thursday, June 17, 2004, make the following correction:

On page 33888, in the first column, under the heading ''**IV. Application and Submission Information**,'' in the first paragraph, in the fourth line, ''June 27, 2004'' should read ''June 17, 2004.''

[FR Doc. C4–13612 Filed 6–22–04; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Wednesday,
June 23, 2004

Part II

Department of Transportation

Federal Railroad Administration

49 CFR Parts 227 and 229

Occupational Noise Exposure for Railroad Operating Employees; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Parts 227 and 229

[Docket No. FRA 2002–12357, Notice No. 1]

RIN 2130–AB56

Occupational Noise Exposure for Railroad Operating Employees

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: FRA is proposing to amend its occupational noise standards for railroad employees whose predominant noise exposure occurs in the locomotive cab. FRA's existing standard (issued in 1980) limits cab employee noise exposure to certain levels based on the duration of their exposure. This proposed rule modifies that standard and also sets out additional requirements.

The NPRM proposes to require railroads to conduct noise monitoring and to implement a hearing conservation program for railroad operating employees whose noise exposure equals or exceeds an 8-hour time-weighted average of 85 decibels. The NPRM also proposes design, build, and maintenance standards for new locomotives and maintenance requirements for existing locomotives. FRA expects that this proposed rule will reduce the likelihood of noise-induced hearing loss for railroad operating employees.

DATES: (1) *Written Comments:* Written comments must be received on or before September 21, 2004. Comments received after that date will be considered to the extent possible without incurring additional expense or delay.

(2) *Public Hearing:* Requests for a public hearing must be in writing and must be submitted to the Department of Transportation Docket Management System at the address below on or before August 9, 2004. If a public hearing is requested and scheduled, FRA will announce the date, location, and additional details concerning the hearing by separate notice in the **Federal Register**.

ADDRESSES: You may submit comments (identified by DOT DMS Docket Number FRA–2002–12357) 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: 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 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. Note that all comments received will be posted without change to *http://dms.dot.gov,* including any personal information provided. Please see the Privacy Act heading under Regulatory 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 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jeffrey Horn, Economist, Office of Safety, Federal Railroad Administration, 1120 Vermont Avenue, NW., Mail Stop 25, Washington, DC 20590 (em-mail: *Jeffrey.Horn@fra.dot.gov* and telephone: 202–493–6283); or Christina McDonald, Trial Attorney, Office of Chief Counsel, Federal Railroad Administration, 1120 Vermont Avenue, NW., Mail Stop 10, Washington, DC 20590 (e-mail: *Christina.McDonald@fra.dot.gov* and telephone: 202–493–6032).

SUPPLEMENTARY INFORMATION: Note that for brevity, all references to CFR parts will be to parts in 49 CFR, unless otherwise noted.

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I. Statutory and Regulatory Framework

A. Railroad Safety, in General

FRA has broad statutory authority to regulate railroad safety. The Locomotive Inspection Act (''LIA'') (formerly 45 U.S.C. 22–34, now 49 U.S.C. 20701–20703) was enacted in 1911. It prohibits the use of unsafe locomotives and authorizes FRA to issue standards for locomotive maintenance and testing. In order to further FRA's ability to respond effectively to contemporary safety problems and hazards as they arise in the railroad industry, Congress enacted the Federal Railroad Safety Act of 1970 (''Safety Act'') (formerly 45 U.S.C. 421, 431 *et seq.*, now found primarily in chapter 201 of Title 49). The Safety Act grants the Secretary of Transportation rulemaking authority over all areas of railroad safety (49 U.S.C. 20103(a)) and confers all powers necessary to detect and penalize violations of any rail safety law. This authority was subsequently delegated to the FRA Administrator (49 CFR 1.49). (Until July 5, 1994, the Federal railroad safety statutes existed as separate acts found primarily in Title 45 of the United States Code. On that date, all of the acts were repealed, and their provisions were recodified into Title 49.)

The term ''railroad'' is defined in the Safety Act to include:

> All forms of non-highway ground transportation that runs on rails or electromagnetic guideways, * * * other than rapid transit operations within an urban area that are not connected to the general railroad system of transportation.

This definition makes clear that FRA has jurisdiction over (1) rapid transit operations within an urban area that are connected to the general railroad system of transportation, and (2) all freight, intercity, passenger, and commuter rail passenger operations regardless of their connection to the general railroad system of transportation or their status as a common carrier engaged in interstate commerce. FRA has issued a policy statement describing how it determines whether particular rail passenger operations are subject to FRA's jurisdiction (65 FR 42529 (July 2, 2000)). The policy statement is located in Appendix A to parts 209 and 211.

Pursuant to its statutory authority, FRA promulgates and enforces a comprehensive regulatory program to address railroad track, signal systems, railroad communications, rolling stock, rear-end marking devices, safety glazing, railroad accident/incident reporting, locational requirements for dispatching of U.S. rail operations, safety integration plans governing railroad consolidations, merger and acquisitions of control, operating practices, passenger train emergency preparedness, alcohol and drug testing, locomotive engineer certification, and workplace safety. In the area of workplace safety, the agency has issued a variety of standards designed to protect the health and safety of railroad employees. For instance, FRA requires ladders and handholds to be installed on rail equipment in order to prevent employee falls (part 231). FRA requires locomotive cab floors and passageways to remain clear of debris and oil in order to prevent employee slips, trips, and falls (§ 229.119). FRA requires blue signal protection in order to protect employees working on railroad equipment from injuries due to the unexpected movement of the equipment (part 218). FRA has rules that provide for the protection of railroad employees working on or near railroad tracks in order to decrease the risk of employees falling from railroad bridges and of being struck by moving trains (part 214).

B. FRA–OSHA Jurisdiction for Occupational Safety and Health Issues

FRA and the U.S. Occupational Safety and Health Administration [1] (OSHA) have a complementary relationship and overlapping jurisdiction with respect to occupational safety and health issues in the railroad industry. OSHA regulates conditions and hazards affecting the health and safety of employees in the workplace. OSHA's jurisdiction extends to all types of employment, except where another Federal agency exercises statutory authority and displaces OSHA pursuant to section 4(b)(1) of the Occupational Safety and Health Act of 1970.[2] Section 4(b)(1) permits Federal agencies to oust OSHA's regulatory and enforcement authority where that agency pronounces its own regulations or standards or articulates a formal position that a particular working condition should go unregulated.

In 1978, FRA issued a Statement of Policy setting out the respective areas of jurisdiction between FRA and OSHA in the railroad industry.[3] In that Policy Statement, FRA drew the jurisdictional line between ''occupational safety and health'' issues in the railroad industry and work related to ''railroad operations,'' with FRA exercising authority over railroad operations and OSHA over occupational safety and health issues. Further, the Policy Statement pointed to FRA's ''proper role'' as concentrating its ''limited resources in addressing hazardous working conditions in those traditional areas of railroad operations'' (*i.e.*, movement of equipment over the rails'') in which FRA has special competence and expertise. (43 FR 10585). Often, railroad working conditions are so unique that a regulatory body other than FRA would not possess the requisite expertise to determine appropriate safety standards.

As a general rule, FRA exercises its statutory jurisdiction over railroad employee working conditions where employees are engaged in duties that are intrinsic to ''railroad operations,'' where the identical conditions generally do not occur in typical industrial settings, and where the hazard falls within the scope of FRA's expertise. Historically, the concept of ''railroad safety'' has included the health and safety of employees when they are engaged in railroad operations. In its 1978 Statement concerning employee workplace safety, FRA stated:

> The term 'safety' includes health-related aspects of railroad safety to the extent such considerations are integrally related to operational safety hazards or measures taken to abate such hazards. 43 FR 10585.

Hazards that impact the health of railroad employees engaged in railroad operations may also result in adverse impacts on railroad safety, and so there is often a clear nexus between railroad safety and employee health. An example of this jurisdiction is seen in FRA's issuance of locomotive sanitation standards.[4] There, FRA promulgated regulations that address toilet and washing facilities for employees who work in locomotive cabs. 49 CFR 229.137–139.

FRA has also exercised this jurisdiction with regard to occupational noise in the locomotive cab. FRA issued its current standard for locomotive standard in 1980. While OSHA, in general, regulates occupational noise in the workplace,[5] FRA is the more appropriate entity to regulate noise in the locomotive cab, because the locomotive cab is so much a part of ''railroad operations.'' With respect to noise in the locomotive cab, FRA wrote, in its Policy Statement, that:

> FRA views the question of occupational noise exposure of employees engaged in railroad operations, during their involvement in such operations, as a matter comprehended by the regulatory fields over which FRA has exercised its statutory jurisdiction. FRA is therefore responsible for determining what exposure levels are permissible, what further regulatory steps may be necessary in this area, if any, and what remedial measures are feasible when evaluated in light of overall safety considerations. 43 FR 10588.

C. Federal Occupational Noise Standards

OSHA's occupational noise standard was promulgated under the Walsh-Healey Public Contracts Act of 1969 [6] for the purpose of protecting employees from workplace exposure to damaging noise levels. The Walsh-Healey Act contained very limited provisions. Its noise standard allowed for a permissible exposure level of 90 dB(A), a 5 dB exchange rate, and a 90 dB(A) threshold. Pursuant to section 6(a) of the OSH Act, OSHA adopted the Walsh-Healey standard.

In January 1981, OSHA promulgated a Hearing Conservation Amendment to its occupational noise exposure standard. The amendment consisted of requirements for noise measurements, audiometric testing, the use and care of hearing protectors, employee training, employee education, and recordkeeping. See 46 FR 4078 (1981). Portions of the amendment were subsequently stayed for reconsideration and clarification. In 1983, OSHA finalized the provisions of

[1] OSHA is an agency within the U.S. Department of Labor. Congress created OSHA with the Occupational Safety and Health Act of 1970 (''OSH Act''). Pursuant to the OSH Act, employers have a duty to protect workers from all kinds of hazards, including noise.

[2] *See* 29 U.S.C. 653(b)(1). This section provides:

> Nothing in this Act shall apply to the working conditions of employees with respect to which other Federal agencies * * * exercise statutory authority to prescribe or enforce standards or regulations affecting occupational safety or health.

[3] *See* 43 FR 10583 (March 14, 1978).

[4] *See* 67 FR 16032 (April 4, 2002).

[5] *See* 29 CFR 1910.95 and 29 CFR 1926.52 (''Occupational Noise Exposure'').

[6] 41 U.S.C. 35, *et seq.*

its Hearing Conservation Amendment by revoking various stayed provisions, lifting the stay on other provisions, and making other technical corrections. OSHA's revised regulation included a detailed hearing conservation program. See 48 FR 9738 (1983). OSHA's occupational noise standard applies, for the most part, to all industry engaged in interstate commerce.[7] OSHA's noise standard can be found at 29 CFR 1910.95. As will be discussed in subsequent sections, FRA's proposed standard is quite similar to OSHA's standard.

While OSHA is the primary regulator of noise in the workplace, other federal agencies regulate specific occupational settings. FRA regulates the occupational noise exposure of railroad operating employees in the locomotive cab. The U.S. Air Force regulates the noise environment of Air Force personnel.[8] The Mine Safety and Health Administration (MSHA) regulates the occupational noise exposure of miners.

In 1999, MSHA issued a comprehensive rule that establishes uniform requirements for all miners.[9] In that rule, MSHA adopted a permissible exposure level of 90 dB(A) as an 8-hour TWA. MSHA also requires employers to use all feasible engineering and administrative controls in order to reduce a miner's noise exposure to the permissible exposure level. Where a mine operator is unable to reduce the noise exposure to the permissible level, the mine operator must provide the miner with hearing protectors (HP) and is required to ensure that the miner uses them. In addition, where a miner is exposed at or above a TWA of 85 dB(A), the employer must place the miner in a hearing conservation program. The program must include exposure monitoring, the use of hearing protectors, audiometric testing, training, and recordkeeping. See 64 FR 49548, 49550 (1999).

II. History of FRA's Treatment of Occupational Noise

A. FRA's Noise Standard

In part 229, FRA establishes minimum federal safety standards for locomotives. These regulations prescribe inspection and testing requirements for locomotive components and systems. They also prescribe minimum locomotive cab safety requirements. In 1980, FRA issued standards for acceptable noise levels aboard a locomotive (§ 229.121).[10]

Section 229.121 was promulgated to protect the hearing and health of cab employees and to facilitate crew communication. It provides that noise level exposure in the cab may not exceed specific prescribed levels. The provision limits employee noise exposure to an eight-hour time-weighted average (TWA) of 90 dB(A) with a doubling rate of 5dB(A). It also provides for an absolute upper noise limit of 115 dB(A). In addition, it establishes procedures for noise testing.

At the time of the promulgation of the rule, there was discussion as to the proposed noise exposure limits. One commenter to the proposed rule took exception to the proposed 90 dB(A) 8-hour time limit and suggested that 85 dB(A) was more appropriate. FRA explained that, in selecting the proposed noise exposure limits, it attempted to ''strike a balance between that which is most desirable and that which is feasible.'' [11] FRA acknowledged that more crew members would be at a lower risk at 85 dB(A), but also acknowledged that there would be problems with the technical feasibility of, and economic impact associated with, an 85 dB(A) requirement. Based on the information available and technology of the time, FRA determined that the 90 dB(A) 8-hour noise exposure limit would ''provide adequate protection for the hearing, communication, and comfort of locomotive crews under presently accepted standards.'' [12]

Section 229.121 does not address hearing conservation for locomotive cab employees, including the use of personal protective equipment, ongoing hearing testing, employee training on the cause and prevention of hearing loss, and periodic noise monitoring in the workplace. These are standard components of an occupational hearing conservation program, and OSHA requires them of other industries.

In 1992, Congress enacted Section 10 of The Rail Safety Enforcement and Review Act (RSERA) (Public Law 102–365, September 3, 1992; codified at 49 U.S.C. 20103, note) in response to concerns raised by employee organizations, Congressional members, and recommendations of the National Transportation Safety Board (NTSB) concerning crashworthiness of and working conditions in locomotive cabs. Section 10 of RSERA, entitled *Locomotive Crashworthiness and Working Conditions,* required FRA ''to consider prescribing regulations to improve the safety and working conditions of locomotive cabs' throughout the railroad industry. In order to determine whether regulations would be necessary, Congress asked FRA to assess ''the extent to which environmental, sanitary, and other working conditions in locomotive cabs affect productivity, health, and the safe operation of locomotives.''

In response to the Congressional mandate set forth in Section 10 of RSERA, FRA undertook steps to determine the health and safety effects of locomotive cab working conditions. FRA studied a variety of working conditions in locomotive cabs, including sanitation, noise, temperature, air quality, ergonomics, and vibration. FRA prepared the Locomotive Crashworthiness and Cab Working Conditions Report to Congress (''Report''), dated September 1996, which outlines the results of these studies. A copy of the Report is included in the docket. With respect to noise, FRA conducted a comprehensive survey, reviewed historical data on noise-related incidents and investigations, and gathered information on hearing protection programs.

B. Studies on Noise

FRA first considered the sound environment in the locomotive cab in 1971 as part of a study on highway-rail grade crossings.[13] The study examined the visibility and audibility of trains approaching rail and highway grade crossings. An addendum to the study, authored by John Aurelius, examined the sound environment in locomotive cabs.[14] Observing two different test runs made under diverse conditions, Aurelius recorded the sounds inside cabs operating in regular service. Aurelius concluded that the noise level in a typical locomotive cab approached 90 dB(A), which is the limit allowed by the Walsh-Healey Public Contracts Act.[15] Given that conclusion, Aurelius recommended that a more detailed survey be conducted to determine whether the exposures exceeded the

[7] OSHA has a general exclusion for the agriculture industry. *See* 29 CFR 1928.21(b). OSHA exempts oil and gas well drilling and servicing operations in its Hearing Conservation Amendment. *See* 29 CFR 1910.95(o). OSHA has a separate occupational noise regulation that applies to the construction industry. See 29 CFR 1926.52.

[8] *See* Air Force Occupational Safety and Health Standard 48–20, ''Hearing Conservation Program.''

[9] *See* 64 FR 49548 (September 13, 1999).

[10] For the Final Rule, *see* 45 FR 21092, 21105 and 21117 (March 31, 1980). For the Notice of Proposed Rulemaking, *see* 44 FR 29604, 29618 and 29627 (May 21, 1979).

[11] 45 FR 21092, 21106 (March 31, 1980).

[12] 45 FR 21092, 21106 (March 31, 1980).

[13] John Aurelius and Norman Korebor, ''The Visibility and Audibility of Trains Approaching Rail—Highway Grade Crossings,'' Report No. FRA–RP–71–2, May 1971.

[14] John P. Aurelius, ''The Sound Environment in Locomotive Cabs,'' Report No. FRA–RP–71–2A, July 1971.

[15] *See* 41 U.S.C. 35.

legal limits and if so, under what conditions.

In 1980, Roger Kilmer, under the auspices of the National Bureau of Standards, conducted an extensive study on the noise environment in locomotive cabs.[16] Kilmer selected eighteen test runs that covered a wide range of operational conditions, trip lengths, and geographical conditions. In general, Kilmer concluded that ''based on the group of locomotives tested, it does not appear that overexposure to noise is a widespread problem for locomotive crews under the current OSHA standard.'' [17] Kilmer explained that noise exposure was within acceptable limits for two reasons: (1) locomotives operate in such a way that the sources which generate high sound levels (*i.e.*, horn and brakes) operate for only short periods of time, and (2) locomotives spend a great deal of time in idle, which involves sound levels below 90 dB. However, the report also recognized that overexposure can, and does, occur. The report explained that the level of overexposure depends on the type of locomotive and the nature of the run. The next step, according to Kilmer, was to determine the type of monitoring that should be used to identify the cases where overexposure may occur. Kilmer advocated a simplified test procedure to screen locomotives.

C. FRA's Report to Congress

FRA conducted an extensive noise survey of actual noise levels in locomotive cabs. The survey sought to determine whether cab working conditions impaired a crew's ability to safely operate a locomotive. FRA field inspectors traveled aboard locomotives while the crew operated the locomotive in a ''normal'' fashion (*i.e.*, as though FRA personnel were not present). The inspectors measured cab noise with a Metrosonics Db-3100 Metrologger. The inspectors conducted a total of 350 noise measurements, all between 1992 and 1994. FRA had intended to run the noise tests over 8-hour time periods, but that was not possible due to the varying lengths of the train routes. Tests performed on the eastern routes tended to be shorter in length, and tests on the western routes tended to be longer in length. The noise tests were run, on average, for approximately 6.5 hours.

The 350 measurements included 234 measurements from winter/summer tests and 116 measurements evaluated in response to inquiries and complaints. Both the complaint-based investigations and the hot summer tests (often conducted with windows open) represent railroad operations that are more likely to present unacceptable noise environments. As a result, the Report pointed out that measurements used in this survey did not constitute a random sample of locomotives or locomotive operating conditions. The Report directed the reader to exercise caution in characterizing the significance of the findings.

FRA inspectors identified several factors as major contributors to high average cab noise levels and to significant peak readings of 95 dB(A) or higher. Those major contributors were: radios; audible warning devices; diesel engines; tunnels, sheds, and bridges; close embankments; open windows; dynamic braking; loose cab sheet metal; loose side windows; and miscellaneous loose and/or poorly fitted cab equipment. While collecting the survey data, inspectors also noted the use of hearing protection by train crews. FRA observed that, in most cases, crews wore hearing protection in noise environments that exceeded the FRA standard.

FRA reviewed several sources of data and information in the Report. FRA reviewed historical data for noise-related incidents and investigations. Using its accident/incident database, FRA compiled data on locomotive cab member injuries and illnesses attributable to excessive noise levels. Railroads had reported no incidents prior to 1992, 23 incidents in 1992, and 18 incidents in 1993. FRA also reviewed complaints of alleged noise violations received by FRA from crew members or their labor organizations. In addition, FRA gathered information on the hearing conservation programs of several Class I railroads by contacting the railroads' industrial hygienists. All railroads stated that they had comprehensive hearing conservation programs, that they were conducting audiometric exams, and that they were providing hearing conservation training to both locomotive crews and ground crews that work in excessively noisy areas. Finally, FRA described the changing working conditions in the railroad industry, *i.e.*, the various measures that had been taken to reduce the effects of noise in the cab. These steps included the introduction of new locomotives with advanced sound reduction technology, as well as the establishment of hearing conservation programs and the extensive use of personal protective equipment.

Based on its findings, FRA concluded, among other things, that certain locomotive crew assignments expose crews to increased noise levels, thereby raising concerns of possible hearing loss and of impaired communication. FRA also concluded that many factors, including the sounding of the horn, engine noise, and radio volume, contribute to noise levels that are equal to or exceed 85 dB(A) for a group of locomotive assignments. In addition, FRA noted that human factors literature suggests that excessive noise levels can impair mental processes, increase fatigue, and increase the number of errors, while simultaneously decreasing vigilance.

FRA then recommended several measures that, if implemented, might reduce the exposure of operating crews to excessive noise levels. After noting that several railroads have hearing conservation programs and that FRA's current noise regulation lacks a hearing conservation approach, FRA encouraged railroads without such programs to seriously consider the development and implementation of such programs. In addition, FRA stated that railroads should evaluate the use of sound-insulated headsets with microphones in order to provide hearing protection, to help ensure effective radio communications, and to facilitate intra-crew communication.[18] FRA also recommended that railroads implement several administrative and engineering controls (*i.e.*, measures that reduce noise levels and minimize noise exposure in locomotive cabs).

D. Wyle Report

The American Association of Railroads (AAR) commissioned Wyle Laboratories to review the noise and vibration sections of FRA's Report to Congress, as well as the 350 in-cab locomotive noise measurements referenced in the Report. In December 1996, Wyle Laboratories produced a Report entitled ''A Review of the Noise and Vibration Sections of the Federal Railroad Administration's Report to Congress Entitled 'Locomotive Crashworthiness and Cab Working Conditions' '' (''Wyle Report.'') [19] A copy of the Wyle Report is included in the docket. The Wyle Report reviewed Chapter 6 ''Locomotive Cab Noise'' and Chapter 10 ''Other Factors Affecting Locomotive Cab Working Conditions'' of FRA's Report but focused most of its comments on Chapter 6. The Wyle

[16] Roger D. Kilmer, ''Assessment of Locomotive Crew In-Cab Occupational Noise Exposure,'' National Bureau of Standards. Report No. FRA–ORD–80/91, December 1980.

[17] Kilmer at 113–114.

[18] See 227.115(d) and accompanying preamble language for a further discussion of electronic communication devices.

[19] Wyle Report, WR 96–37, was prepared by Eric Stusnick, Ph.D.

Report acknowledged that FRA's noise measurements were, at that time, the largest set of publicly available locomotive cab noise data and were a valuable resource in analyzing and understanding the in-cab noise environment. The Wyle Report disagreed with the two general conclusions that FRA reached in Chapter 6.

The Wyle Report disagreed with FRA's conclusion that ''[a≤ significant minority of locomotive cabs had noise levels high enough to contribute to long-term hearing loss after long-term repetitive exposure, and in absence of personal protective equipment.'' [20] It stated that FRA's statistical analyses of locomotive cab noise exposure measurements was flawed for three reasons.[21] First, FRA compared its 8-hour TWA measurements from the Report to Congress with the 12-hour TWA standard that is specified in 49 CFR 229.121. Second, FRA used a definition of noise dose (in its analysis for the Report to Congress) that had no lower sound level threshold, whereas 49 CFR 229.121 provides a definition of noise dose that uses a lower threshold of 87 dB. Third, FRA measured a sample of locomotive trips that was not random and thus not an accurate representation of the total population of trips. The Wyle report concluded that ''the result of these errors is that the calculated TWA values are larger than would have been obtained if the proper analysis were done on a properly stratified random-sample of locomotive trips.'' [22]

The Wyle Report also disagreed with FRA's conclusion that ''the noise level in many locomotives was sufficiently high to interfere with normal voice communication.'' [23] The Wyle Report explained that FRA's assertion was based on its statistical analysis that showed that thirteen percent of the measured TWAs exceeded 88 dB. Earlier in the Report, FRA had identified a sound level of 88 dB as the sustained verbal communication limit. From that, FRA inferred that, where there was a background sound level of 88 dB or more, crew members would need to use a voice sound level equal to or greater than 88 dB (*i.e.*, the maximum that can be sustained to maintain verbal communication) in order to communicate in the cab.

The Wyle Report disagreed with that inference for three reasons. First, the Wyle Report explained that a given TWA does not represent the background sound level at any given time, because the TWA is an average over a measurement period of all the sound levels that occurred. A measured TWA of 88 dB does not mean that the sound level in the cab was 88 dB for the entire trip; that TWA might result from a few very loud sound levels and from the remainder at sound levels lower than 88 dB—during which the crew could successfully communicate. Second, the Wyle Report asserted that it is not necessary for the speech sound level to be greater than or equal to the background sound level (in order for the speech to be understood), because the ear can distinguish communication from background noise based on its sound level and its frequency content. Third, the Wyle Report asserted that the sound level of radio messages usually contribute a great deal to the TWA value and they are communication. Thus, it is inappropriate to consider sound levels due to radio messages as part of the background noise. In addition, the Wyle Report did note that ''voice communication is certainly difficult'' when the horn is being sounded or the brake systems are being exhausted.

E. FRA's Follow-Up to the Report to Congress and Wyle Report

FRA hired a contractor to review FRA's Report to Congress, the accompanying data, and the Wyle Report. In June 1997, consultants with Harris Miller, Miller & Hanson, Inc. prepared a Technical Memorandum ''Comments on AAR Review of Chapter 6, FRA Report to Congress 'Locomotive Crashworthiness and Cab Working Conditions.' '' A copy of the Technical Memorandum is included in the docket. The Technical Memorandum discussed each of the major points brought up in the AAR's Review (*i.e.*, the Wyle Report).

Harris Miller concluded that although FRA's noise measurements were not part of a random sample and although FRA's analysis was not the most rigorous, the data set used by FRA in the Report to Congress still provided a valuable assessment of the noise levels in locomotive cabs. Harris Miller also concluded that the data supported a ''general conclusion that hearing conservation programs are warranted for some locomotive crew assignments.'' In addition, while acknowledging that the data could not be used to make statistical inferences, Harris Miller explained that the data still did show that ''noise inside a small percentage of locomotives exceeds the FRA and OSHA permissible noise exposure limits.'' [24]

In the area of voice communication, Harris Miller found that FRA's conclusion that ''frequent high in-cab noise levels make speech communication difficult between crew members over two-way radios'' was appropriate, even if FRA's analysis of the pertinent data was not rigorous. In addition, Harris Miller stated that the normal background noise level inside locomotive cabs is high enough to make voice communication difficult. Harris Miller further explained that ''even accounting for locomotive noise being weighted toward low frequencies, with a background sound level of 88 dBA, crew members will need to shout if they are to be understood by others in the cab.'' Thus, they concluded that for some locomotive crew assignments, communication could be categorized as ''difficult.'' [25]

F. FRA's Administrator's Roundtable Discussion on Noise

On April 3, 1997, FRA hosted a roundtable discussion on noise. The transcript from the roundtable discussion is included in the docket. There were 32 participants, including representatives from FRA, other federal agencies, railroads, labor organizations, locomotive manufacturers, and trade associations. The meeting provided an opportunity to discuss the effects of occupational noise exposure on railroad workers and on the industry as a whole. FRA also explained that the roundtable was an opportunity to understand best practices, to exchange information about railroad industry conservation programs, and to learn about educational hearing initiatives.[26]

Several individuals made presentations to the group. A physician provided some historical background on hearing loss.[27] He explained that hearing loss had been ''substantially neglected'' for years.[28] Then, in the late 1970s, government policy makers realized that the emphasis should be placed on prevention, rather than treatment and care, and that the industry was in a position to educate its workforce and implement preventative measures that produce a healthier workforce. As a result of that sentiment, OSHA wrote and issued its noise regulation.

[20] Wyle Report at 2–1.

[21] Wyle Report at 2–2.

[22] Wyle Report at 2–2.

[23] Wyle Report at 2–12.

[24] Technical Memorandum from Hugh J. Saurenman and Lance D. Meister of Harris, Miller, Miller, & Hanson (June 18, 1997), 1.

[25] Technical Memorandum at 5.

[26] Transcript at 13–14.

[27] Transcript at 25–29.

[28] Transcript at 26–27.

A union representative provided some input from the employee's perspective.[29] He explained that conditions on a locomotive can be extremely noisy and that those noisy conditions can lead to pain, discomfort, and bad decisions. He acknowledged that some technological progress has been made on locomotives, but that a difficult situation remained ahead.

A carrier representative spoke about the carrier's perspective and about some of the initiatives that his particular railroad had undertaken.[30] He discussed the elements of a hearing conservation program. He also spoke about his railroad's comprehensive mobile medical service that traveled throughout the country and about his railroad's extensive training program that covers hazard communication in addition to the traditional audiometric testing training. In addition, he mentioned that his railroad uses communication tools, such as newsletters, pamphlets, and daily job briefings, to increase employee awareness about noise issues. Finally, he briefly addressed control measures that his railroad uses, including hearing protection, equipment specifications, and alterations to track equipment.

Next, FRA presented its Report to Congress, summarizing the contents and noting that the Report was now a ''launching pad'' and ''baseline'' from which to move forward.[31] In addition, the New York League for the Hard of Hearing spoke to the group.[32] The Executive Director addressed the importance of prevention and treatment of hearing loss. He also stressed the need for programs that educate people about the dangers of excessive noise exposure. The roundtable participants subsequently discussed a wide range of topics, including: the available scientific data related to occupational noise exposure and hearing loss in the railroad industry;[33] the identification of the appropriate noise exposure threshold at which noise adversely affects railroad workers' health and job performance; a review of voluntary noise reduction and conservation programs that industry participants had already implemented;[34] and an assessment of what remained to be done in addressing the noise issue.

Participants generally agreed that exposure to high levels of noise adversely affects workers and the industry; however, participants did not agree on the threshold level of noise exposure at which these effects occur.[35] One individual asked what the proper damage risk criteria should be and what is safe noise verus unsafe noise.[36] Another individual noted that there is controversy between scientists and regulators as to what level of protection is necessary to protect individuals from hearing loss.[37]

As well, the potential damaging effects of noise on railroad workers arose on several occasions. In addition to noting the obvious damaging affects of noise on railroad workers' hearing abilities, many participants pointed out that there were several other potential damaging effects of noise exposure. One participant noted that it is more than just one's ears that respond to noise; bodies also respond to noise, for example, in the form of hypertension, anxiety, nausea, or other medical ailments.[38] Another participant noted that there had been little discussion about the impact of noise on fatigue.[39] Several participants also noted that they lacked full understanding of the effects of noise on railroad worker job performance.[40]

During the course of the discussions, the participants acknowledged the positive steps taken thus far, that is, that industry participants have implemented many voluntary noise reduction and hearing conservation programs. Participants also acknowledged that there have been technological advances that have led to the manufacture of quieter locomotives.[41] Participants concluded by identifying the need for more current research and data on noise in the rail industry.[42]

III. The Railroad Safety Advisory Committee (RSAC) Process

A. RSAC

In March 1996, FRA established the RSAC, which provides a forum for developing consensus recommendations on rulemakings and other safety program issues. The Committee includes representation from all of the agency's major customer groups, including railroad carriers, labor organizations, suppliers, manufacturers, and other interested parties. A list of member groups follows:

American Association of Private Railroad Car Owners (AARPCO)
American Association of State Highway & Transportation Officials (AASHTO)
American Public Transportation Association (APTA)
American Short Line and Regional Railroad Association (ASLRRA)
American Train Dispatchers Department/BLE (ATDD/BLE)
AMTRAK
Association of American Railroads
Association of Railway Museums (ARM)
Association of State Rail Safety Managers (ASRSM)
Brotherhood of Locomotive Engineers (BLE)
Brotherhood of Maintenance of Way Employes (BMWE)
Brotherhood of Railroad Signalmen (BRS)
Federal Transit Administration (FTA)*
High Speed Ground Transportation Association
Hotel Employees & Restaurant Employees International Union
International Association of Machinists and Aerospace Workers
International Brotherhood of Boilermakers and Blacksmiths
International Brotherhood of Electrical Workers (IBEW)
Labor Council for Latin American Advancement (LCLAA)*
League of Railway Industry Women*
National Association of Railroad Passengers (NARP)
National Association of Railway Business Women*
National Conference of Firemen & Oilers
National Railroad Construction and Maintenance Association
National Transportation Safety Board (NTSB)*
Railway Progress Institute (RPI)
Safe Travel America
Secretaria de Communicaciones y Transporte*
Sheet Metal Workers International Association (SMWIA)
Tourist Railway Association Inc.
Transport Canada*
Transport Workers Union of America (TWUA)
Transportation Communications International Union/BRC (TCIU/BRC)
United Transportation Union (UTU)
*Indicates associate membership.

Where appropriate, FRA assigns a task to the RSAC, and after consideration and debate, the RSAC may accept or reject the task. If the task is accepted, the RSAC establishes a working group that possesses the appropriate expertise and representation of interests to develop recommendations to FRA for action on the task. The working group develops the recommendations by consensus. The working group may establish one or more task forces to

[29] Transcript at 29–33.
[30] Transcript at 33–44.
[31] Transcript at 10, 13, 23, 50–57.
[32] Transcript at 69–82.
[33] Transcript at 92–94.
[34] Transcript at 33, 88–89
[35] Transcript at 96–97.
[36] Transcript at 111.
[37] Transcript at 42–43.
[38] Transcript at 93
[39] Transcript at 83.
[40] Transcript at 100–102.
[41] Transcript at 115–118.
[42] Transcript at 98–99.

develop the facts and options on a particular aspect of a given task. The task force reports to the working group. If a working group reaches unanimous consensus on recommendations for action, the working group presents the package to the RSAC for a vote. If a simple majority of the RSAC accepts the proposal, the RSAC formally recommends the proposal to FRA.

FRA then determines what action to take on the recommendation. Because FRA staff has played an active role at the working group level in discussing the issues and options and in drafting the language of the consensus proposal, and because the RSAC recommendation constitutes the consensus of some of the industry's leading experts on a given subject, FRA is often favorably inclined toward the RSAC recommendation.

However, FRA is in no way bound to follow the recommendation, and the agency exercises its independent judgement on whether the recommended rule achieves the agency's regulatory goal, is soundly supported, and is in accordance with policy and legal requirements. Often, FRA varies in some respects from the RSAC recommendation in developing the actual regulatory proposal. If the working group or the RSAC is unable to reach consensus on recommendations for action, FRA moves ahead to resolve the issue through traditional rulemaking proceedings.

On June 24, 1997, FRA presented the subject of locomotive cab working conditions to RSAC. The purpose of this task was defined as follows: ''To safeguard the health of locomotive crews and to promote the safe operation of trains.'' The RSAC accepted this task (No. 97–2) and formed a Locomotive Cab Working Conditions Working Group (''Working Group'').

B. Working Group

Task 97–2 addressed several issues, one of which was noise exposure. With respect to noise exposure, RSAC asked the Working Group to complete two items: (1) Revise existing cab noise limits to take into account current requirements of the OSHA standard, specifically as it relates to hearing conservation programs, and (2) Continue efforts to evaluate engineering controls and other measures used to minimize noise exposure in locomotive cabs.

The Working Group consisted of representatives of the following organizations, in addition to FRA:

AASHTO
APTA
ASLRRA
AAR
BLE
BMWE*
IBEW
Amtrak
RPI
SMWIA
TWUA
UTU
*Indicates associate membership

The Working Group's goal was to produce recommendations for locomotive cab noise exposure standards warranted by an assessment of available information on hearing loss, hearing conservation programs, existing federal standards, and occupational injury data. The Working Group decided that specific expertise would be needed to analyze pertinent information and so it formed the Noise Task Force.

The Noise Task Force, which was established in September 1997, was made up of industrial hygiene, safety, engineering, and medical staff from carriers, labor organizations, and FRA. The Noise Task Force met regularly over a period of several years to discuss several topics, including hearing loss and noise exposure among locomotive cab employees; existing railroad hearing loss prevention programs; OSHA's occupational noise standards; equipment changes and procedures that improve noise levels in the cab; hearing testing and training programs; and noise monitoring.

The Task Force concluded that OSHA's standard for noise was an appropriate framework and starting point for an update and revision to FRA's existing noise regulation. The Task Force also identified several areas where OSHA's regulation might be modified to create a FRA regulation that could better address the occupational noise exposure of the rail industry. The Task Force forwarded these findings to the Working Group.

The Working Group conducted a number of meetings and discussed each of the matters proposed in the NPRM. FRA has placed the minutes of these meetings in the docket for this proceeding. Throughout this preamble, we frequently discuss issues that were raised and views that were expressed at the task force and working group levels. We discuss these points to show the origin of certain important issues and the course of discussion on these issues at the task force and working group levels. FRA believes that this helps illuminate the facts FRA has weighed in making its regulatory decisions and the logic behind those decisions. The reader should keep in mind, of course, that only the full RSAC makes recommendations to FRA, and it is the consensus recommendation of the full RSAC on which FRA is acting.

The Working Group, using the preliminary findings of the Task Force, developed recommendations for reducing the likelihood of hearing loss for cab employees. The Working Group reached full consensus in June 2003 and forwarded these recommendations to the RSAC. The RSAC accepted these recommendations and on June 27, 2003, the RSAC voted to forward these recommendations to FRA for rulemaking action. In large part, this NPRM incorporates the RSAC's recommendations.

FRA has worked closely with the RSAC in the development of its recommendations and believes that the RSAC effectively addressed occupational noise exposure for cab employees. FRA has greatly benefitted from the open, informed exchange of information that has taken place during meetings. There is general consensus among labor, management, and manufacturers concerning the primary principles FRA sets forth in this NPRM. FRA believes that the expertise possessed by the RSAC representatives enhances the value of the recommendations, and FRA has made every effort to incorporate them in this proposal.

The Working Group will reassemble after the comment period for this NPRM closes and will consider all comments received. Based on any recommendations RSAC receives from the Working Group, RSAC will then be in a position to make recommendations to FRA concerning the development of a final standard.

IV. Fundamental Principles of Sound

A. Sound

Sound is a physical phenomenon brought about by oscillations in pressure. Oscillations or vibrations cause pressure changes in a medium, such as air. These pressure changes produce waves that emanate away from the oscillating or vibrating source. If a listener is present, the listener will experience these waves as an auditory sensation. The effect of sound on a listener depends on three physical characteristics of sound: amplitude, frequency, and duration.

The amplitude (*i.e.*, the magnitude or intensity) of the pressure change is measured in sound pressure level (SPL) and is perceived by the listener as loudness. Sound pressure level, which is expressed in decibels (dB), is a logarithmic measure. Because of the logarithmic scale, a small increase in decibels represents a large increase in

sound energy. Technically speaking, each increase of 3 dB represents a doubling of sound energy; an increase of 10 dB represents a tenfold increase in sound energy, and an increase of 20 dB represents a 100-fold increase. Frequency is an objective measurement of the physical number of oscillations in a wave per unit of time. It is expressed in hertz (Hz) and is perceived by listeners as pitch. Duration usually refers to the amount of time per day to which an individual is exposed to noise. Noise exposure durations can be broadly classified into continuous-type noises (*i.e.*, continuing, varying, and intermittent) and impulsive noises (*i.e.*, there is a steep rise in the sound level to a high peak, followed by a rapid decay).

B. Hearing and Hearing Loss

The ear is the sense organ that detects sound waves and sends those signals to the brain for processing. The human ear has three primary components—outer ear, middle ear, and inner ear. The outer ear directs sound into the ear, the middle ear mechanically transmits the sound waves from the air to the fluid-filled inner ear, and the inner ear changes the sound waves from mechanical energy into nerve impulses. This last process is completed in a small organ known as the cochlea. In the cochlea, sensory cells respond to the mechanical vibrations, change the vibrations into electrical energy, and transmit a message to the brain via the auditory nerve.

Noise is essentially any unwanted or undesirable sound. Exposure to high levels or extended durations of noise can cause hearing loss. Noise-induced hearing loss (NIHL) can be temporary or permanent. Temporary hearing loss, also called a temporary threshold shift, results from short-term exposures to noise; hearing generally returns to its former level after a period of rest. Permanent hearing loss, also called a noise-induced permanent threshold shift, can result from prolonged exposure to high noise levels over an extended period of time. The extent of the damage depends on several factors: the overall decibel level of the sound, the duration of the noise exposure, the frequency spectrum of the noise source, and an individual's personal susceptibility to noise damage.

A noise-induced permanent threshold shift is not reversible and cannot be treated medically. Once it has occurred, the only course of action is to prevent the further progression of hearing loss. Noise-induced hearing loss causes difficulty in interpreting sounds and in perceiving the loudness and pitch of sounds. Even when sounds are amplified (*e.g.*, with a hearing aid), the sounds may still remain indistinct.

Noise induced hearing loss typically starts with threshold shifts in the higher frequencies. The loss usually appears first at 3000 Hz, 4000 Hz, or 6000 Hz. If damaging noise exposure continues, the loss spreads to the lower frequencies (*i.e.*, between 500 Hz and 3000 Hz.) The human voice ranges from 200 Hz to 4000 Hz, so these frequencies are critical to human conversation. The loss of these frequencies is detrimental to an individual's ability to understand speech.

C. Instrumentation

1. Measuring Hearing Levels

An individual's hearing level (or hearing acuity) can be measured through the use of an audiometer. An audiometer measures an individual's hearing level by testing an individual's ability to hear various frequencies in each ear. The audiogram is a graphic representation of an individual's hearing and it indicates how intense or loud a sound must be at a given frequency before it can be detected by a listener.[43]

There are several different types of audiometers, including manual, self-recording, microprocessor, and computer-controlled. To administer manual audiometers, examiners operate the frequency dial (to select the stimulus tone, *e.g.*, 500 Hz or 1000 Hz), the presentation level dial (with levels in increments of 5 dB), and the signal presentation switch (to turn the stimulus on or off). Then the examiner must identify and document the hearing levels that qualify as thresholds. With self-recording audiometers, a pen traces a subject's response to test signals on a response card; a subject indicates his or her response by operating a hand switch. Microprocessor audiometers contain a computer chip that controls the audiometer. A related type, a computer-controlled audiometer, has software in a personal computer that drives the audiometer.[44]

2. Measuring Noise Exposures

This regulation specifies two different types of instruments that can be used to measure noise exposures: Sound level meters (SLM) and noise dosimeters. Sound level meters and noise dosimeters are small instruments used to measure, among other things, sound metrics and/or sound pressure levels. These instruments are usually equipped with weighting networks that adjust the instrument frequency response to predetermined frequency spectra of the measured sounds. The A-weighting network, one type of weighting network, is designed to adjust the instrument frequency to that which approximates the frequency response of human hearing.

A SLM is a hand-held device that records the sound pressure level (logarithm of the ratio of the sound pressure to a reference point) at a given moment in time at a particular location. It consists of a microphone, preamplifier, electronic circuits, and a readout display. The microphone detects the small air pressure variations associated with the sound and changes them into electronic signals. These signals are then processed by the electric circuitry of the instrument. The readout displays the sound level in decibels (dB). Since SLMs provide a measure of sound pressure at only one point in time, it is generally necessary to take several measurements at many different times during the day to estimate noise exposure over a workday. SLMs are useful for measuring the noise attributable to a given process or for instantaneous (or spot) sound pressure level measurements.

An integrating sound level meter (iSLM) is a specific type of SLM. It can be used to determine equivalent sound levels, which are the energy-averaged sound pressure levels over a given measurement period. An iSLM with data storage capabilities is useful in a noise monitoring program, because it records sound level data, which can be thoroughly analyzed later. This can be particularly useful when distinguishing artifactual noise measurements from actual noise exposure.

Noise dosimeters are primarily used to assess individual noise exposure. A noise dosimeter measures an employee's total noise dose for the duration of a sampling period. A noise dosimeter stores sound level measurements and integrates these measurements over time, providing an average noise exposure reading for a given period of time (*e.g.*, an 8-hour workday). The noise dosimeter is designed to be worn by an employee and should be placed in a location that measures the employee's noise exposure but does not interfere with the employee's work. For noise dosimeter results to be meaningful, the person conducting the survey should maintain a log of the employee's activities and correlate the exposure data with different locations and

[43] 46 FR 4078 (1981).

[44] Royster, Julia Doswell. (2000). ''Audiometric Monitoring Phase of the HCP'' in The Noise Manual, edited by Elliott H. Berger, Larry H. Royster, Dennis P. Driscoll, Julia Doswell Royster, and Martha Lane, American Industrial Hygiene Association, 470–473.

activities. This allows the person conducting the survey to identify noise sources.

The use and design of SLMs and dosimeters vary. SLMs are used for measuring all types of sounds and noise, whereas noise dosimeters are typically used only for personal monitoring. SLMs are designed to be handheld or tripod-mounted instruments, whereas most noise dosimeters are designed to be worn by the individual that is being monitored. Also, the SLMs used in the industrial and scientific communities tend to be Type 1 and Type 2,[45] while noise dosimeters are typically Type 2 instruments.

3. Instrument Calibration

There are two types of instrument calibration that should be performed on SLMs and noise dosimeters: Field system (routine) and laboratory instrument (comprehensive). Field system calibration on a noise dosimeter or SLM should be conducted on the instrument before and after taking measurements. Field system calibration is necessary to ensure that the instruments provide accurate measurements and to establish the measurement system's sensitivity. Laboratory instrument calibration should be conducted according to manufacturer's recommendations (typically on an annual or biannual basis) and is traceable to a national standards laboratory. In addition, laboratory instrument calibration should be conducted after an instrument has been repaired or has experienced problems during field calibrations.

Users should keep instruments well-maintained and should follow the manufacturer's instructions for maintenance. If an instrument is used often or is inadvertently bumped or dropped, it should be calibrated more frequently. In addition, if an instrument is frequently or extensively adjusted as a result of field calibration, it should be calibrated more often.

[45] There are four grades of SLMs (types 0, 1, 2, and S), and there are design tolerances associated with each grade. Type 0 SLMs are used for laboratory purposes only, and type S SLMs are used for special purposes. Type 1 SLMs are precision instruments intended for noise measurements in the field and laboratory. On average, measurements with a Type 1 SLM will have errors not exceeding plus or minus 1 dB.

Type 2 SLMs are general purpose instruments intended for general field use. Type 2 SLMs have design tolerances that are greater than Type 1 and tend to be used where high-frequency (over 10 kHz) sound components do not dominate. On average, measurements with a Type 2 SLM will have errors not exceeding plus or minus 2 dB.

V. Occupational Noise in the Railroad Industry

Noise is one of the most pervasive hazardous agents in the American workplace. In the 1980's, the National Institute for Occupational Safety and Health (NIOSH) identified noise-induced hearing loss (NIHL) as one of the ten leading work-related diseases and injuries.[46] In the 1990's, NIOSH listed noise-induced hearing loss as one of the eight most critical occupational diseases and injuries requiring research and development activities within the framework of the National Occupational Research Agenda.[47] Noise is also one of the most intrusive aspects of locomotive operations.[48]

There are many noise sources in a locomotive cab. The primary noise sources are engine noise, locomotive horns, and brake noise. The nature and level of noise generated by each source varies greatly. Diesel engine noise is continuous, but it varies according to the engine load and engine speed. The noise from locomotive horns (and other audible warning devices) is sporadic but can be very loud if the window is open and can be very frequent if there are many highway-rail grade crossings.

Brake noise results from the air exhaust that comes from the brake valves when the brakes are released. Air brake exhaust is a high frequency sound and can be very intense. In the past, air brake exhaust vented directly into the locomotive cab. By 1980, locomotive manufacturers, maintenance facilities, and railroads had begun venting the exhaust below the cab floor. FRA noted that change in its 1980 locomotive cab noise rule.[49] FRA recognized the effectiveness of this redesign, noting that it reduced the cab occupant's noise dose by an estimated 15 to 20 percent while still providing an audible indication of brake performance.[50] Manufacturers continued to re-design locomotives accordingly, and today the vast majority of locomotive air brakes are vented below the floor and away from the crew. There are some older locomotives, though (such as the ones used by some short lines), which still use the older equipment that vents air brake exhaust into the cab.

Another noise source comes from vibrations which loosen cab components—such as loose cab sheet metal, loose cab side windows, and miscellaneous loose and/or poorly fitted cab equipment—and cause them to resonate. Other potential noise sources include fans on dynamic brake systems; alerters; wheel/rail contact at cruising speed; rooftop or retrofitted air conditioning/cooling units; bells that are sounded to indicate that the train is about to move; and radios that are used for crew communication. Noise can also result from the cab structure, depending on the particular design of the locomotive as it pertains to noise or vibration isolation. Maintenance, or the lack thereof, can also impact noise. Engines in less than ideal condition will run rougher and noisier. Mountings can wear and loosen, which can create new vibrations or decrease vibration damping. Also, worn engine components (*e.g.*, bearings) can create noise.

The locomotive is also subject to several external noise sources. Since the locomotive cab is a mobile workplace, the level of noise exposure varies greatly by the route traveled. Noise results from the sound that is reflected into the cab (especially if through open windows) from reflective surfaces such as tunnels, bridges, sheds, and close embankments. Other conditions that can also impact noise include the topography and grade of the work assignment and the use of locomotive horns to provide notice at highway-rail grade crossings.

Predicting and addressing noise exposures in the locomotive cab is difficult not only because of the wide variety of possible conditions, but because of the mobile railroad workforce. It is a challenge to create and implement effective training and testing programs, because locomotive crews are not on the same run or same locomotive from one day to the next. In addition, locomotive crews can work shifts that last up to twelve hours.

VI. FRA's Approach to Cab Noise

As OSHA governs workplace safety, and OSHA has already issued regulations in the area of occupational noise, FRA used OSHA's standard as a foundation for its own standard. However, there are many areas in which the OSHA standard differs from the FRA standard. The purpose of this rulemaking is to adapt the OSHA rule to the unique circumstances of the railroad environment. The working environment for railroad cab employees is quite different than that of the typical

[46] National Institute for Occupational Safety and Health (NIOSH), ''Criteria for a Recommended Standard: Occupational Noise Exposure, Revised Criteria 1998,'' National Institute for Occupational Safety and Health, DHHS (NOISH) Pub. No. 98–126, Cincinnati, OH (1998).

[47] NIOSH, ''National Occupational Research Agenda,'' National Institute for Occupational Safety and Health, DHHS (NIOSH), Pub. 96–115, Cincinnati, OH (1996).

[48] Human Factors Guidelines for Locomotive Cabs, DOT/FRA/ORD–93/03 (November 1998).

[49] 45 FR 21092 (March 31, 1980).

[50] 45 FR 21092, 21015 (March 31, 1980).

American worker. Also, the noise exposure of railroad employees is not uniform throughout the industry. Railroad employees may work in a different location each day, *i.e.*, a different locomotive and/or a different route. Employee assignments and actual time in the cab may vary significantly during a typical week. The level of noise in any individual locomotive cab will vary greatly, depending on the locomotive model, locomotive age, condition of the locomotive, length of the route, traffic on the route, number of highway-rail grade crossings on the route, physical characteristics of the route, weather conditions during the run, and any one or more of several other factors. FRA's proposed rule has taken into account these unique characteristics of the railroad operating environment and has modified OSHA's standard to suit the railroad industry.

Since FRA's proposed rule is based on OSHA's rule, it is helpful to review OSHA's standard before explaining FRA's proposed standard. OSHA's noise standard limits employee noise exposure to an 8-hour TWA of 90 dB(A). OSHA identifies a hierarchy of controls that should be used to limit noise exposure. If employee noise exposure exceeds the permissible exposure level, the employer must reduce the exposure (so that it is within permissible exposure limits) through the use of feasible engineering controls, administrative controls, or a combination of both. Where such controls cannot reduce employee exposure to permissible limits, employers are to supplement the engineering and administrative controls with hearing protection. The OSHA noise standard also requires that the employer administer a continuing effective hearing conservation program for employees who are exposed to levels that equal or exceed an 8-hour TWA of 85 dB(A).

OSHA's regulation has placed engineering controls, and then administrative controls, at the top of its hierarchy and takes the position that these controls are the best method for controlling noise exposure. These controls reduce employee exposure to hazardous noise levels by eliminating (or at least reducing) the noise source, by modifying the noise path or by decreasing employee exposure time to the noise source. Engineering controls are generally understood to be the modification or replacement of equipment or any other related physical change at the noise source or along the transmission path that reduces the noise level at the employee's ear (not including hearing protectors). They include such changes as the re-design of machinery or the use of different tools. Administrative controls involve efforts to limit worker noise exposure by modifying work schedules, work locations, or the operating schedule of noisy machinery. Administrative controls include, for example, the rotation of schedules for tasks that are near noisy machinery or the use of quiet areas that provide employees with an opportunity to recover from temporary threshold shifts.

FRA's proposed standard on locomotive cab noise is based very heavily on OSHA's standard. In part 227, FRA requires railroads to limit employee noise exposure to an 8-hour TWA of 90 dB(A).[51] Also, FRA requires railroads to implement a hearing conservation program for those employees who are exposed to noise levels that equal or exceed an 8-hour TWA of 85 dB(A).

FRA's doubling, or exchange, rate is 5 dB(A). FRA's decision to use a 5 dB doubling rate is notable, because a 5 dB doubling rate is different than the scientific principle for a doubling rate. Technically, a increase of 3 dB represents a doubling of sound energy.[52] In making its decision, FRA considered a doubling rate of 3 dB, 4 dB, and 5 dB. FRA ultimately decided on a 5 dB doubling rate. NIOSH recommends a 3 dB doubling rate, the Air Force uses a 3 dB doubling rate, and OSHA and MSHA use a 5 dB doubling rate.

In its 1999 rulemaking on occupational noise for miners, MSHA faced a similar decision, choosing between a 3 dB or 5 dB exchange rate. MSHA conducted a study and found that the exchange rate substantially affects the measured noise exposure; nonetheless, MSHA retained the 5 dB exchange rate because of feasibility concerns.[53] In its final rule, MSHA concluded that:

> It would be extremely difficult and prohibitively expensive for the mining industry to comply with the existing permissible exposure level with a 3 dB exchange rate, using currently available engineering and administrative noise controls. MSHA therefore cannot demonstrate that implementation of such an exchange rate would be feasible. However, [MSHA] will continue to monitor the feasibility of adopting a 3 dB exchange rate. 64 FR 49548, 49589 (September 13, 1999).

FRA, like MSHA, recognizes that the cost and feasibility of a 3 dB exchange rate is prohibitive. Furthermore, there was a consensus decision of the RSAC that 5 dB is most appropriate. Taking all of those factors into account, FRA proposes to use a doubling rate of 5 dB. Thus, a 5 dB increase in level is permitted each time the exposure duration is decreased by half.

FRA recognizes the same controls as OSHA (*i.e.*, engineering controls, administrative controls, and hearing protection); however, FRA uses different terms to describe some of those controls. OSHA uses the term, ''administrative controls,'' while FRA uses the term ''noise operational controls.'' These two terms are the functional equivalent. Also, OSHA uses the term ''engineering controls,'' while FRA uses no equivalent term—FRA instead describes the specific actions which it would like railroads to take.

FRA's overall approach toward controls differs from that of OSHA. FRA does not adopt OSHA's hierarchy of controls. As explained above, OSHA places controls in a hierarchy and mandates their use according to that hierarchy. FRA has no such hierarchy. Rather, FRA has specific requirements that railroads must satisfy. FRA requires railroads to design and maintain locomotives according to the standards in § 229.121. (OSHA's equivalent of ''engineering controls''). FRA requires railroads to use hearing protectors (HP) when employees are exposed to noise levels that exceed an 8 hour-TWA of 90 dB(A). (OSHA's equivalent of HP). And, FRA gives railroads the *option* of using noise operational controls when employees are exposed to noise levels that exceed 90 dB(A) as an 8 hour-TWA. (OSHA's equivalent of administrative controls). It is very important to note that FRA does *not* require the use of noise operational controls. Thus, when a railroad learns that an employee is exposed to noise levels that exceed an 8-hour TWA of 90 dB(A), the railroad *must* provide the employee with HP, but need only consider the use of noise operational controls.

The RSAC spent a great deal of time discussing options and developing the recommended requirements for § 229.121 and thus a discussion is warranted here. An Engineering Controls Task Force, a subgroup of the Noise Task Force, met to discuss the viability of engineering controls. The group reviewed OSHA and MSHA regulations and compliance documents and journal articles. Among its findings,

[51] For a complete list of the permissible noise exposures, see Table 1 in § 227.103. According to Table 1, railroads must limit employee noise exposure to 85 dB(A) as a 16–hour TWA, 87 dB(A) as a 12–hour TWA, 90 dB(A) as an 8–hour TWA, and so on.

[52] See discussion in § IV(A) of the background section.

[53] 64 FR 49548, 49588–49589 (September 13, 1999).

the group identified certain items that might help reduce noise exposure in the locomotive cab. In identifying these items, FRA has given serious consideration to those items which are feasible and those items which are not feasible.

FRA believes that the specified items are feasible maintenance and engineering controls. The group found that certain maintenance tasks—*e.g.*, repair, replacement, or installation of cab insulation, door seals, window seals, weatherstripping, and electrical cabinet insulation and seals—can help reduce in-cab noise levels. The group also discussed other engineering controls and maintenance items which have been shown to reduce noise exposure in the cab, *e.g.*, venting piping for air brake exhaust and power control devices out and under the locomotive; using air cooling devices so that windows can be closed; and using noise-dampening window glass which limits the penetration of noise and thereby limits the contribution of outside noise. In addition, the group discussed the location of locomotive horns and agreed that relocation of the horn to the center position had reduced crew noise exposure.

FRA recognized that there are many benefits to using engineering and maintenance controls. First, they do not interfere with crew and radio communication, which HP can do. HP can interfere with crew and radio communication by blocking out necessary sounds in addition to unwanted noise. Second, engineering and maintenance controls do not present the potential hazard of overprotection that HP presents. Engineering controls block out noise at its source, thus there is no concern that necessary sounds will be blocked out too. Third, engineering controls put less burden on the employee and as a result, are easier for employees to use. With HP, railroads must ensure that employees are properly trained on the use of the devices, and employees must ensure that they wear and properly use the devices. Due to the benefits of engineering controls, FRA did not want to exclude their use. However, due to burden that it would impose on railroads if there was a general requirement for the use of engineering controls, FRA did not include the requirement as found in OSHA's rule. As a compromise, then, FRA identified the specific engineering controls—the design and build requirements in § 229.121(a) and the maintenance requirements in § 229.121(b)—which railroads must use.

This background section has sought to provide an overview of FRA's rule, as well as a broad comparison to OSHA's rule. A more thorough discussion of the differences between OSHA's and FRA's standards is provided in the section-by-section analysis below.

VII. Responsibilities of Railroads and Employees

The primary responsibility for compliance with this regulation lies with employers, *i.e.*, railroads. As such, railroads would have several enumerated responsibilities. This regulation would require railroads to: develop and implement a noise monitoring program; administer a hearing conservation program; establish and maintain an audiometric testing program; make audiometric testing available to employees; implement noise operations controls (if desired); require the use of hearing protection; make hearing protection available to employees at no cost; train employees in the use and care of hearing protection; ensure proper fitting of and supervise the correct use of hearing protection; give employees the opportunity to select hearing protection from a variety of suitable hearing protection; evaluate hearing protection attenuation; initiate and offer a training program, maintain and retain records; and build and maintain locomotives according to specified standards.

The responsibilities of employees derive from those of the railroad. Employees' responsibilities come from railroad policies, which are issued pursuant to this regulation. This regulation would require employers to: use their hearing protection when mandated by the railroad; care for their hearing protection as trained by the railroad; and complete the training program which is offered by the railroad. There is one additional obligation for which employees have primary responsibility—employees must report for audiometric testing once every three years. While railroads have an affirmative obligation to offer testing, employees have an affirmative obligation to report for testing. Without adequate audiometric testing, a HCP will not succeed, and so FRA is identifying an employee's audiometric testing obligation as a primary responsibility.

Because employee responsibilities are, for the most part, derivative, compliance would generally take place through the railroad disciplinary process, rather than direct enforcement by FRA. FRA does, however, recognize one major exception. FRA may assess civil penalties for a wilful violation [54] for an employee who does not report for audiometric testing. Overall, FRA expects that employees will fully comply with all their responsibilities. Railroads should perform required actions, and employees should reciprocate with their commensurate responsibilities. Railroads should set expectations of compliance, and employees should meet those expectations of compliance.

VIII. Compliance

FRA's principal method of enforcement will be through audits. With an industrial hygienist as team leader, an audit team will examine a railroad's hearing conservation program. The team will examine whether the railroad is adequately protecting its employees. The team will speak with the program manager, review records (*e.g.*, noise monitoring records, audiograms, standard threshold shift records, etc.) and determine the extent to which the railroad is complying with the requirements of this regulation. If warranted, FRA will take enforcement action against the railroad.

In addition, if FRA has reason to believe that certain locomotive crews are being exposed to high noise doses, FRA inspectors will ride in the locomotive cab with those crews to measure the sound levels and determine the crews' exposure. FRA inspectors may also review maintenance records to determine whether railroads have corrected defective conditions (*e.g.*, loose windows, deteriorated seals). Additionally, FRA will investigate employee complaints of excessive noise.

IX. Section-by-Section Analysis

This section-by-section analysis explains the provisions of the NPRM. Of course, a number of the issues and provisions of the proposed rule have been discussed and addressed in detail in the preceding discussions. Accordingly, the preceding discussions should be considered in conjunction with those below and will be referred to as appropriate.

Part 227—Occupational Noise Exposure

Subpart A—General

Section 227.1 Purpose and Scope.

This section identifies the purpose and scope of this part. This is a general provision. Per paragraph (a), the purpose of this part is to protect the occupational health and safety of employees involved in specified

[54] Under the railroad safety laws, civil penalties may be assessed against individuals only for willful violations. *See* 49 U.S.C. 21304.

railroad activities and/or operations. More specifically stated, the purpose of this part is to protect the hearing of individuals who experience their primary noise exposure in the locomotive cab. Hearing loss occurs cumulatively over time and thus, the purpose of this proposed rule is to protect individuals over the span of their railroad career. Per paragraph (b), this part prescribes minimum Federal safety standards for the specified railroad workplace safety items (*i.e.*, occupational noise).

Section 227.3 Application.

This section identifies the applicability of this part. FRA proposes that this part will apply to all railroads and contractors to railroads. This section identifies three exceptions. First, this part will not apply to railroads that operate only on track inside an installation that is not part of the general railroad system of transportation.

Second, this part will not apply to rapid transit operations in an urban area that are not connected to the general railroad system of transportation. This part will still apply to rapid transit operations in an urban area that are connected to the general railroad system. Rapid transit operations connected to the general system are a specialized set of operations (*e.g.*, the Maryland Mass Transit Administration's Central Light Rail Line in Baltimore). FRA regulates at least the shared use portions these operations, because FRA has jurisdiction over such operations by statute.[55] FRA realizes that these types of operations have already applied for and received shared use waivers from FRA's other regulations. FRA also recognizes that these types of operations might need to seek an additional waiver, consistent with 49 CFR part 211, in order to be exempted from the requirements of this part. FRA seeks comment from the public on how to handle these types of operations.

Third, this part will not apply to railroads that operate tourist, scenic, historic, or excursion operations, whether they are on or off the general railroad system of transportation. The term ''tourist, scenic, historic, or excursion operations'' is defined in § 227.5 to mean ''railroad operations that carry passengers, often using antiquated equipment, with the conveyance of the passengers to a particular destination not being the principal purpose.'' Congress has directed that, in issuing safety rules, FRA take into account the unique financial, operational, and other factors that may apply to such railroads. 49 U.S.C. 20103(f). For example, these operations are often seasonal and generally use somewhat antiquated equipment.

In this proposal, FRA exempts these operations from the rule; however, FRA is still considering this issue and invites public comments. FRA believes that certain circumstances, such as employee assignments and railroad equipment, might result in conditions that expose these employees to high noise levels. If that is the case, then these employees might also need the protection of this rule. FRA plans to consult with tourist and historic railroad operators and their associations, as well as the RSAC Working Group on tourist railroads, to determine the applicability of this rule to those employees. For now, FRA believes that this situation is best handled through such separate proceedings.

Fourth, this part will not apply to employees of foreign railroads operating in the U.S. if they meet the following requirements: (1) The government of the foreign railroad must have established requirements for hearing conservation for railroad employees in that jurisdiction; (2) the foreign railroad must undertake to comply with those requirements while operating within the U.S.; and (3) the Associate Administrator for Safety must determine that the foreign government requirements are consistent with the purpose and scope of part 227. A ''foreign railroad'' refers to a railroad that is incorporated in a place outside the United States and is operated out of a foreign country but operates for some distance in the U.S. (*e.g.*, Canadian National Railroad). Employees excepted from application would be those employees of a foreign railroad whose primary reporting point is in Canada and Mexico.

The Associate Administrator's evaluation and determination would only be made at the request of the foreign railroad. As a practical matter, this evaluation could be accomplished at the request of an association of foreign railroads (*e.g.*, the Railway Association of Canada), and the exception would then be available to all railroads of that country entering the U.S.

The Associate Administrator must find that the foreign government's requirements are consistent with the purpose and scope of the new part, specifically that their legitimate purpose ''is to protect the occupational health and safety of employees whose predominant noise exposure occurs in the locomotive cab.'' This standard does not require a finding of equivalence in terms of program effectiveness, because making such a finding would require an estimation of incremental hearing loss over the working life of specific populations (which is scientifically impracticable). Further, more important than precise equivalence is the integrity of each of the North American governments' programs. Employees and program managers need to know what rules apply and need to be able to carry out those programs without the confusion that would be inherent in changing the rules at international boundaries. FRA will request similar treatment of U.S. railroads operating into Canada and Mexico, in order to achieve the goal of harmonization.

Section 227.5 Definitions

This section contains proposed definitions for key terms. The definitions are set forth alphabetically. Most of these definitions have been taken from the standards issued by OSHA and the Mine Safety and Health Administration (MSHA) and the recommendations issued by the National Institute of Occupational Safety and Health (NIOSH) and the American Conference of Governmental Industrial Hygienists (ACGIH). These are definitions that are widely used by noise professionals. This includes definitions such as ''Audiologist,'' ''Decibel,'' ''dB(A),'' ''Hertz,'' ''Medical Pathology,'' and ''Otolaryngologist.''

This section also contains some basic definitions that are standard to several of FRA's regulations. This includes definitions such as ''Administrator,'' ''FRA,'' ''Person,'' ''Railroad,'' and ''Tourist, scenic, historic, or excursion operations.'' Several of the definitions, however, are new or fundamental concepts that require further discussion.

The term ''Continuous Noise'' is being added by FRA in order to clarify its use in § 227.105. This definition comes from OSHA. *See* 29 CFR 1910.95(b)(2).

The term ''Employee'' refers to individuals engaged or compensated by a railroad, as well as to contractors to a railroad. One of FRA's objectives in covering contractors is to promulgate standards that are applicable to all those individuals that are exposed to the specified levels of locomotive cab noise. Whether an individual is paid by a railroad or a contractor is irrelevant. The most important issue is the prevention of hearing loss. FRA holds no position

[55] Under the Federal railroad safety laws, FRA has jurisdiction over all railroads except ''rapid transit operations in an urban area that are not connected to the general railroad system of transportation.'' 49 U.S.C. 20102. For a discussion of FRA's jurisdiction over passenger operations, *see* 49 CFR part 209, Appendix A.

on the practice of a railroad contracting work out to another company, but FRA strongly believes that contract employees are entitled to the same level of safety as railroad employees. To the extent that contract employees work under the circumstances presenting the noise hazards addressed in this regulation, those contractors must be protected.

The term ''Exchange Rate'' refers to the change in sound levels which would require halving or doubling the allowable exposure time to maintain the same noise dose. FRA has set the exchange rate for this regulation at 5 dB. Both OSHA and MSHA also use a 5dB exchange rate. *See* OSHA's ''Occupational Noise Exposure,'' 29 CFR 1910.95(a) and MSHA's ''Health Standards for Occupational Noise,'' 30 CFR 62.101.

The term ''Hearing Protector'' is currently defined in the NPRM as ''any device or material, capable of being worn on the head or in the ear canal, designed wholly or in part to reduce the level of sound entering the ear, and which has a scientifically accepted indicator of its noise reduction value.'' The RSAC discussed variations of this definition but ultimately agreed upon this definition. FRA adopted that definition.

Despite the RSAC consensus on this definition during its development, several Working Group members expressed the view that the phrase, ''which has a scientifically accepted indicator of its noise reduction value,'' is too general and provides too much leeway. They would prefer to see that phrase replaced with a requirement to use a specific indicator—the Noise Reduction Rating. With such a change, the definition of ''hearing protector'' would read as follows: ''any device or material, capable of being worn on the head or in the ear canal, designed wholly or in part to reduce the level of sound entering the ear, and which has a Noise Reduction Rating.'' The Noise Reduction Rating (NRR) is one of several methods that exist for estimating the amount of sound attenuation that a hearing protector provides. The NRR is one of the most commonly used methods. FRA seeks comments from the public on the definition of hearing protector and asks whether FRA should use a general description for an indicator (*i.e.*, ''which has a scientifically accepted indicator of its noise reduction value), the NRR, or some other specific type of indicator.

The term ''Noise Operational Controls'' was developed by the RSAC as the functional equivalent of the term ''administrative controls.'' FRA has accepted the RSAC's recommended term and definition. The term ''administrative controls'' is used by OSHA, MSHA, and NIOSH. OSHA uses the term in its noise regulations. *See* 29 CFR 1910.95(b)(1) and 29 CFR 1926.52(a). MSHA also uses the term in its occupational noise exposure rule. *See* 30 CFR 62.130. NIOSH defines ''administrative controls'' as ''[e]fforts, usually by management, to limit workers'' exposure by modifying workers' schedule or location, or by modifying the operating schedule of noisy machinery.'' See NIOSH's Common Hearing Loss Prevention Terms.[56]

The term ''Occasional Service'' refers to service of not more than a total of 20 days with one or more assignments in a calendar year. The term is used only once in this proposed regulation. This term is added to clarify its use in § 227.101.

The terms ''Sound Level'' and ''Sound Pressure Level'' can be used interchangeably. The definition comes from OSHA's regulation. See Appendix I to 29 CFR 1910.95. OSHA's regulation, in addressing SLOW time response, referenced a now-outdated ANSI standard (ANSI S1.4–1971 R1976)). FRA changed that cite to ANSI S1.43–1997 which updates the citation to reflect the current ANSI standard.

FRA invites comment from the public about all of the proposed definitions, as well as any other terms that the public believes should be defined.

Section 227.7 Preemptive Effect

This section informs the public of FRA's views on the preemptive effect of the proposed rule. While the presence or absence of such a section does not in itself affect the preemptive effect of the rule, it informs the public about the statutory provision which governs the preemptive effect of the rule. Section 20106 of title 49 of the United States Code provides that all regulations prescribed by the Secretary related to railroad safety preempt any State law, regulation, or order covering the same subject matter, except a provision necessary to eliminate or reduce an essentially local safety hazard that is not incompatible with a Federal law, regulation, or order and that does not unreasonably burden interstate commerce. With the exception of a provision directed at an essentially local safety hazard, 49 U.S.C. 20106 will preempt any State regulatory agency rule covering the same subject matter as the regulations in the proposed rule.

[56] See *www.cdc.gov/niosh/hpterms.html.*

Section 227.9 Penalties

This section identifies the civil penalties that FRA may impose upon any person, including a railroad or an independent contractor providing goods or services to a railroad, that violates any requirement of this part. These penalties are authorized by 49 U.S.C. 21301, 21302, and 21304. This penalty provision parallels penalty provisions included in numerous other safety regulations issued by FRA.

Essentially, any person who violates any requirement of this part or causes the violation of any such requirement will be subject to a civil penalty of at least $500, and not more than $11,000, per violation. Civil penalties may be assessed against individuals only for willful violations. Where a grossly negligent violation or a pattern of repeated violations creates an imminent hazard of death or injury to persons, or causes death or injury, a civil penalty not to exceed $22,000 per violation may be assessed. In addition, each day will constitute a separate offense. Furthermore, a person may be subject to criminal penalties under 49 U.S.C. 21311 for knowingly and willfully falsifying reports required by these regulations. FRA believes that the inclusion of penalty provisions for failure to comply with this regulation is important in ensuring that compliance is achieved.

With respect to the penalty amounts contained in this section, the Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. 101–410 Stat. 890, 28 U.S.C. 2461 note, as amended by the Debt Collection Improvement Act of 1996 Pub. L. 104–134, April 26, 1996, required agencies to adjust for inflation the maximum civil monetary penalties within the agency's jurisdiction. The resulting $11,000 and $22,000 maximum penalties were determined by applying the criteria (set forth in sections 4 and 5 of the statute) to the maximum penalties otherwise provided for in the Federal railroad safety laws.

Section 227.11 Responsibility for Compliance

This section clarifies FRA's position that the requirements contained in this proposed rule are applicable not only to any ''railroad'' subject to this part but also to any ''person'' (as defined in ''227.5) that performs any function required by this rule. Although various sections of the rule address the duties of a railroad, FRA intends that any person who performs any action on behalf of a railroad or any person who performs any action covered by this rule is required to perform that action in the

same manner as required of a railroad or be subject to FRA enforcement action.

Section 227.13 Waivers

This section sets forth the procedures for seeking waivers of compliance with the requirements of this part. Requests for such waivers may be filed by any interested party. In reviewing such requests, FRA conducts investigations to determine if a deviation from the general criteria can be made without compromising or diminishing rail safety. This section is consistent with the general waiver provisions contained in other Federal regulations issued by FRA.

Section 227.15 Information Collection

This section notes the provisions of this part that have been reviewed and approved by the Office of Management and Budget (OMB) for compliance with the Paperwork Reduction Act of 1995. *See* 44 U.S.C. 3501 *et seq.*

Subpart B—Occupational Noise Exposure for Railroad Operating Employees

Section 227.101 Scope

This section identifies the individuals to whom this rule will apply. In subparagraph (a)(1), FRA proposes that this rule will cover employees who regularly perform service subject to the provisions of the hours of service law governing ''train employees.'' *See* 49 U.S.C. 21101(5) and 21103. This refers to employees who are engaged in functions traditionally associated with train, engine, and yard service; for example, engineers, conductors, brakemen, switchmen, and firemen. In general, these employees encounter their predominant occupational noise exposure in the locomotive cab, and therefore, FRA plans to appropriately tailor the noise monitoring and noise testing programs in this section to address the exposure that these employees experience.

With respect to the term ''regularly'' in subparagraph (a)(1), FRA intends to cover individuals who perform some level of work in a locomotive cab. In making this assessment, the railroad should consider an employee's work over the period of a year. FRA would like railroads to think about how they use their workforces, *i.e.*, take a serious look at the work that their employees perform, determine which employees will experience potentially hazardous noise exposure in the cab, and then place those employees in a hearing conservation program.

Given the nature of the railroad industry, FRA is aware that some of these employees may not always experience their predominant noise exposure in the cab. Due to longstanding labor practices in the railroad industry concerning seniority privileges and concerning the ability of railroad employees to bid for different work assignments, these railroad employees are likely to change jobs frequently and to work, for extended periods of time, on assignments that involve duties outside the cab. For example, an employee might start the year in a job that involves mostly outside-the-cab work, spend three months working primarily inside the cab, and then return to outside-the-cab work for the rest of the year. In this type of situation, FRA's regulations can govern the noise exposure of this employee throughout the year despite the fact that the employee only spent three months inside the cab. This employee can be covered by FRA's regulations, because he spent time, no matter how little, in a locomotive cab.

Under an alternative to the proposed scope provision, OSHA's regulations would apply to these employees when they are outside the cab and FRA's regulations would apply to these employees when they are inside the cab. The employee would switch back and forth between OSHA's and FRA's hearing conversation programs throughout the year. FRA believes this would be both illogical and unworkable.

This rule will not extend to employees who occasionally and briefly enter the cab. That includes employees who move equipment only within the confines of locomotive repair or servicing areas protected by blue signals (*see* § 227.101(a)(1)(i)) or who move locomotives for distances of less than 100 feet for inspection or maintenance purposes (*see* § 227.101(a)(1)(ii)). The job assignments of these employees usually involve consistent and significant work outside the cab, such as moving about on the shop floor, working on the ground to connect the air hoses and MU cable for locomotives, and performing locomotive servicing (*e.g.*, sanding or fueling). This is why these types of employees are being excepted from FRA's regulation. Increasingly, however, inside hostling duties are commingled with other mechanical duties involving major additional sources of noise exposure. These employees would remain under the authority of OSHA with respect to occupational noise exposure, unless the railroad elected to place them in the FRA program based upon their expected mix of assignments (*see* § 227.103).

In addition, this rule will not extend to contractors who operate historic equipment in occasional service, as long as those contractors have been provided with hearing protection and are required (where necessary) to use the hearing protection while operating the historic equipment. Although these contractors will not be in the railroad's HCP, it is still important that they use HP, because they will be working in noisy environments (*e.g.*, historic locomotives). Occasional service is defined in § 227.5 and refers to service of not more than a total of 20 days with one or more assignments in a calendar year. This exception will apply to all members of the crew responsible for operating the train; that includes, but is not limited to, engineers, conductors, firemen, and brakemen. When originally raised, this exception contemplated service on steam locomotives; however, FRA has instead used the term ''historic equipment,'' thereby encompassing steam locomotives as well as diesel locomotives and other antiquated equipment typically used in tourist and scenic operations.

A Working Group member raised this issue during a meeting. The member explained that a railroad will occasionally hire a contractor (with special expertise) to operate a steam locomotive for one or two days as part of a special excursion operation. The member was concerned that the railroad would have to place those temporary, contract employees in a hearing conservation program. The Working Group discussed this issue and recommended this exception. FRA decided to include the exception. Pursuant to this provision, those contractors are exempted, because they provide limited service and thus will have limited exposure to noise in a locomotive cab. Railroads should note, however, that this provision will not exempt regular railroad employees who happen to perform this occasional service on historic equipment.

FRA realizes that earlier provisions in this proposed rule have discussed historic operations. Section 227.3(b)(3) excludes from this part railroads that perform historic operations. Despite the apparent similarity, these provisions are different. The earlier provision excludes railroads that operate, among other things, historic operations, while this provision excludes contract employees who work for a freight railroad (such as Union Pacific Railroad or CSX Railroad) operating tourist, scenic, and excursion equipment.

Pursuant to § 227.101(b), all other railroad employees who are exposed to noise hazards but are outside the scope of this regulation will continue to be

covered by OSHA's noise standard, which is located at 29 CFR 1910.95.

Section 227.103 Noise Monitoring Program

Railroad noise monitoring programs entail a system of monitoring that evaluates employee noise exposure. Noise monitoring is performed for one or more of the following reasons: To determine whether hearing hazards exist; to ascertain whether noise presents a safety hazard by interfering with oral communication; to ascertain whether noise presents a safety hazard by impairing recognition of audible warning signals; to identify which employees need to be included in a hearing conservation program; to define and establish the amount of hearing protection that is necessary; to evaluate specific noise sources for noise control purposes; and to evaluate the success of noise control efforts.

FRA's proposed regulation requires railroads to develop and implement a noise monitoring program by a specific date, depending on the size of the railroad. These noise monitoring programs are intended to determine whether an employee's exposure to noise may equal or exceed an 8-hour time-weighted average of 85 dB(A). Factors which suggest that noise exposure in the cab may meet or exceed a TWA of 85 dB(A) include: employee complaints about the loudness of the noise, indications that train employees are experiencing hearing loss, noisy conditions that make conversation difficult, and route-specific or locomotive-specific factors that suggest the possibility of an excessive noise dose. In addition, actual workplace noise measurements can suggest whether or not a monitoring program should be initiated.

FRA's proposed noise monitoring requirements cover noise in cabs and noise in exterior environments in which employees work during their work shifts. FRA's proposal would involve the monitoring of some employees whose daily functions are entirely outside of the cab and some employees whose daily functions are both inside and outside of the cab. This ensures that the hearing conservation program addresses the full noise exposure that is experienced by employees within the scope of this rule.

FRA's proposed rule text on railroad noise monitoring programs is nearly identical to OSHA's rule on noise monitoring programs. Paragraphs (a) through (d) and (f) of 227.103 are very similar to the provisions found in 29 CFR 1910.95(d), OSHA's ''Monitoring'' section. Paragraph (a) provides the general requirement that all railroads must develop and implement a noise monitoring program. FRA has re-worded OSHA's language (from 29 CFR 1910.95(d)(1)) to make the provision more clear.

Also, FRA has identified dates by which railroads must develop and implement a noise monitoring program. The date varies based on the size of the railroad. Class I, passenger, and commuter railroads have 12 months from the effective date of this rule to establish a noise monitoring program. Railroads with 400,000 or more employee hours, but that are not a class I, passenger, or commuter railroad have 18 months to comply. Railroads with fewer than 400,000 employee hours have 30 months to comply.

FRA is proposing to classify railroads by employee hours, rather than classes, for several reasons. First, it is a more specific and better-defined distinction than a class distinction. Second, FRA collects and maintains data on employee hours and thus FRA can more easily identify a railroad's category based on employee hours. Third, an hours distinction is probably more reflective than a class distinction of a railroad's ability to comply with this regulation. For example, all switching and terminal operations are categorized as class III railroads regardless of their revenue. By using a class distinction and staggering implementation for class III railroads, FRA would delay implementation for all switching and terminal operations, not just those that are small. But by using an hours distinction, FRA would delay implementation for only those switching and terminal operations that are small. Fourth, FRA has already used this distinction in other regulations, such as § 217.9(d) (a recordkeeping requirement in the CFR part addressing railroad operating rules) and § 220.11 (radio communication requirements for roadway workers). FRA considered staggering the implementation dates based on classes (class I, II, and III); however, for the reasons discussed in this paragraph, FRA proposes to stagger the implementation dates based on employee hours. FRA seeks comment as to which option is the most appropriate.

FRA is adjusting the implementation dates for smaller operations because of their unique situation. FRA understands that they lack the resources, manpower, and money of larger operations, and thus FRA is providing them with more time to comply with the requirements of this part. In addition, FRA is required, by law, to consider the impact of its regulations on smaller entities. The Small Business Regulatory Enforcement and Fairness Act (SBREFA)[57] requires agencies to employ communication, enforcement, and regulatory systems that consider the unique aspects of small entities. For the purposes of the regulation, small entities are defined as operations with less than 400,000 employee hours per year. The Act specifically provides that agencies should avoid ''one size fits all'' enforcement and regulatory programs and should, to the extent possible, minimize unnecessary economic burdens. One of the Act's suggestions is that agencies use phase-in implementation dates to permit gradual compliance where no immediate safety risk exists, and that is what FRA has proposed here. For all the reasons discussed here, FRA has also provided phase-in implementation dates here and in two other locations in this proposed rule—in § 227.109(e)(2) (audiometric testing) and § 227.119(b)(2) (training).

Paragraph (b) discusses sampling strategy and is virtually identical to OSHA's provision. OSHA's provision is found in 29 CFR 1910.95(d)(i) and (ii).

Paragraph (c) specifies how railroads should conduct noise measurements. Paragraph (c)(1) requires that all continuous, intermittent, and impulsive sound levels from 80 dB to 130 dB shall be integrated into the measurement of noise exposure. Paragraph (c)(1) is identical to OSHA's comparable provision. *See* 29 CFR 1910.95(d)(2)(i).

OSHA promulgated its general industry noise standards for occupational noise in 1981. In its preamble to that noise rulemaking, OSHA explained that its intent was to increase the upper limit to 140 dB as noise dosimeters were improved and became readily available. OSHA further explained that its decision to adopt the 80 to 130 dB range (and not the 80 to 140 dB range) reflected the technological limitations of sound level meters and noise dosimeters at the time of the regulation's promulgation.[58]

Recently, in 2002, OSHA issued an Advance Notice of Proposed Rulemaking (ANPRM) for a Hearing Conservation Program for Construction Workers.[59] In that ANPRM, OSHA stated that it ''believes that most, if not all, of today's noise dosimeters and integrating sound level meters are capable of dynamic ranges from 80 dB to 140 dB.''[60] FRA seeks comments on whether, in light of technological advances, the 80 to 140 dB range is

[57] Pub. L. 104–121, 110 Stat. 857 (codified at 5 U.S.C. 601 *et. seq.*)

[58] *See* 46 FR 4078, 4135 (January 16, 1981).

[59] *See* 67 FR 50610 (August 5, 2002).

[60] *See* 67 FR 50610, 50605 (August 5, 2002).

more appropriate for calculating railroad operating employees noise doses. If so, what are the expected impacts, *i.e.*, costs and benefits, associated with such a change?

Paragraph (c)(2) specifies that railroads shall take noise measurements under typical operating conditions using a sound level meter, integrated sound level meter, or noise dosimeter. The instrumentation should meet the appropriate standard set forth by the American National Standard Institute (ANSI); these standards set performance and accuracy tolerances. A sound level meter used to comply with this regulation shall meet the American National Standard, ANSI S1.4–1983 (R2001) (or its successor). An integrating-averaging sound level meter (iSLM) used to comply with this part shall meet the American National Standard, ANSI S1.43–1997 (R2002) (or its successor). A noise dosimeter used to comply with this regulation shall meet the American National Standard, ANSI 1.25–1991 (R2002) (or its successor). Each instrument should be set to an A-weighted SLOW response.

Paragraph (c)(2), for the most part, is from FRA's current noise regulation, § 229.121(d). Note, however, that FRA has added the ANSI standard for noise dosimeters, updated the ANSI standard for sound level meters (from ANSI S1.4–1971 to ANSI S1.4–1983 (R2001)), and included a reference and citation to integrating-averaging sound level meters. In doing so, FRA has made this regulation more current and comprehensive.

FRA's use of standards established by other organizations, such as ANSI, is a means of establishing technical requirements without increasing the volume of Code of Federal Regulations. This NPRM uses several different ANSI standards, including the ones above. In developing the final rule, FRA will seek the proper authority from the Office of the Federal Register to formally incorporate these standards by reference.

While the regulation provides that a railroad may use either a noise dosimeter, SLM, or iSLM to conduct noise measurements, a railroad may choose to use any combination of those instruments. Using several instruments helps to develop a more complete picture of the noise environment, because the instruments provide different information. A SLM and an iSLM measure the sound levels at fixed locations in the cab and during transient events (*e.g.*, application of the alerter, brakes, or horn). They also characterize the emissions of suspected noise sources (*e.g.*, vibrating panels). A noise dosimeter and an iSLM measure an employee's overall noise exposure. An iSLM is particularly useful, because it characterizes the contribution of transient events to an employee's overall dose. A noise dosimeter, which is worn by the employee, is useful because it accumulates all the noise exposure data from an employee's work shift. From that, a tester can determine an employee's noise dose during a work shift.

Paragraph (c)(3) specifies that all instruments used to measure employee noise exposure shall be calibrated to ensure accurate measurements. Again, this paragraph is identical to OSHA's provision, which is found in 29 CFR 1910.95(d)(2)(ii).

Paragraph (d) provides that a railroad shall repeat noise monitoring whenever there is a change in operation, process, equipment, or controls that increases noise exposures to the extent that either 1) additional employees may be exposed at the action level, or (2) the attenuation provided by the hearing protectors may be inadequate to meet the requirements of § 227.103. Once again, this paragraph is identical to OSHA's provision, which is located at 29 CFR 1910.95(d)(3).

Paragraph (f) specifies that a railroad shall provide affected employees or their representatives with an opportunity to observe any noise dose measurements conducted pursuant to this section. This parallels OSHA's provision, which is found in 29 CFR 1910.95(f).

There are also some notable differences in § 227.103. First, FRA is adding a new subsection, paragraph ''e,'' which states that, ''In administering the monitoring program, the railroad shall take into consideration the identification of work environments where the use of hearing protectors may be omitted.'' This provision will ensure that railroads do not excessively rely on reflexive use of hearing protectors when structuring their hearing conservation programs. FRA believes that well managed programs already focus on this issue, incorporating such monitoring, as necessary, to determine general categories of work assignments that require hearing protectors and those that do not. FRA fully recognizes that no sustainable amount of monitoring could support a job-by-job analysis at all locations on the railroad. FRA also recognizes that such a level of monitoring is not appropriate given the objective of the hearing conservation program.

Examples of situations where hearing protection may be omitted include:

(1) Cabs designed for sound reduction. These cabs should be monitored over time on a sample basis to ensure that their noise-insulating qualities continue to function as intended; and

(2) ''Ground'' assignments where employees work around moving equipment but have limited exposure to loud and persistent noise sources such as locomotives or retarders.

There are several benefits that accrue when employees refrain from over-using hearing protectors. It reduces any danger of infection from the misuse of hearing protectors. It strengthens overall employee compliance with hearing protector use by focusing requirements (to use hearing protectors) where it makes a difference. Among ground personnel, it maximizes the availability of auditory cues associated with the movement of equipment; this results in improved personal safety. In addition, among cab crews with existing hearing loss (from whatever source), it avoids negative impacts on the discrimination of voice communications, both radio and in-person. This, in turn, limits the noise dose of other employees in the workplace who would otherwise have to live with excessively high radio volume and struggle to be heard while calling signals and communicating other information.

Second, FRA is also adding another new paragraph, (g) Reporting of Monitoring Results, which requires railroads (1) to notify each monitored employee of the results of the monitoring, and (2) to post the monitoring results at the appropriate crew origination point for a minimum of 30 days.

Section 227.103(g)(1) is similar to OSHA's notification provision. OSHA requires an employer to notify employees of the results of the monitoring if the employee is exposed at or above an 8-hour time-weighted average of 85 decibels. See 29 CFR 1910.95(e). FRA also requires a railroad to notify employees of the results. However, there is a difference. OSHA requires an employer to notify each employee *that is exposed at or above an 8-hour TWA of 85 dB(A)* of the results of his or her monitoring. By contrast, FRA requires a railroad to notify each employee *that is monitored* of the results of his or her monitoring.

Section 227.103(g)(2) is a new section. There is no comparable provision in OSHA's rule. This section specifies that a railroad must post the monitoring results. The posting should include sufficient information to permit other crews to interpret the meaning of the results in the context of the operations monitored. The information is intended to help crews and labor officials to

understand the conditions under which the monitoring was conducted. There are a wide range of data elements that a railroad could include in its posting. FRA believes that the railroad should include enough information so that the monitored crew, as well as other crews, are able to understand, interpret, and assess the results of the monitoring.

FRA recommends, though does not require, that a railroad include the following data elements: (1) A description of the monitoring event: The date of the monitoring, the start time and end time of the monitoring, the locations of the beginning and end of the monitoring; the assignment or train identification number or train symbol; the locomotive consist (including locomotive numbers, models, and dates of manufacture); and a train profile (including car counts, length of train, tonnage, and power consist details); and (2) circumstances of the monitoring: Number of crew members monitored, job title(s) of the crew members monitored, duration of crew member exposure, number of crew members monitored, placement of measurement equipment, results of the monitoring, and the equipment used for monitoring.

These data elements are useful, because they contain information on items and conditions that can impact the noise level in the locomotive cab. The date of monitoring is important, because it indicates the time of year of the monitoring, which in turn indicates general weather conditions (*e.g.*, it was likely that there was ice on the rail or that it was raining). The start and end time indicate the length of the crew exposure to noise. The location of the monitoring indicates the topography of the specific run (*e.g.*, there were many hills, curves, or closed embankments). The assignment or train identification number or train symbol indicate the type of equipment and the make-up of the train. The locomotive consist provides information which can be used to figure out tractive effort. The train profile provides specific information on the particulars of that train, *i.e.*, car counts, the number of loaded cars, the number of empty cars, the length of the train, tonnage, and power consist details. The monitoring circumstances are useful, as well, because they convey the specifics of the railroad's monitoring efforts.

Section 227.103(g) is the product of extensive RSAC discussions and negotiations. It reflects a compromise of labor and railroad concerns. To reach this compromise, the RSAC considered numerous proposals concerning monitoring observations and reporting. The RSAC's initial proposals did not include an observation provision and instead focused on reporting requirements. One proposal, without an observation requirement, required a railroad to notify each employee exposed during a monitored exposure, as well as the employee's designated representative, of the results of the monitoring. A variation to that proposal required a railroad to notify each employee and employee's representative upon written request by the employee. Another proposal, also without an observation requirement, required railroads to provide the monitoring information to the president of each labor organization that represented monitored employees. In yet another proposal, railroads would have been required to submit to FRA an annual summary of its noise monitoring activity. FRA would then have made this information publicly available.

In the end, the RSAC recommended to retain the observation provision contained in OSHA's provision. See 29 CFR 1910.95(f)). In addition, the RSAC recommended that railroads shall notify monitored employees of the results of monitoring (regardless of the TWA) and shall post monitoring results at appropriate crew origination points. FRA believes this it this is most effective proposal, because the proposal satisfies both labor's request for access to information and management's request for a reasonable and practical means of complying with the observation and reporting provisions. Nonetheless, FRA seeks comment from the public on this proposal. *See* proposed § 227.103(f).

Section 227.105 Protection of Employees

In this section, FRA establishes the permissible noise exposures for railroad employees. In paragraph (a), FRA proposes the prescribed limits that noise exposure may not exceed. These standards are the same as FRA's current noise standard (49 CFR 229.121), OSHA's permissible noise exposures (29 CFR 1910.95(a), Table G–16), and OSHA's occupational noise exposure limits (29 CFR 1926.52(a), Table D–2). The standards limit employee exposure to 90 dB(A) as an 8-hour TWA, with a 5 dB exchange rate. Where an employee is exposed to noise that exceeds the prescribed limits, the railroad shall provide appropriate protection for that employee.

In paragraph (b), FRA addresses measurement artifacts. FRA proposes that railroads should note the apparent source of noise exposure and, if possible, remove the measurement artifacts from their noise measurements. Artifacts include events such as an unintentional brushing of the noise dosimeter microphone. Artifacts cause the noise level to spike, which, in turn, results in higher overall noise dose levels. FRA proposes to exclude these measurement artifacts from the calculations, because they are not experienced as noise exposure by the employee.

The Working initially considered a draft provision that was based on OSHA's standard; it required railroads to remove measurement artifacts; the sentence originally provided that ''the apparent source of the noise exposures *shall* be noted and measurement artifacts *shall* be removed.'' By contrast, the proposed provision, based on the full RSAC recommendation, allows railroads to choose whether or not they want to remove the measurement artifacts. At one of its meetings, the Working Group discussed this issue at the request of a railroad representative. The representative had explained that if there is a measurement artifact, he will remove it, since artifacts can cause the overall noise levels to increase. He emphasized that not only would he remove the artifact, but he would want to remove it. However, he is concerned about a situation where he tries valiantly, but is unable to, identify the artifact. If he is unable to identify the artifact, he is going to be unable to remove the artifact. To address that practical concern, the proposed regulation contains this provision whereby a railroad has the option of removing an artifact. Practical concerns aside, FRA maintains that it is in the best interest of a railroad to remove measurement artifacts, because the inclusion of artifacts results in calculations that are not representative of an employee's noise exposure.

Paragraph (c) provides that employee exposure to continuous noise shall not exceed 115 dB(A). Paragraph (c) is the same as 49 CFR 229.121(c), FRA's current noise regulation. It merely restates an existing requirement.

Paragraph (d) addresses continuous noise exposure above 115 dB(A). This requirement differs from OSHA's standards. OSHA prohibits unprotected exposures above 115 dB(A) (*See* 29 CFR 1910.95(a) and 29 CFR 1926.52(a)). By contrast, FRA proposes that employees can be exposed to continuous noise between 115 dB(A) and 120 dB(A) as long as their total daily duration does not exceed 5 seconds. FRA is making this proposal because of the operational realities of railroading and the resulting safety implications.

In the railroad industry, it is generally recognized that very brief excursions

above 115 dB(A) sometimes occur in the cab. For the most part, these noise exposures are brief, non-recurring events. Some of these excursions are due to external conditions that may be difficult, or unwise, to prevent. The sounding of the locomotive horn is a prime example. The locomotive horn is a safety device used to warn the public and railroad employees of oncoming train traffic. If the horn is used while cab windows are open or while the cab is adjacent to reflective surfaces, the noise level in the cab may exceed 115 dB(A). FRA would not want to eliminate the sounding of the horn, however, because the horn is very important to safe rail operations. Unfortunately, then, these types of noise exposures are unavoidable.

Working Group discussions revealed that some RSAC members did not wish to penalize the railroads for these brief excursions above 115 dB(A). At the same time, other RSAC members did not wish to stray, to any great extent, from the existing OSHA standard. It should be noted, however, that certain RSAC members expressed the view that there may be health effects associated with longer exposures over 115 dBA, while other RSAC members contended that health effects will not occur until much higher noise levels.

Recognizing the realities of railroad work, the RSAC recommended this provision. The proposed regulation permits very brief exposures to continuous noise (which is defined as noise that exceeds one second) so long as the exposures do not exceed a total of 5 seconds within one day or work shift. FRA concludes that this short cumulative time limit will effectively distinguish incidental, and perhaps unavoidable and necessary noise exposures, from longer exposures that stem from undesirable noise overexposure found in deficient rolling stock that should not be in use.

Section 227.107 Hearing Conservation Program

Section 227.107 sets out the requirement that railroads establish a hearing conservation program for all employees exposed to noise at or above the action level. It also provides that railroads shall compute employee noise exposure in accordance with Table 1 of § 227.105 and the tables found in Appendix A and without regard to any attenuation provided by the use of hearing protectors. Section 227.107 is identical to the comparable provision in OSHA's occupational noise regulation. OSHA's provision is found at 29 CFR 1910.95(c).

As for the current state of hearing conservation programs, FRA recognizes that most class I railroads, as well as some regional and commuter railroads, already have hearing conservation programs and that those HCPs meet the requirements of OSHA's occupational noise standard. Although not required, railroads have included cab employees in those hearing conservation programs. Thus, several railroads are already complying with the requirements of this proposed rulemaking, *i.e.*, establishing a HCP, offering training, conducting audiometric testing, etc.

Section 227.109 Audiometric Testing Program

This section sets out the requirements for railroads to establish and maintain an audiometric testing program for employees that are covered by the hearing conservation program. It requires railroads to establish a baseline audiogram and then to conduct periodic audiograms. It also specifies the requirements for conducting, evaluating, and following-up with the audiograms.

Paragraph (a) notes the general requirement that each railroad shall establish and maintain an audiometric testing program as set forth below. Paragraph (b) provides that audiometric tests shall be provided for employees, at no cost to employees. This paragraph refers only to the audiogram. (An audiogram is more popularly known as a hearing test.) It does not refer to additional costs that might be incurred by employees, *e.g.*, missed trips or missed work time that is incurred as a result of the audiogram.

Paragraph (c) requires that appropriate professionals or trained audiometric technicians administer the audiometric tests. It specifies that audiometric tests be administered by a licensed or certified audiologist, otolaryngologist, or other qualified physician (§ 227.109(c)(1)); or by a certified audiometric technician under the supervision of an audiologist, otolaryngologist or physician (§ 227.109(c)(2)). In order to be qualified under the standard, an individual must be competent in the administration of hearing tests and in the care and use of audiometers. In addition to trained technicians, this can also include hearing aid specialists, industrial hygienists, and nurses with appropriate credentials.

OSHA has recognized two methods by which a technician can become qualified in the administration of audiometric tests. (*See* 48 FR 9738). FRA, likewise, recognizes those methods. The first method, and one of the best methods, is for a technician to successfully complete a course that is designed for the training and certification of audiometric technicians. *See* § 227.109(c)(2)(i). The second method is for a technician to demonstrate, to the satisfaction of the professional supervisor of the hearing conservation program, that he or she is competent in the administration of audiometric tests and the use and care of audiometers. The technician must be able to show competence in the proper use, maintenance, calibration, and functioning of the particular type of audiometer being used. *See* § 227.109(c)(2)(ii). Where a technician (of either qualification type) performs an audiometric test, that technician must be responsible to an audiologist, otolaryngologist, or physician. *See* § 227.109(c)(2)(iii).

Paragraph (d) addresses the instruments that should be used during audiometric testing; it notes that the instruments used for audiometric testing must meet the requirements of Appendix C ''Audiometric Testing Requirements.''

Paragraphs (e) and (f) discuss audiograms. For purposes of this regulations, there are two types of audiograms: A baseline audiogram and a periodic audiogram. A baseline audiogram is the reference audiogram to which all future audiograms are compared. Baseline audiograms are necessary, because they can then be used as points of comparison for subsequent audiograms. Periodic audiograms are the subsequent audiograms that are conducted at regular intervals in the future. They can be used to identify deterioration in hearing ability and to track the effectiveness of a hearing conservation program. Paragraph (e) provides the requirements for baseline audiograms, and paragraph (f) provides the requirements for periodic audiograms. These provisions differ from OSHA; the differences are discussed below.

Paragraph (g) provides the requirements for evaluation of audiograms. It states that each employee's periodic examination should be compared to that employee's baseline audiogram to determine if the audiogram is valid and to determine whether a standard threshold shift (STS) has occurred. *See* § 227.109(g)(1). If the periodic audiogram demonstrates a STS, a railroad may obtain a retest within 90 days and use the retest as the periodic audiogram. *See* § 227.109(g)(2). The audiologist, otolaryngologist, or physician shall review problem audiograms and shall determine whether there is a need for further evaluation. *See* § 227.109(g)(3). The

term ''problem audiograms'' refers to audiograms that have had technical or administrative problems. In a general sense, it refers to situations where the testing equipment did not work, where there is evidence that the test-taker skewed the test results, or where the results are medically atypical. Examples of problem audiograms include audiograms that show large differences in hearing thresholds between the two ears, audiograms that show unusual hearing loss configurations that are atypical of noise induced hearing loss, and audiograms with thresholds that are not repeatable.[61]

Paragraph (h) provides the follow-up procedures. Section 227.109(h)(1) explains that a railroad shall notify an employee if the employee experiences a standard threshold shift (as indicated through a comparison of the employee's baseline audiogram and periodic audiogram). Section 227.109(h)(2) identifies the steps that a railroad should take if the railroad learns that an employee has experienced a standard threshold shift. Section 227.109(h)(3) specifies further notification procedures for subsequent audiometric testing.

Paragraph (i) identifies two situations where an audiologist, otolaryngologist, or physician may substitute a periodic audiogram in place of the baseline audiogram. The two situations are: (1) The audiogram reveals that the standard threshold shift is persistent, and (2) the hearing threshold shown in the periodic audiogram indicates significant improvement over the baseline audiogram. See 227.109(i).

Paragraph (j) addresses standard threshold shifts. It provides that when determining whether a standard threshold shift has occurred, the individual evaluating the audiogram can consider the contribution of age (presbycusis) to the change in hearing level. The individual evaluating the audiogram should use the procedure described in Appendix F: ''Calculation and Application of Age Correction to Audiograms.'' *See* 227.109(j).

While most of section 227.109 tracks the requirements found in OSHA's regulation (29 CFR 1910.95(g)), there are a few differences. FRA's proposed regulation differs from OSHA's regulation in three areas: (1) Baseline audiograms, (2) periodic audiograms, and (3) time frames for re-testing and for employee notification.

First, OSHA and FRA differ with respect to baseline audiograms. OSHA requires employers to establish a valid baseline audiogram within 6 months of an employee's first exposure at or above the action level. Like OSHA, FRA provides a railroad with 6 months from a new employee's first tour of duty to establish a baseline audiogram for that employee. *See* § 227.109(e)(1). (A railroad has one year to establish a baseline audiogram if it uses mobile test vans to meet these requirements.) Although OSHA's regulatory text did not provide additional time to establish baseline audiograms for existing employees, OSHA, provided one year from the effective date of the rule for employers to establish baseline audiograms for existing employees. See the ''Effective Date'' of OSHA's Final Rule. *See* 48 FR 9738. FRA also provided railroads with additional time for establishing baseline audiograms for existing employees. However, unlike OSHA, FRA has several categories of existing employees and different terms for each.For an existing employee without a baseline audiogram, a railroad will have two years from the effective date of the rule to establish a baseline audiogram for that employee. *See* § 227.109(e)(2). FRA is providing railroads with more time to establish baseline audiograms for employees without baseline audiograms, because FRA realizes that railroads will need time to ''catch up'' on testing. The decision to provide railroads with extra time for this category of employee recognizes the administrative difficulties of testing a large number of employees, as well as the high potential cost of testing so many employees in a short period of time. Railroads with 400,000 or fewer employee hours will have three years from the effective date of the rule to establish a baseline audiogram for existing employees.[62]

For existing employees who have had a baseline audiogram, a railroad may or may not be able to use that baseline audiogram, depending on how the baseline audiogram was obtained. Where an existing employee has already had a baseline audiogram as of the effective date of this rule, and it was obtained under conditions that satisfy the requirements found in 29 CFR 1910.95(h), the railroad must use that baseline audiogram. Section 1910.95(h) identifies OSHA's audiometric test requirements for employees who obtained audiograms as part of a hearing conservation program. The requirements in 29 CFR 1910.95(h) are the same requirements that are found in FRA's proposed regulation at § 227.109.

Where an existing employee has already had a baseline audiogram as of the effective date of this rule, and it was obtained under conditions that satisfy the requirements in 29 CFR 1910.95(h)(1) but not the requirements found in 29 CFR 1910.95(h)(2)–(5), the railroad may elect to use that baseline audiogram as long as the individual administering the Hearing Conservation Program makes a reasonable determination that the baseline audiogram is valid and is clinically consistent with the other material in the employee's medical file. This provision evolved out of comments made by numerous railroad hearing conservation individuals. Those individuals thought that it was in the employee's best interest to use grandfathered baseline audiograms; however, they were concerned that they would not be able to identify the information required to satisfy 29 CFR 1910.95(h)(2)–(5). To address those concerns, FRA has included this provision.

Many railroad employees—locomotive engineers, specifically—will have baseline audiograms that were obtained as part of the hearing acuity testing for FRA's Locomotive Engineer Qualification.[63] (*See* 49 CFR 240.121). As part of the locomotive engineer certification process, many engineers will have had an audiogram that meets OSHA's 29 CFR 1910.95(h) requirements. As stated above, railroads must accept these baseline audiograms if they were obtained in compliance with the requirements found in 29 CFR 1910.95(h).

In essence, then, FRA is ''grandfathering'' certain pre-existing baseline audiograms. FRA is grandfathering these baseline audiograms, because they provide a more accurate picture of an individual's initial hearing ability. They indicate an employee's initial hearing level and thus, when compared with subsequent audiograms, they will reflect the true extent of an employee's hearing loss (if any). In addition, grandfathering these baseline audiograms eliminates unnecessary costs for the railroad, because railroads do not need to re-test employees that already have baseline audiograms.

OSHA also decided to adopt a lenient policy on accepting baseline audiograms that were taken before the promulgation of the hearing conservation amendment. OSHA noted that it would be flexible in accepting or grandfathering old baseline audiograms, because in most cases, this would be more protective of employees;

[61] OSHA Interpretation Letter from OSHA to Mr. J. Christopher Nutter dated May 9, 1994.

[62] For a further discussion on allowances for small entities, see the preamble discussion for § 227.103(a).

[63] *See* Qualification and Certification of Locomotive Engineer, 49 CFR part 240.

old baseline audiograms allow the true extent of hearing loss over the years to be evaluated. In its Final Rule, OSHA noted that ''this policy is consistent with the exercise of professional judgment. It is the responsibility of the professional supervising the hearing conservation program to determine which pre-existing audiograms are acceptable and which to choose as the baseline.'' [64]

Many railroads have expressed concern about the record-keeping requirements associated with grandfathered baseline audiograms. Section 227.121 requires railroads to maintain records of employee audiometric tests and to retain them for the duration of the employee's employment. Those records should include information such as the name and job classification of the employee, the date of the audiogram, the examiner's name, the date of the last acoustic or exhaustive calibration of the audiometer, and accurate records of the measurements of the background sound pressure levels in the audiometric test rooms. Railroads explain that they will not be able to provide all the required information for grandfathered baseline audiograms. FRA is fully aware of the railroads' concerns. FRA recognizes that, in some cases, railroads will not have some of that information and will not be able to obtain some of that information (*e.g.*, a railroad might not know the examiner or the last exhaustive calibration for a baseline audiogram that was obtained five years ago). FRA will be cognizant of that fact when evaluating what records are available and when evaluating the adequacy of the available records. Overall, FRA will take a practical approach toward the audiometric test record-keeping requirements for grandfathered baseline audiograms.

Second, FRA differs from OSHA with respect to periodic audiograms. OSHA's comparable requirement, ''Annual Audiogram,'' states that ''[a]t least annually after obtaining the baseline audiogram, the employer shall obtain a new audiogram for each employee exposed'' at or above the action level. *See* 29 CFR 1910.95(g)(6).[65] FRA's proposed rule is stated in paragraph (f), ''Periodic Audiogram.'' Subparagraph (f)(1) requires railroads to offer audiometric testing to each covered employee at least once a year. FRA is aware that most large railroads already do this, and thus it should not impose a new burden on railroads. Subparagraph (f)(2) requires railroads to conduct audiometric testing of covered employees at least once every three years. This requirement mirrors part 240, in which locomotive engineers must receive a hearing test (as part of the engineer certification process) at least once every three years. See 49 CFR 240.201(c).

This provision reflects a compromise that evolved out of RSAC discussions. While employees often disfavor mandatory hearing testing, railroads generally favor mandatory hearing testing. To satisfy both concerns, FRA established a compromise position whereby railroads must test employees at least once every three years but must offer testing at least once a year. This provision is also important, because its provides additional assurances that FRA's hearing conservation efforts will be effective. The RSAC discussions indicate that the employee participation in existing railroad hearing conservation programs has been low. RSAC members agree that the effectiveness of a hearing conservation program would be improved by increased participation, and these provisions increase participation.

Third, FRA's proposal differs from OSHA's regulation with respect to time frames. In 29 CFR 1910.95(g)(7)(ii), if an annual audiogram shows that an employee has experienced a standard threshold shift, OSHA gives an employer 30 days to obtain a re-test. By comparison, FRA proposes to give an employer 90 days to obtain a re-test. See § 227.109(g)(2). FRA's standard gives employers more time to obtain a re-test, because FRA realizes that railroads can experience administrative difficulties in testing their employee population. The railroad employee population is widely dispersed, is subject to statutory Hours of Service limitations, and often works irregular hours.

In 29 CFR 1910.95(g)(8)(i), OSHA's standard provides that, if a comparison of the annual audiogram and the baseline audiogram indicates that a standard threshold shift has occurred, the employer shall inform the employee within 21 days. By contrast, FRA's proposal states that the railroad shall inform the employee of the determination within 30 days. *See* § 227.109(h)(1). FRA's standard provides railroads with more time, because FRA is taking into account the mobile railroad workforce and railroad's difficulty in providing notice to that mobile workforce. Moreover, there is no substantial harm if the railroads have an additional nine days to notify employees.

Section 227.111 Audiometric Test Requirements

Once again, this section is almost identical to OSHA's Audiometric Test Requirements. OSHA's requirements can be found at 29 CFR 1910.95(h). FRA's proposed §§ 227.111(a) through (d) are identical to OSHA's §§ 1910.95(h)(1) through (h)(5). Section 227.111(a) provides that audiometric tests shall be pure tone, air conduction hearing threshold examinations and shall test frequencies including 500, 1000, 2000, 3000, 4000, and 6000 Hz. Section 227.111(b) addresses audiometers, § 227.111(c) addresses pulse-tone and self-recording audiometers, and § 227.111(d) addresses room requirements for audiometric testing.

In § 227.111(e), FRA's proposed rule differs from OSHA's rule in two ways, one minor and one substantial. The minor difference is found in § 227.111(e)(1), where FRA adds ''or by appropriate calibration device.'' In OSHA's rule the audiometer shall be checked by testing a person with known, stable hearing thresholds. FRA's rule allows that method and also allows the audiometer to be tested with an appropriate calibration device.

The more substantial difference is found in § 227.111(e)(3). OSHA requires employers to perform an exhaustive calibration of the audiometer at least every two years. As a general rule, FRA is also requiring railroads to perform an exhaustive calibration at least every two years. However, FRA is proposing stricter requirements for mobile test vans. FRA proposes that railroads perform an exhaustive calibration of the audiometers on mobile test vans at least once a year.

FRA proposes this stricter requirement for mobile vans because of the nature of mobile service work. Mobile vans are constantly in movement, and so the audiometric equipment in those mobile vans are subject to greater mechanical stress. An exhaustive annual calibration will ensure that the audiometer is continually producing accurate test results. Moreover, the cost of such a calibration is low. Accordingly, FRA concluded that the minimal cost of this stricter requirement would be easily offset by the assurance of more accurate test data.

[64] *See* 48 FR 9738.

[65] OSHA's application of this provision may be at variance with the language. *See* OSHA's Standard Interpretations, ''Free audiometric testing for employees exposed over the action level,'' July 27, 1987. For a copy of the letter, *see http://www.osha .gov/pls/oshaweb/ owadisp.show_document? p_ table= INTERPRETATIONS&p_id=19570.*

Section 227.113 Noise Operational Controls

This section provides for the use of noise operational controls. As explained in the background section of this preamble, noise operational controls are the functional equivalent of OSHA's term ''administrative controls.'' Operational controls refer to efforts to limit workers' noise exposure by modifying workers' schedules or locations, or by modifying the operating schedule of noisy machinery. Examples of operational controls include, but are not limited to, the following: Placement of a newer (*i.e.*, quieter) locomotive in the lead; rotation of employees in and out of noisy locomotives; and variation of employee's routes, *e.g.*, rotation of employees on routes that have many grade crossings (which means that horn is sounded more often). Operational controls are beneficial, because they help reduce the total daily noise exposure of employees, thereby reducing the harmful cumulative effects of noise. They also make the environment safer and take the burden off employees to protect himself or herself. FRA seeks comments from the public on the proposed use of this measure.

This proposed regulation does not require railroads to use operational controls. (This is unlike OSHA's standard, which makes operational controls mandatory). Rather, this regulation gives railroads the option of using operational controls. Railroads can use operational controls, by themselves, to lower the total noise dose exposure (as long as the total noise dosage is not 90 dB(A) as an 8-hour TWA, in which case the railroad must require hearing protection). Railroads can also use operational controls in combination with the other controls. Those other controls include hearing protection and FRA's design, build, and maintenance requirements (*i.e.*, those items found in § 229.121, through which FRA has embodied OSHA's concept of engineering controls). FRA realizes operating requirements and labor agreements may affect a railroad's ability to use noise operational controls; nevertheless, FRA would like railroads to remain open to their use.

While operational controls will be an option for all railroads, FRA expects that the smaller railroads will be in the best position to use them and benefit from the flexibility that they provide. Small railroad work is characterized by more limited hours of operation and more flexible work rules, and thus it is more conducive to the use of operational controls. Noise operational controls are even more useful to small railroads since they rarely have the opportunity to implement engineering controls. Unlike larger railroads, small railroads infrequently buy new locomotives or rebuild old locomotives.

The regulation notes that ''[w]hen employees are exposed to sound exceeding an 8-hour TWA of 90 dB(A), railroads may use noise operational controls.'' FRA would like to clarify, however, that railroads may consider noise operational controls at any point in time. In other words, railroads need not wait until sound reaches an 8-hour TWA of 90 dB(A) before considering and/or using operational controls.

Section 227.115 Hearing Protectors

This section addresses another measure—hearing protectors (HP)—that can be used to minimize employee exposure to noise in the locomotive cab. The term ''hearing protector'' is defined in § 227.5. However, in simpler words, a hearing protector is a ''personal safety product that is worn to reduce the harmful auditory and/or annoying effects of sound.'' [66] Hearing protectors can be divided into three main categories: (1) Ear plugs are placed in or against the entrance of the ear canal to form a seal and block sound. (2) Ear muffs fit over and around the ears to provide an acoustic seal against the head. (3) Helmets encase the entire head.[67]

With respect to the rail industry, RSAC members noted that ear plugs and ear muffs are the most commonly-used forms of hearing protection. During Working Group discussions, a railroad representative of the RSAC noted that several railroads occasionally have used low attenuation ear muffs, electronic-assisted ear muffs, and active noise cancellation ear muffs. The representative also indicated that several railroads have tried using radio headsets. Crews have not received them well, and so railroads have not used them widely.[68] FRA invites comments from the public on the use of these types of hearing protection.

Paragraph (a) proposes that railroads shall require the use of hearing protectors where employees are exposed to sound exceeding an 8-hour time-weighted-average of 90 dB(A). Paragraphs (b)–(e) are modeled after the similar OSHA provision, which is located at 29 CFR 1910.95(i).

There is one significant difference between FRA's proposal and OSHA's provision. FRA has added subparagraph (b)(2), which requires railroads to consider two important factors when offering (and requiring) hearing protectors: (1) Employees' ability to understand and respond to voice communications, and (2) employees' ability to hear and respond to audible warnings. This requirement addresses FRA's concern that the use of hearing protection may be counter-productive, especially for employees with existing hearing loss. If, for example, there is a cab employee who is exposed to a TWA of 85 or 86 dB(A), the railroad will not want to simply put 30 dB noise reduction HP on that employee, because it will reduce the employee's hearing ability and thus the employee's ability to listen and communicate in the cab. The ability of these employees to discriminate speech and recognize other auditory clues can be critical to avoiding train accidents and incidents. In the transportation industry, there are important concerns about communication, in general, and about speech communication in noise, in particular. FRA seeks comment from the public on the proposal contained in this regulation, as well as any suggestions as to how best address this issue.

During meetings, some labor members of the RSAC noted their unease with the hearing protector requirement located in § 227.115(b)(2). They are concerned that some railroads might use a mandatory hearing protector provision as a disciplinary tool or as a means for harassing an employee. They also state that some employees find HP to be uncomfortable, and if railroads unnecessarily mandate the use of HP, compliance may erode and employees could encounter excessive noise exposure. FRA believes there are many beneficial aspects to HP, and thus FRA is including this section. FRA seeks comment from the public on these concerns.

Paragraph (d) generated a great deal of discussion and thus is discussed here. Paragraph (d) states that ''The railroad shall give employees the opportunity to select their hearing protectors from a variety of suitable hearing protectors. The selection shall include devices with a range of attenuation levels.'' This paragraph is intended to help ensure that railroads offer employees suitable hearing protectors. Providing a choice of suitable devices increases the likelihood that the employee will use the device as required. The first sentence of this paragraph is almost identical to OSHA's

[66] Berger, Elliott H. (2000). ''Hearing Protection Devices'' in The Noise Manual, edited by Elliott H. Berger, Larry H. Royster, Dennis P. Driscoll, Julia Doswell Royster, and Martha Lane, American Industrial Hygiene Association, 381.

[67] Berger at 383.

[68] *See* the discussion below on § 227.121(d) for a further discussion of radio headsets.

rule. The second sentence is an addition to FRA's rule. FRA included the second sentence to acknowledge the importance of having a variety of hearing protectors with a range of hearing attenuation levels. Ensuring inclusion of low or moderate attenuation devices furthers safety by facilitating communication and detection of audible cues in the workplace.

The related matter of electronic communication headsets arose during Working Group meetings and generated extensive discussions. Railroad representatives strongly disfavor the use of these devices. They maintain that these types of devices are ineffective and have gained poor acceptance by crews. They also assert that it is expensive for them to purchase such devices and to apply the necessary wiring to locomotives to use these devices. Labor representatives, in response, agree that these devices have gained poor acceptance by crews, but assert that the poor acceptance is due to the conditions of their use, *i.e.*, non-temperature controlled locomotive cabs make for a warm cab environment and the resulting heat build-up under the headsets causes discomfort. Labor representatives believe that these hearing protection devices enhance communication and that crews would more widely and readily accept these devices if the circumstances of their use were improved.

For the purposes of this rule, FRA does not require a railroad to offer electronic communication headsets (wired or wireless), but FRA does not intend to discourage the use of this technology. If a railroad elects to accommodate an employee with hearing loss by providing that employee with an electronic headset, the railroad would also need to provide the other regularly assigned crew members with compatible equipment.

There are a few other miscellaneous issues related to this provision. With respect to locomotive engineers, the issue of hearing acuity is addressed in 49 CFR Part 240. In addition, with respect to crew members with documented hearing loss, the proposed rule does not vary or add to the railroad's duties under the Americans with Disabilities Act.

Section 227.117 Hearing Protector Attenuation

FRA's proposal is identical to OSHA's Hearing Protector Attenuation provisions. OSHA's standard is found at 29 CFR 1910.95(j). Paragraph (a) provides that a railroad shall evaluate HP attenuation for the specific noise environments in which the protector will be used and directs that a railroad shall use one of the methods described in Appendix B to this part, ''Methods for Estimating the Adequacy of Hearing Protector Attenuation.'' Those methods include the Noise Reduction Rating (NRR), NIOSH methods #1, #2, and #3, and objective measurement.

FRA seeks comment on an additional method, ''Method B,'' which is not included in Appendix B. Method B refers to the ANSI S12.6–1997 entitled Methods for Measuring Real-Ear Attenuation of Hearing Protectors. This standard ''provides attenuation estimates based on the responses of subject who are given the manufacturer's directions and are told to fit the device themselves as best they can.'' [69] Instead of the traditional method of obtaining attenuation estimates, which uses experimenters who fit highly trained subjects, this method uses subjects that are untrained in the fitting of hearing protectors. Arguably, ''the NRR derived from Method B more closely resembles the real-world performance of hearing protectors.'' [70] Although this method is not included in Appendix B, FRA thinks that it would be a useful method and so seeks comment on its inclusion in the rule as yet one more method of measuring hearing protector attenuation.

Paragraph (b) states that hearing protectors shall attenuate employee exposure to an 8-hour TWA of 90 decibels or lower, as required by § 227.115 of this subpart.

Paragraph (c) provides that hearing protectors for employees who have experienced a STS must attenuate exposure to an 8-hour time-weighted average of 85 decibels or lower. During RSAC discussions, a railroad representative raised some practical concerns about this requirement. Per § 227.115(d), an employee selects his hearing protection. The railroad representative is concerned that an employee might select hearing protection that is not protective enough, *e.g.*, an employee might want to use HP with lower attenuation because he or she finds it more comfortable. FRA notes that a railroad should offer its employees a variety of hearing protectors with several different types of attenuation, all of which provide adequate protection.

Paragraph (d) explains that the railroads should re-evaluate the adequacy of hearing protector attenuation whenever noise exposures increase to the extent that hearing protectors may no longer provide adequate attenuation. FRA believes it is necessary for railroads to conduct noise monitoring in order to know whether noise exposures have changed.

Section 227.119 Training Program

This section discusses FRA's proposed training program. OSHA's training program provision is located at 29 CFR 1910.95(k). While FRA's training program, in general, is similar to OSHA's training program, FRA's training also contains some distinct features of its own.

First, FRA's proposal in § 227.119(a)(2) is different than the comparable provision in OSHA's regulation. FRA requires each employee to complete the hearing training program at least once every three years. By contrast, OSHA requires employees to complete a hearing training program at least once a year. FRA's triennial training requirement is consistent with FRA's triennial audiometric testing requirement; that requirement is found in § 227.109(f)(ii).

Second, FRA has added an entire subparagraph, § 227.119(b). Subparagraph (b) identifies the times when a railroad should initiate training for employees. For new employees, a railroad shall provide training within 6 months after the employee's first tour of duty in a position identified within the scope of this part. *See* § 227.119(b)(1). FRA seeks comment on the appropriateness of this start time. In particular, FRA wants to know whether railroads should initiate training no later than six months after the employee's first occupational exposure or whether railroads should initiate training prior to the expiration of the six months (*i.e.*, when the occupational exposure occurs or before the occupational exposure first occurs). For existing employees, a railroad shall provide training within two years of the effective date of this rule. Railroads with 400,000 or less employees hours have three years to provide training.[71]

Third, in § 227.119(c), FRA has added some items to the list of information required by OSHA for a hearing conservation training program. Sections 227.119(c)(1)–(5) contains the same items that are found in OSHA's training section, 29 CFR 1910.95(k)(3). Those items are: The effects of noise on hearing; the purpose of hearing protectors; the advantages, disadvantages, and attenuation of

[69] Council for Accreditation in Occupational Hearing Conservation ''Hearing Conservation Manual,'' Fourth Edition, 114 (2002).

[70] *Id.*

[71] For a discussion on small entities, see the preamble discussion on § 227.103(a).

various types of hearing protectors; instructions on selection, fitting, use, and case of hearing protectors; and the purpose of audiometric testing and an explanation of test procedures. Sections 227.119(c)(6)–(11) contain FRA's additional training items.

Section 227.119(c)(6) requires railroads to provide an explanation of noise operational controls, where used. This is most relevant for short lines, because they are most likely to use noise operational controls. Section 227.119(c)(7) requires railroads to provide employees with general information concerning the expected range of workplace noise exposure levels associated with major categories of railroad equipment and operations (*e.g.*, switching and road assignments, hump yards proximate to retarders) and appropriate reference to requirements of the railroad concerning the use of hearing protectors.

This provision, as originally conceptualized, required railroads to provide employees with workplace noise exposure levels, including examples of where hearing protectors are or are not necessary, of types of equipment that emit excessive noise, and of operations that produce excessive noise. During meetings, some Working Group members expressed concern that railroads would have to provide detailed information specific to each employee. That would have been administratively difficult for railroads. After discussing the issue, the Working Group, and ultimately the RSAC, recommended that the requirement be expressed in more general terms. FRA accepted that recommendation. The general language addresses the railroad's administrative concerns. The general language also captures FRA's intention that railroads should provide a general discussion of the ranges of noise exposure levels that an employee might encounter. FRA does not intend that a railroad provide an individualized report to each employee.

Furthermore, FRA notes that railroads may provide details of requirements for the use of hearing protectors during safety or operating rules training, if the railroad so chooses, as long as the railroad retains the appropriate records required by this part. This provision was included to address railroad representatives' concerns about the timing of this training. Some railroad representatives asserted that this material was already covered at the time of the audiometric test. Others asserted that a portion of this information was already covered in the railroad safety rules training. Accordingly, FRA did not specify the delivery time for these training requirements. A railroad may choose to present this information at the safety rules training, operating rules training, during audiometric testing, and/or at any other time. A railroad can even present this information to an employee at different times, as long as an employee can reasonably understand the information and make sense of it.

Section 227.119(c)(8) requires railroads to explain the purposes of noise monitoring and a general description of noise monitoring procedures. The intention of this provision is that railroads will provide employees with an understanding of how monitoring is conducted and how monitoring helps to identify potentially high exposures of excessive doses. FRA does not foresee that railroads will have to provide employees with a complex, technical discussion. Rather, railroads should provide employees with enough information so that they know what will occur and what equipment will be used during monitoring.

Section 227.119(c)(9) requires railroads to provide information concerning the availability of a copy of this rule, the requirements of this rule as they affect the responsibilities of employees, and employees' rights to access records required under this part. FRA mandates that employees must participate in the audiometric testing program specified in this rule, and thus it is important that the railroads, at a minimum, explain this rule's requirements as they affect employees. This provision is not too different from OSHA's requirement; OSHA's rule contains a provision whereby the employer shall make available copies of this standard and shall also post a copy in the workplace. See 29 CFR 1910.95(l)(1). FRA had, at one point, considered a more general provision that would have broadly required railroads to provide information on the requirements of this subpart. However, FRA decided that this more narrow requirement struck a better balance between the need to provide employees relevant information and the scope of the information that railroads will have to provide.

For the reasons discussed above, FRA believes these additional requirements (*i.e.*, § 227.119(c)(6)–(9)) are important. FRA's has included these requirements to ensure that the railroad conveys general knowledge to its employees. Also, FRA believes that it is important for employees to have an understanding of how hearing loss occurs. By accomplishing this, FRA believes that employees will take further steps to protect themselves, *i.e.*, there will be an increase in employee audiograms and employee use of HP.

Section 227.119(c)(10) requires railroads to train employees on how to determine what can trigger an excessive noise report, pursuant to § 229.121(b). Section 227.119(c)(11) requires railroads to train employees on how to file an excessive noise report, pursuant to § 229.121(b). This information will be helpful to employees, because it will enable them to identify when noise exposures are loud in the locomotive cab. Also, it will educate employees, so that they know how to respond to excessive noise in the locomotive cab. These two training elements were not found in the consensus document which the RSAC forwarded to FRA. Rather, these two elements were added as a result of OSHA's review of this proposed rule. FRA invites comments on these two new training requirements.

Some railroad representatives have explained that they use already-established programs to satisfy their OSHA training requirements, and so these additional requirements will necessitate the creation of new programs and instructor training, as well as cost more. A ''canned'' OSHA training program, however, is not sufficient training for a railroad employee (although a ''canned'' OSHA training program does suffice as training for the OSHA-related elements in the FRA training program). Such a training program does not contemplate the unique needs of the railroad operating environment—e.g., the mobile nature of his or her work, the variety of noise sources to which he or she is exposed—while FRA's training program does.

This regulation does not specify a delivery method. As currently written, a railroad can provide this information through any medium it chooses. FRA understands that employees typically receive their training by viewing a video presentation or by operating an interactive computer program. About one-half of the class I railroads uses videos, while the other half uses computers. As between video and computer training, FRA would prefer that railroads use computer training because of its interactive component. The interactive component (*e.g.*, the ability to test employees' knowledge of the subject matter as they learn and the ability of employees to obtain further information during the session) creates a more effective learning environment.

Video and computer training aside, traditional classroom training is the most beneficial, because it allows employees to ask questions and receive immediate feedback. Railroad representatives feel that classroom

training should not be mandated; they note that alternative forms of training have been successfully used in other industries, as well as in the railroad industry. Railroads feel that any requirement that departs from a standardized OSHA training program might result in significantly increased costs with questionable additional benefit. FRA seeks comments on whether railroads should conduct training through the use of traditional classroom methods, video presentations, or computer training. With respect to traditional classroom methods, is there a need for that kind training (for occupational noise) in the railroad industry?

Section 227.121 Recordkeeping

This section contains the recordkeeping requirements for this regulation. This section first sets out some general recordkeeping provisions and then specifies which records railroads must maintain and retain. FRA is granted authority to inspect records from the Federal Railroad Safety Act (*see* 49 U.S.C. 20107). Pursuant to that authority, FRA must act within certain parameters when inspecting records. FRA must enter upon property and inspect records at a reasonable time and in a reasonable manner and must seek records that are relevant to FRA's investigation.

Section 227.121(a)(1)(i) provides that a railroad shall make records available to FRA, or to a railroad employee, former employee, or employee's representative, upon written authorization of such employee. In general, an individual employee would not be able to request the individual testing records of another employee. However, that employee would be able to receive the records of a monitored run if the employee was in the cab or if the employee works in the same yard. Section 227.121(a)(1)(ii) provides that a regional or national labor representative may request copies of reports for specific locations. These reports should not contain identifying information of an employee unless an employee authorizes the release of such information in writing. Section 227.121(a)(2) permits records to be kept in written or electronic form, and § 227.121(a)(3) discusses the transfer of records from a railroad that ceases to do business.

The first few records requirements parallel OSHA's rule. In paragraph (b), FRA proposes that railroads maintain exposure measurement records and retain them for three years. *See* 29 CFR 1910.95(m)(1). In paragraph (c), FRA proposes that railroads maintain employee audiometric test records and retain them for the duration of the employee's employment. *See* 29 CFR 1910.95(m)(2). FRA included a list of specific records; that list comes from OSHA's regulation. FRA has included all of OSHA's records except for one, ''the employee's most recent noise exposure assessment.'' FRA excluded that record from the list because it is impracticable. Realistically speaking, the individual performing the employee's audiometric test would not have access to this noise measurement data and thus would not be able to enter it on the audiogram. In that respect, this requirement will be impractical. Moreover, this information would already be included in the records maintained under § 227.121(b). Railroad representatives support the removal of this requirement to include individual employee exposure data on the audiometric test record.

For a discussion on FRA's position toward the audiometric test record-keeping requirements for grandfathered baseline audiograms, see the preamble discussion in § 227.107. In short, FRA expects railroads to make a good faith effort in obtaining the audiometric test records for grandfathered baseline audiograms. At the same, FRA understands that, in several cases, that might be very difficult, if not impossible, since the baseline audiograms were presumably obtained years ago. Accordingly, FRA recognizes that railroads will sometimes be unable to provide some of the required information from the audiometric testing records for grandfathered baseline audiograms.

The subsequent records requirements are new provisions that are not found in OSHA's regulation. FRA invites comment on the following proposed provisions. In paragraph (d), FRA establishes a requirement that railroads maintain a record of all positions and persons that are required to be placed in a Hearing Conservation Program. Railroads are to retain these records as long as the position and/or person is designated to be in the Hearing Conservation Program. In paragraph (e), FRA establishes a requirement that railroads maintain copies of the training materials required by § 227.119.

In paragraph (f), FRA establishes a requirement that railroads maintain lists of employees who have been found to have experienced a standard threshold shift (STS) within the prior calendar year. Railroads are to retain this list for five years. FRA seeks comment as to whether this is an appropriate amount of time for railroad to retain a list of STSs. A STS should be noted on the list for the year in which it occurred; the STS need not be re-entered on the list for subsequent years. FRA might review this information during an inspection or audit. FRA believes that this information can help to assess the effectiveness of a railroad's HCP over time. This information is not required to be reported to FRA, nor is it considered to be an accident/incident injury or illness report, pursuant to part 225.

Appendices A–G

FRA proposes to adopt appendices A–F from OSHA's noise standard. With the exception of a minor edits (*e.g.*, changing ''appendix A to § 1910.95 to ''appendix A to part 227''), FRA is adopting these appendices in their entirety. FRA seeks comment on that proposal.

FRA also seeks comment on whether or not it should adopt the non-mandatory Appendix G. Appendix G addresses conventional workplaces, rather than the railroad industry. As such, it does not accurately characterize the noise environment in the locomotive cab. In addition, much of the general material in Appendix G is also covered in the preamble discussion of this NPRM, and so it is unnecessary to repeat in Appendix G.

Appendix H—Schedule of Civil Penalties

This appendix is being reserved until the final rule. At that time, it will include a schedule of civil penalties to be used in connection with this part. Because such penalty schedules are statements of policy, notice and comment are not required prior to their issuance. *See* U.S.C. 553(b)(3)(A).

Nevertheless, commenters are invited to submit suggestions to FRA describing the types of actions or omissions under each regulatory section that would subject a person to the assessment of a civil penalty. Commenters are also invited to recommend what penalties may be appropriate, based upon the relative seriousness of each type of violation.

PART 229—RAILROAD LOCOMOTIVE SAFETY STANDARDS

Section 229.4 Information Collection

This section notes the provisions of this part that have been reviewed and approved by the Office of Management and Budget (OMB) for compliance with the Paperwork Reduction Act of 1995. *See* 44 U.S.C. 3501 *et seq.*

Section 229.5 Definitions

The term ''Decibel'' refers to a unit of measurement of sound pressure levels, and the term ''dB(A)'' refers to the

sound pressure levels in decibels measured on the A-weighted scale. These terms are commonly accepted and widely used by noise professionals.

The term ''Excessive Noise Report,'' as used in § 229.121(b), refers to a report filed by a locomotive cab occupant that indicates that the locomotive is producing an unusual level of noise such that the noise significantly interferes with normal cab communications or that the noise raises a concern with respect to hearing conservation.

The term ''Upper 99% Confidence Limit'' is a statistical probability statement. A confidence limit refers to the lower and upper boundaries of a statistic confidence interval. A confidence interval gives an estimated range of values which is likely to include an unknown population parameter. The estimated range is calculated from a given set of sample data. For example, if the upper 99% confidence limit for the noise level of a population of locomotives is 87 dB(A), then in a sample of 100 locomotives, at least 99 will be found to have a noise level of 87 dB(A) or less.

Section 229.121 Locomotive Cab Noise

(a) Performance Standards for Locomotives

FRA recognizes, and commends, railroads and manufacturers for their diligent efforts and work, thus far, in making locomotives quieter. In recent years, locomotive builders have responded to industry pressure to design and build new locomotives with better sound reduction techniques and with lower noise exposure levels. Many new locomotives now have several of the following features, which reduce the cab noise exposure level: moving the horn back to the center of the locomotive; insulating the inside of the cab; insulating the cab floor; piping the exhaust of the air brake system outside of the cab; and installing air conditioning in the cab to allow cab windows to be closed.

In addition to the above features, manufacturers have developed and offered ''quiet cabs,'' which isolate the cab occupant from noise sources of both high and low frequencies. One manufacturer, in particular, has developed a locomotive cab that is vibrationally isolated from the locomotive body, thereby resulting in substantially less noise in the cab and arguably less vibration in the cab. The manufacturer has recently discontinued offering this feature as an option. Another manufacturer has developed a locomotive design that isolates the diesel engine, which decreases the transfer of noise and vibration throughout the locomotive. Manufacturers claim that they can achieve normal noise exposure levels of 75 dB(A) in these locomotive cabs. At the time of the issuance of this proposed rule, these units are not yet pervasive throughout the industry.

Paragraph (a)(1) of proposed § 229.121(a) establishes a design requirement for all locomotives that are manufactured after January 1, 2005. It provides that all locomotives of each design or model shall average less than or equal to 85 dB(A), with an upper 99% confidence limit of 87 dB(A). This performance standard ensures that newly-built locomotives will not produce excessive noise levels. For the most part, this section imposes requirements that reflect current equipment and design, and, therefore, they should not impose a new burden on railroads or locomotive manufacturers. FRA, at one point, had considered using the average for a fleet; however, due to the difficulty of defining the term ''fleet,'' FRA is not using it. Instead, FRA is using the terms ''design'' and ''model.'' While the term ''model'' tends to be accepted terminology in the U.S., the term ''design'' is used more internationally, and, therefore, the inclusion of both terms provides for a more complete understanding of this provision.

Paragraph (a)(1) also includes some guidelines for these build provisions. A manufacturer may determine the average by testing a representative sample of locomotives or an initial series of locomotives, provided that there are suitable manufacturing quality controls and verification procedures in place to ensure product consistency. To determine whether the standard in this regulation is met, the railroad may rely on certification from the equipment manufacturer for a production run.

Paragraph (a)(2) discusses the issue of alterations on locomotive that are manufactured in accordance with paragraph (a)(1). If the average sound level for a particular locomotive design or model is less than 82 dB(A), a railroad shall not make any alterations that cause the average sound level for that locomotive design or model to exceed 82 dB(A). If the average sound level for a particular locomotive design or model is between, or includes, 82 dB(A) to 85 dB(A), then a railroad shall not make any alterations that cause the average sound level for that locomotive design or model to increase to 85 dB(A). For purposes of the maintenance conducted pursuant to § 229.121(a), replacement in kind is not an alteration. Replacement in kind refers to a situation where an individual removes a part and replaces that part with the identical part of the same make and model. That identical part must be of equivalent or better quality. The purpose underlying this provision is FRA's desire that railroads retain equipment's essential quiet cab status through the life of that locomotive and especially after the railroad performs maintenance on the locomotive.

In developing this recommended provision, the RSAC considered several other possible provisions. One of those provisions stated that the railroad should not alter any portion of the equipment originally designed to reduce interior noise unless the alteration essentially maintained the existing noise level or decreased the existing noise level. As that provision was somewhat vague, the Working Group sought to better define the term ''alteration.'' FRA suggested that an alteration would be permissible if it only resulted in a modest increase in noise. A ''modest increase'' referred to the lesser amount as between an increase of 3 dB or 85 dB(A). In other words, an alteration must not increase the noise level by more than 3 dB. And, where the noise level was 83 dB(A), the noise level could only increase 2 dB, and where the noise level was 84 dB(A), the noise level could only increase 1 dB. In all cases, the maximum permissible noise level would be 85 dB(A). Certain railroad representatives of the Working Group disfavored this provision, because they felt that it limited their ability to conduct maintenance on equipment. To address those concerns and to produce a better defined standard, FRA is using the provision now found in the rule text, which was the provision ultimately recommended by the RSAC.

Paragraph (a)(3) directs railroads and manufacturers to conduct static testing, as specified in Appendix H. Appendix H (to part 229) contains a set of procedures for conducting in-cab static test measurements on locomotives. Through the static test, railroads and manufacturers can determine whether newly-built locomotives meet the requirements of § 229.121. The rule states that a railroad or manufacturer shall follow the Appendix H static test protocols to determine compliance with paragraph (a)(1). The rule also states that a railroad or manufacturer shall also follow the Appendix H static test protocols to determine compliance with paragraph (a)(2), but only to the extent reasonably necessary to evaluate the effect of alterations during maintenance. In sum, then, a railroad or manufacturer

must conduct static testing pursuant to (a)(1) and may conduct static testing for (a)(2) if they find it is needed.

(b) Equipment Maintenance

This section stipulates the noise-related maintenance requirements for locomotives. Paragraph (b)(1) discusses the provisions concerning an excessive noise report. When a cab occupant in a locomotive operating in service experiences an unusual noise level, he or she may file a report with the railroad. In that report, the occupant should indicate those items which he or she believes are substantially contributing to the noise. An ''unusual level of noise'' refers to a noise level in the cab that is much higher or much different than that to which the occupant is normally accustomed; it is, for example, a banging or squealing sound. It is, however, not just any irritating noise. Not only must the noise level be excessive and unusual, but it must also either (1) significantly interfere with normal cab communications and/or (2) raise hearing conservation concerns.

A noise level significantly interferes with normal cab communications if it prevents the locomotive cab occupants from safely and effectively conducting their job assignments. Noise can degrade job safety in several ways. Certain parameters, such as high noise levels, high-frequency noise; and intermittent, unexpected, uncontrollable, or continuous noise can jeopardize job safety by distracting, disrupting, or annoying an individual. In addition, noise can be a safety hazard if it ''masks'' alarm signals or warning shouts. Masking is ''an increase in the threshold of audibility of one sound (the *masked* sound) caused by the presence of another sound (the *masking* sound or *masker*).'' [72] In the railroad operating environment, the masked sound can be an alarm or warning sound, speech from a coworker or over a radio, or a sound produced by a machine (*e.g.*, air brake exhaust, engine noise). Masking becomes a problem when an intentional or incident sound that is conveying useful information is rendered inaudible or when speech that is conveying critical information is rendered unintelligible. Where noise masks necessary speech or other warning signals, it disrupts speech, interferes with the communication, and prevents a cab occupant from safely performing his job. As these employees operate large pieces of equipment and transport large quantities of (sometimes dangerous) materials, there are serious consequences for errors in operation.

This proposed rule does not identify the precise decibel level at which communication is deemed to have been ''significantly interfered,'' because it is impossible to identify any single number due to the fact each individual has a different sensitivity to hearing and different susceptibility to hearing loss. Moreover, the identification of a single decibel level would be meaningless to cab occupants. As crew members do not have measurement instrumentation with them on their runs (nor do they know how to use them), the crew occupants would be unable to determine the precise decibel levels during any single run.

A noise level raises hearing conservation concerns if, for example, it causes the occupant to question the effectiveness of his or her hearing protection or if the occupant is experiencing new noise-related medical conditions such as tinnitus (*i.e.*, a ringing, buzzing, roaring, or other sound in the ear). This proposed rule operates under the assumption that the person identifying this hearing conservation concern is an individual who has been trained in hearing protection (as most employees likely will be) and understands the basic principles of hearing protection and attenuation—that is why this person is informed enough to determine that there is a hearing conservation concern.

Upon receiving an excessive noise report, a railroad must immediately correct any conditions that are required to be immediately corrected under part 229. Examples are broken or missing windows or broken or extremely loose handholds that are hitting the car body. For all other items, the railroad could allow the locomotive to run until that locomotive's next 92 day periodic inspection (as per § 229.23). At that time, the railroad would be expected to inspect the locomotive and attempt to identify the item or items that it believes is substantially contributing to the noise. The mechanical employee inspecting the locomotive would be held to the standard of a reasonably prudent mechanical employee. Where the railroad could identify that item, FRA expects that the railroad would repair and/or replace that item. FRA understands that there might be situations where a railroad brings a locomotive to the shop and makes reasonable efforts to identify a condition but is unable to do so. FRA does not intend to penalize a railroad in those situations. The railroad shall maintain a record of the excessive noise report, as well as records of any maintenance or attempted maintenance. (Records will be discussed further in § 229.121(b)(4)).

However, if the repair of the item supposedly contributing to the noise requires significant shop or material resources that are not readily available, the railroad is not required to repair that locomotive at the 92 day periodic inspection. In that situation, the railroad shall schedule its maintenance of that item to coincide with other major equipments repairs commonly used for the particular type of maintenance needed. The types of repairs to which FRA is referring include difficult-to-access equipment; vibration-isolating systems such as bushings or elastomers; and situations where the railroad had to replace the insulation padding under the cab or remove the insulation from the inside of the cab walls.

Paragraph (b)(2) identifies specific items which might lead a locomotive cab occupant to file an excessive noise report. These listed maintenance items, along with the design and build requirements in paragraph (a), embody the concept of OSHA's engineering controls. Whereas OSHA imposes a general requirements on employers to use engineering controls, FRA identifies specific items that railroads must address. This particular list evolved out of discussions of an engineering controls task force, a smaller group within the Working Group.[73] This list contains items that are likely to deteriorate over time and thus would contribute to the noise level in the cab. This includes: defective cab window seals, defective cab door seals, broken or inoperative windows, deteriorated insulation or insulation that has been removed for other reasons, and unsecured panels in the cab. The list also notes that air brakes that vent inside the cab can be a noise source.

The task force recommended these items to the Working Group, which in turn recommended them to the RSAC. The RSAC accepted this list and recommended it to FRA. FRA adopted the RSAC's list, though with one exception. FRA removed ''unsecured appurtenances in the cab'' from the list. FRA's existing regulations, 49 CFR 229.7, address this item, so FRA believes it is unnecessary to also include that item here. Section 229.7 identifies prohibited acts for locomotive safety standards. It provides that a locomotive and its appurtenances must be in proper condition and safe to operate.

[72] ''Speech Communications and Signal Detection in Noise,'' G.S. Robinson & J.G. Casali in *The Noise Manual,* 569 (2000).

[73] *See* Section VI for a discussion of the engineering controls task force.

While some of the other listed items might appear redundant, they are, in fact, not fully addressed by FRA's existing regulations. For example, cab doors are mentioned in § 229.119(a); that section provides that ''cab doors shall be equipped with a secure and operable latching device.'' While a secure and operable latching device is one component of a door, there are several other components to a door; some of which could result in noisy conditions, such as door hinges, missing doors, or a damaged door. Another item on the list is cab windows; they are mentioned in § 229.119(b), which provides that windows of the lead locomotive shall provide an undistorted view of the right-of-way for the crew from their normal position in the cab, and in section 223, which discusses window glazing. But there are other conditions that might exist. Worn window framing that permits a window to rattle is probably not viewed as a defect under FRA's existing regulations but it might be an unwanted noise source. The other listed items—cab window seals, cab door seals, insulation, and air brake venting—are not currently covered in this context in any of FRA's existing regulations.

Paragraph (b)(3) addresses a railroad's response to an excessive noise report. The proposed rule provides that a railroad has an obligation to respond to an excessive noise report filed by a locomotive cab occupant. This sentence makes explicit a railroad's obligation to make an appropriate response to cab occupant noise concerns. This first sentence was not part of the document which the RSAC forwarded to FRA. Rather, this sentence was added as a result of OSHA's review of this proposed rule. The rest of this section was part of the consensus document from the RSAC.

The proposed rule also provides that a railroad meets its obligation to respond to an excessive noise report if the railroad makes a good faith effort to identify the cause of the reported noise. In addition, if the railroad successfully determines the cause of the reported noise, then the railroad meets its obligation to respond to the excessive noise report if it repairs or replaces the item causing the noise.

Paragraph (b)(3) addresses a concern that railroad representatives raised during Working Group discussions. The representatives were concerned that they might be cited for violations in situations where they had inspected a condition (in response to a excessive noise report) but were unable to find a problem or where they had inspected the locomotive, identified the problem, and repaired that problem only to later find out that the noise concern continued to persist. It is not FRA's intention to cite railroads in these situations. The purpose of this regulation is to address unusually noisy conditions in the cab and commensurate with that, to ensure that railroads make concerted, good faith efforts to identify and if possible, correct, such noisy conditions.

Paragraph (b)(4) contains the recordkeeping requirements for this section. Railroads shall maintain a record of any excessive noise reports filed pursuant to paragraph (b)(1); and any inspection, test, maintenance, replacement, or repair completed pursuant to paragraph (b)(1). In that record, the railroad shall includes the date on which the excessive noise report was filed; and the date on which the inspection, test, maintenance, replacement, or repair occurred. The railroad shall note any attempts to identify conditions and any attempts to correct conditions.

Railroads shall retain these records for 92 days if they are made pursuant to § 229.21; or for 1 year if they are made pursuant to § 229.23. During RSAC discussions, several members suggested that railroads retain these records for two years. Other members suggested that a two year retention requirement was unreasonable. The RSAC discussed this two year retention option and instead decided to recommend the 92 day/1 year retention proposal. FRA adopted the RSAC's recommendation. FRA believes the 92 day/1 year retention proposal is most appropriate, because it is consistent with the retention requirements in existing FRA regulations, *i.e.*, § 229.21 (''Daily Inspection'') and § 229.23 (''Periodic inspection: General'').

Railroads shall establish an internal, auditable monitoring system that tracks the above-mentioned records, *i.e.*, the noise-related maintenance tasks. The system should include, at a minimum, information such as the locomotive number, the date of the complaint or inspection (from which the maintenance task arose), the items thought to have caused the problem, and the actions taken to correct the problem. These records can be maintained in writing or electronically. As this is an auditable system, FRA will review these records as part of compliance audits.

Nothing in paragraph (b) should be read to discourage or limit the use of equipment improvements or innovations that arise after publication of the final rule. In addition, nothing in paragraph (b) should be read to compromise existing duties found in part 229 to make prompt repairs to other components and systems (*e.g.*, to malfunctioning turbo chargers) that generate noise in the cab and along the wayside.

Appendices D–G

Appendices D through G are being reserved for future use.

Appendix H

Appendix H is a set of procedures for conducting in-cab static test measurements of locomotives. Railroads and locomotive manufacturers should use this protocol to determine whether they have built and (where necessary) maintained locomotives that meet the performance standards prescribed in 49 CFR 229.121(a). In formulating this protocol, FRA looked to several sources, including the procedures used by General Electric (GE) and the Electric Motor Division (EMD) of General Motors (GM), other regulations concerning railroad noise measurement,[74] and various measurement manuals and technical reports on transportation noise measurement and analysis.[75]

FRA presented an initial draft of appendix H at a RSAC Working Group meeting in July 2002. At that meeting, the Working Group established an appendix H task force to further develop the procedures. The task force, which consisted of FRA, railroad, locomotive manufacturers, and labor representatives met several times and produced several drafts. The Task Force made recommendations to the Working Group, which in turn made recommendations to the full RSAC. RSAC ultimately recommended a version of appendix H to FRA that FRA found acceptable. FRA considered all of the factors and arguments raised in these extensive discussions and produced this appendix.

Earlier drafts of the appendix set forth procedures that covered a wide range of topics and addressed many elements associated with measurement. Those drafts contained specific provisions for data collection, compliance, environmental criteria, test site requirements, and record keeping. Most notably, those drafts contained recommended measurement practices for each of those provisions.

[74] *See* 40 CFR part 201, EPA's ''Noise Emission Standards for Transportation Equipment; Interstate Rail Carriers,'' and 49 CFR part 210, FRA's ''Railroad Noise Emission Compliance Regulation.''

[75] *See* ''Railroad Noise Control: The Handbook for the Measurement, Analysis, and Abatement of Railroad Noise,'' Report No. DOT/FRA/ORD–82/02–H (1982). *See also* ''Measurement of Highway-Related Noise,'' Report No. DOT/VNTSC/FHWA–96–5 (1996).

Some members of the Working Group expressed concern with that approach. They asserted that it was unnecessary to include most of those recommended measurement practices in the protocol, since some of those recommended practices are common practices already used in the industry, are frequently incorporated in ANSI standards, and are often explained in manufacturer's instructions.[76]

After discussing these concerns, the Working Group reformulated its approach. The RSAC ultimately agreed with this reformulated approach and recommended it to FRA. FRA adopted that recommendation. The overall goal for appendix H changed from the development of an all-encompassing specific, step-by-step measurement procedure for testing entities to the development of a minimum set of measurement requirements necessary for compliance with § 229.121(a). The testing entities could use these requirements as a basis for developing their own more detailed measurement procedures, if they so desired. Accordingly, the recommended practices were revised, modified, and in some cases, removed. The paragraphs below will discuss many of the recommended practices that were found in the earlier versions of the appendix but have been removed from this version.

While most of these recommended practices have been removed from this document, FRA still acknowledges their utility and encourages railroads and manufacturers to use them. FRA would like to emphasize that if the agency were to conduct a compliance test (or re-test), its representatives (*i.e.*, inspectors) would probably employ many of these recommended practices, along with the minimum standards set out in appendix H. FRA is likely to use these measurement practices, because they constitute good measurement practices and add to the validity, accuracy, and repeatability of measurements. Also, FRA inspectors may not possess the extensive acoustical measurement background that some of the testing entities possess, and so the inspectors may need the additional explanation and criteria to understand the measurement protocol. As an aside, FRA notes that railroads and manufacturers are free to use procedures that are more stringent than those provided in this protocol.

I. Measurement Instrumentation

This section discusses the instrumentation that should be used for conducting measurements. This testing entity shall use an integrating sound level meter (iSLM) that meets the requirements of American National Standard (ANSI) S1.43–1997, ''Specification for Integrating-Averaging Sound Level Meters'' and shall calibrate the iSLM with an acoustic calibrator that meets the requirements of ANSI S1.40–1984 (R1997), ''Specification for Acoustical Calibrators.'' The testing entity should use a Type 1 instrument, but where a Type 1 instrument is not available, the testing entity may use a Type 2 instrument.

An earlier draft of the appendix included more specific calibration requirements, meter specifications, and mounting/orientation requirements. The provisions in that draft required the testing entity to follow the manufacturer's instruction for mounting and orienting the microphone; to calibrate the sound level measurement system at least annually (as well as conduct field/routine calibration); and to use iSLMs that have the capability to store for later retrieval the A-weighted, equivalent sound level and maximum sound level. In addition, the draft suggested that the testing entity use an iSLM with tripod mountings or with a secured handhold. Some members of the RSAC suggested the removal of these specific requirements. As one RSAC member explained, these provisions are not relevant to this section because they apply to procedures, not instrumentation specifications. FRA decided that, overall, the removal of these provisions would not be detrimental since most of these items are already addressed within the ANSI standard, and many of these items would be addressed in other sections of this appendix. The original draft also contained citations to certain International Organization for Standardization (ISO) and International Electrotechnical Commission (IEC) standards.[77] At the request of an RSAC member, FRA removed these citations. The RSAC member had explained that ISO and IEC standards were unnecessary and that the ANSI standards were sufficient. FRA seeks comment from the public on whether FRA should only include ANSI standards or whether FRA should also include reference to these ISO and/or IEC standards.

The decision whether to require a Type 1 or Type 2 instrument generated a great deal of discussion. FRA had considered requiring the use of Type 1 instruments, because they are more precise instruments and because they are used by other U.S. DOT modes.[78] Some RSAC members felt strongly that testing entities should not be required to use Type 1 instruments. They asserted that the minimal benefit derived from using Type 1 instruments did not justify the expensive cost of Type 1 instruments. They asserted that there would be little variance in the readings for the two instruments, yet a Type 1 instrument would cost $600 to $3,000 more than a Type 2 instrument. In addition, they pointed to other noise-related federal regulations that allow the use of Type 2 devices.[79] After extensive discussions, the Working Group agreed to the proposal in its current state. The RSAC adopted that proposal, as did the FRA. The proposal reflects a compromise between FRA's initial preference to use Type 1 instruments and certain industry member's concerns about a Type 1 requirement.

II. Test Site Requirements

This section sets forth the requirements for the testing site where in-cab static measurements are conducted. This section specifies the placement of the locomotive, the installation of locomotive appurtenances, the operational requirements for locomotives, and the condition of the testing environment. Number 1 provides that a locomotive should not be positioned in an area where large reflective surfaces are directly adjacent to or within 25 feet of the locomotive cab, and number 2 provides that a locomotive should not be positioned where other locomotives or rail cars are present on directly adjacent tracks next to or within 25 feet of the locomotive cab.

In earlier drafts, FRA had considered much more specific requirements for numbers 1 and 2. An initial draft listed types of large reflective surfaces from which the test site should be free

[76] Many of the recommended practices, which were removed from this appendix, are discussed in the paragraphs below. They include the following: The SLM should be calibrated annually, and/or the SLM should be used with tripod mountings or positioned with a secure handhold. This provision was ripe for removal, since it is often covered in the manufacturer's instructions and is also discussed in ANSI S1.43–1997 (Specifications for Integrating-Averaging Sound Level Meters).

[77] For example, the relevant IEC standards were International Standard IEC 61672–1 (2002–05) (concerning SLMs) and International Standard IEC 60942 (1997–11) (concerning microphone windscreens and acoustic calibrators).

[78] Federal Aviation Administration (FAA) standards require the use of Type 1 instruments. See 14 CFR part 36, Appendix G, Section G36.105(b). Federal Highway Administration (FHWA) standards recommend the use of Type 1 meters. See ''Measurement of Highway-Related Noise,'' Report No. DOT/VNTSC/FHWA–96–5 (1996) for the specific FHWA criteria and recommendations.

[79] *See e.g.*, 49 CFR 393.94(c)(4); 40 CFR 201.22(a); 49 CFR 229.129(b).

(barriers, hills, signboards, parked vehicles, locomotives, or rail cars on adjacent tracks, bridges, or buildings); required both sides of the locomotive to be clear of large reflective surfaces (for a minimum distance of 400 feet); and excluded locomotives and rail cars directly in front of or behind the test locomotive from that 400 foot requirement. Subsequent drafts also considered minimum distances of 100 feet, 25 feet, and zero feet. FRA decided that the 25 foot requirement was the most appropriate distance, because it did not impose a financial burden on the testing entities (as a 100 or 400 foot requirement would have) yet it still provided a minimum distance of separation between the locomotive and reflective surfaces. Also, 25 feet is a smaller distance, so it allows for an easily-duplicated test area. An earlier draft also specified track conditions (tie and ballast track that is free of track work, bridges, and trestles) and recommended the removal of all unnecessary equipment from the cab. The intent of these more restrictive provisions for numbers 1 and 2 was to ensure that there was an adequate distance between the tested locomotive and other noise sources and/or reflective surfaces. This would isolate in-cab noise (due to the locomotive) from other contaminating noise sources, which in turn, would produce the best quality measurements.

Members of the RSAC raised several concerns with these provisions. They felt that several of these requirements were ambiguous. They also explained that noise sources and reflecting objects, for the most part, affect measurements by making the in-cab noise levels higher, so if a locomotive complies with FRA's regulatory requirements when measured in these noisy circumstances, then the locomotive is performing better than expected. In addition, they stated that the creation of a specified test area free of large, reflecting surfaces and other noise sources would create an economic burden on the testing entities. Following lengthy discussions, Working Group consensus, and RSAC approval, FRA adopted the current proposal—*i.e.*, the testing entity has discretion to decide whether it wants to conduct these measurements in a test area that is free of reflecting objects and noise sources or in a test area that is a less ideal environment.

Number 3 specifies the condition of locomotive appurtenances during testing. It provides that ''[a]ll windows, doors, cabinets, seals, *etc.*, must be installed in the locomotive and be closed.'' Numbers 4 and 5 contain operational requirements. They specify that a locomotive must be warmed up to standard operating temperature and that the heating/ventilation/air conditioning (HVAC) system must be operating on high. FRA has included these operational requirements to ensure that a tested locomotive's performance is typical of a normally-operating locomotive, and to ensure that any results are replicable based on a standardized locomotive operational criteria.

Number 6 provides that ''[t]he locomotive shall not be tested in any site specifically designed to artificially lower in-cab noise levels.'' For example, a site should not contain sound absorbent materials. This concept was originally contemplated in more specific terms, *i.e.*, the ''test site railroad track shall be tie and ballast, free of special track work and bridges or trestles.'' The purpose of that concept was to ensure that testing entities did not create conditions that artificially lower the noise measurements. In order to capture this concept in broader and more generic terms, the FRA proposes this provision as it is expressed now in number 6.

III. Procedures for Measurement

This section provides detailed measurement procedures to be used during testing. Number 1 specifies the settings for the integrating-averaging sound level meter (iSLM), and number 2 describes the calibration procedure for iSLMs. Calibration is a method of validating the performance of the measurement equipment and is important because it verifies the accuracy of measurements. Both field system (routine) and laboratory (comprehensive) calibration should be conducted on iSLMs.

Number 3 identifies the four locations at which microphones should be placed and measurements taken. There are four measurements in the cab: Above the left seat, above the right seat, between the seats, and near the center of the back wall. FRA had considered the inclusion of two additional microphone positions—one above the toilet and one in the front vestibule of the locomotive cab. As explained by various RSAC members, these positions are not representative of positions inside the locomotive cab where crew members spend a substantial amount of time; they are merely transient points through which cab employees pass through to enter or exit the cab or to go to the bathroom. In addition, these locations vary by locomotive, including some locomotives that do not have these positions. Accordingly, FRA has removed these two measurement positions.

Number 4 specifies that the individual conducting the test should be as far away as possible from the measurement microphone. This is so that the individual does not impact the measurement, *e.g.*, shield the microphone from noise sources. For the same reason, the procedure also specifies that only two people can be inside the locomotive cab during testing.

Number 5 requires the manufacturer or railroad to test a locomotive under self-loading conditions if the locomotive is equipped with self-load. The purpose of this provision is to ensure that the in-cab noise level during testing is representative of the in-cab noise level during operation (*i.e.*, under load). Conducting the test in self-load mode simulates the operation of a locomotive that is pulling cars. It is important that the noise measurements are obtained under self-load, because the locomotive is under additional stress and generates more noise. In-cab noise levels of a locomotive that is self-loaded are noticeably louder than those in a locomotive that is not self-loaded and so this provision is necessary.

If the locomotive is not equipped with the ability to operate in the self-load mode, the manufacturer or railroad shall test the locomotive with ''no-load'' and add three decibels to the measured level. ''No-load'' is defined as maximum RPM, with no electric load. The AAR submitted a report to FRA in June 2003. The report, ''Locomotive Static Noise Tests,'' provided data on the noise levels for locomotives that are self-loading and those that are not self-loading. The testing data showed little correlation between the condition of various cab features and noise levels, however, the data indicated a mean and median sound level difference of two decibels between locomotives under load and locomotives not under load. FRA had proposed a four decibel adjustment (*i.e.*, the mean of approximately two decibels plus one standard deviation of 1.518). The Working Group, and ultimately the RSAC, recommended an adjustment of three decibels. FRA considered the RSAC recommendation. FRA decided to use a three decibel adjustment, however FRA also is also requiring manufacturers and railroads to record the load conditions during testing. The records requirement is located in the record keeping section; it states that a testing entity should maintain records of testing conditions and procedures, including whether or not the locomotive

was tested under self loading conditions. (*See* section IV, number 5).

Number 6 requires manufacturers and railroads to record the sound level at the highest horsepower or throttle setting. These settings were selected, because they produce the highest noise level inside the locomotive cab.

Number 7 specifies the metric, sampling rate, and measurement duration for in-cab static measurements. The metric is the A-weighted L_{av}; it is also referred to as L_{OSHA} and $L_{eq(5)}$. It represents a level of continuous constant sound that is equivalent to the same amount of A-weighted acoustic energy of the actual time-varying source. L_{av} is defined in the appendix as the equivalent sound level with a 5 dB exchange rate (with the meter set to A-weighting and slow response). Although an equation is not specified in the appendix, the definition implies the following:

$$L_{av} = 16.61 \times \log_{10}\left(\frac{1}{T}\sum_{i=1}^{N} t_i \times 10^{L_i/16.61}\right)$$

Where:

N = number of time intervals over which the measurements are taken,

t_i = time duration of the I-th interval,

T = the total time duration of the measurement (*i.e.:* = $t_1 + t_2 + \ldots + t_N$),

L_i = the A-weighted sound level of the I-th interval, and

16.61 = q = [Exchange Rate] / [$\log_{10}(2)$].

The A-weighted L_{av} sound level should be measured using a one second sampling interval for a minimum duration of 30 seconds. The sampling rate and measurement duration rate specify how often samples are taken over a specified time range and are used to compute the equivalent sound level. FRA determined that, due to the continuous nature of in-cab noise, a 30 second measurement duration was sufficient to accurately represent in-cab noise levels.

In addition to the L_{av}, FRA also considered using an A-weighted L_{eq} with a 3 dB exchange rate as the metric. The L_{eq} provides an energy-average of the noise levels during the measurement interval.

Number 8 specifies the standard for determining compliance with 49 CFR 229.121(a). It provides that the highest (*i.e.*, loudest) measurement of the four L_{av} measurements in the locomotive cab should be used as the end metric to determine whether the locomotive complies with § 229.121(a). Although this standard uses a measurement that is not representative of all four measurements in the locomotive cab, it provides a measurement that is most representative of how loud it can be in a locomotive cab. It accounts for the worse noise levels in the locomotive cab. Also, the 'highest L_{av} standard' has the advantage of requiring little processing. In addition, locomotive manufacturers currently use the 'highest L_{av} standard.'

Before deciding on the 'highest L_{av} standard,' FRA also considered energy-averaging across the four measurement positions. While energy-averaging is a very good representation of the overall noise levels in the locomotive cab (because it averages together all the energy levels), averaging, in general, is not representative of the worst, or loudest, noise levels in the cab. FRA seeks comment on the appropriateness of its decision to use the 'highest L_{av} standard.' Number 9 provides that if a locomotive fails to meet the requirements of § 229.121, the locomotive may be re-tested according to the requirements of Section II of this appendix, ''Test Site Requirements.'' This concept originated as a provision allowing a re-test in an area free of reflective surfaces and noise sources for a locomotive that fails a test. That provision provided that: ''If the test fails under original acoustical field conditions, adverse weather, or other factors that may have contributed to the failure, the test may be repeated in an acoustic free field, fair weather, etc.'' RSAC members explained that railroads and manufacturers already conduct these types of tests, and they wanted to ensure that this appendix allowed them to continue doing so. As an alternative to that provision, the RSAC considered permitting such a test as long as the test area was well-defined, *e.g.*, where the test area was defined as an area free of large reflecting surfaces or noise sources and that there was a minimum distance of 200 feet around the locomotive. That proposal was also rejected, because some RSAC members felt that the 200-foot minimum distance was too restrictive.

Ultimately, then, FRA decided to include the provision contained here in number 9 (in the ''Procedures for Measurement'' section); it provides that a railroad or manufacturer may re-test a locomotive if that locomotive fails a static test. FRA also decided that the testing entity must record the suspected reason for the failure in its records. That requirement is located in the record keeping section (*see* section IV, number 7).

IV. Record Keeping

This section requires testing entities to maintain records of their testing. They must retain these records for a minimum of three years and may keep these records in either written or electronic form. Those records include: the name of the person conducting the test and date of the test; the description of the tested locomotive; the description of the sound level meter and calibrator; the recorded measurement during calibration and for each microphone location during operating conditions; any other information necessary to describe the testing conditions and procedures (*e.g.*, whether the locomotive was tested under self-loading conditions); and, where applicable, the suspected reason for a test failure (where a locomotive fails a test and can be re-tested under section III(9)).

V. Removed Sections

There were several provisions which were considered but ultimately were not included in the appendix. In particular, there were two notable sections: Environmental Criteria and Quantities Measured, as well as the requirement of pre- and post-background testing.

A. Environmental Criteria

The Environmental Criteria specified optimal meteorological conditions that should be followed during testing. The criteria provided that meteorological conditions, such as precipitation or wind, should not interact with the locomotive or rail car such that they are audible from within the cab. The purpose of specifying this criteria was to prevent those factors from interfering with the measurements and invalidating the test. In general, conducting noise measurements under favorable meteorological conditions is a good, and common, practice. However, some RSAC members believed that these conditions should be left up to the testing entity's best judgement. Moreover, they asserted that they did not believe that entities would conduct noise testing during severe weather conditions that would be audible in the cab. Because these conditions would only serve to raise the noise level inside the cab (and would only make it more difficult, not easier, for a locomotive to pass a test), this requirement was not included in the appendix.

The Environmental Criteria also provided that the air temperature and relative humidity inside the cab should be within the manufacturer's recommended operational ranges for the iSLM or the individual measurement instrumentation. This requirement was initially placed in the appendix to account for the temperature and humidity restrictions specified by

microphone and acoustic measurement instrumentation manufacturers in their supplemental literature. Members of the RSAC acknowledged that these restrictions are mentioned in the ANSI standard and are part of the proper operation of a sound level meter. As a result, FRA decided that it was unnecessary to repeat these requirements in this appendix.

B. Quantities Measured

The ''Quantities Measured'' section specified the metrics that should be used in the measurement procedure. It noted that all instances of exterior noise contamination that is audible inside the cab should be noted and that any noise level above 115 dB(A) would invalidate the noise test. All of the information contained in this section was already stated in other parts of the appendix and NPRM, so FRA decided to simplify the appendix and remove this section.

C. Pre- and Post-Background Testing

FRA had considered pre- and post-background testing requirements. There was much discussion about this requirement, and ultimately, the RSAC recommended not to include it in this protocol. In an early proposal, this provision required manufacturers and railroads to observe the sound levels before and after the static test measurements (at each of the in-cab measurement locations) and ensure that those sound levels were at least 10 dB(A) below the sound level observed during the in-cab static measurements. Manufacturers and railroads were to measure the pre- and post-tests when the locomotive was shut down, and the sound level measurements were to be representative of the ambient noise in the cab during the test. In a later revised form, this provision required manufacturers and railroads to establish baseline noise levels in the cab (on a locomotive that has been shut down) after completing the testing at the high horsepower/throttle setting.

FRA presented this requirement because of the utility of background noise measurements; they provide key pieces of information that can be vital to the procedure and the validity of the measurements. First, pre- and post-noise measurements ensure that ambient noise does not interfere with the test measurement. If the background noise is the same (or at least very similar) during the pre- and post-background noise measurement, one can infer that the background noise did not impact the noise measurement test. Second, pre- and post-testing, along with notation of extraneous noise contamination during the test measurement, ensures that the measurements are not affected by additional noise sources that are atypical of the in-cab noise environment. If there is a variation between the pre- and post-noise measurements and there are notations of extraneous noises during the test measurement, that might indicate that there were changes in the test environment (*e.g.*, changing weather conditions, additional noise sources, etc.). Third, the use of pre- and post-testing ensures that the measurements obtained are actually from the source that is being measured. They ensure that the sound levels measured in the locomotive cab are actually due to the loaded locomotive, and not due to some other noise source.

Several RSAC members did not want to include a pre- and post-background noise measurement requirement in the appendix. They explained that they were not concerned with background noise if it did not impact the locomotive's ability to pass the test. They further asserted that a background noise level shift, even if it were 10 dB or more, is still probably below the criterion level and thus, is most likely irrelevant to whether or not the locomotive meets the criteria of this protocol. They also explained that, if there were external noise occurrences during the static test and those external noise occurrences affected the test, then the testing entity would simply conduct another test. Finding these arguments persuasive, FRA has decided to remove the pre- and post-background testing requirement, in accordance with RSAC's recommendation.

X. Regulatory Impact and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This rule has been evaluated in accordance with existing policies and procedures and determined to be non-significant according to DOT policies and procedures and ''other significant'' pursuant to Executive Order 12866 (44 FR 11034; February 26, 1979). FRA has prepared and placed in the docket a regulatory analysis addressing the economic impact of this proposed rule. Document inspection and copying facilities are available at Room PL–401 on the plaza level of the Nassif Building, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC. Photocopies may also be obtained by submitting a written request to the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001. In addition, all documents supporting this rule are available on-line at *http://dms.dot.gov*.

As part of the regulatory impact analysis, FRA has assessed quantitative measurements of costs expected from this proposed rule. Over a twenty year period, the Present Value (PV) of the estimated costs is $15.4 million. The analysis also includes qualitative discussions and quantified examples of the benefits of this proposed rule. The analysis concludes that an average savings of 24 noise-induced hearing loss cases per year would cover the average annual costs of the proposed rule.

The costs anticipated for this proposed rule include: implementation of noise monitoring programs, implementation of hearing conservation programs, audiometric testing, hearing protection, hearing conservation training programs, and additional locomotive maintenance related to noise issues.

The major benefit anticipated for this proposed rule will be the savings from a reduction in noise-induced hearing loss cases among railroad operating employees. Other quantifiable benefits include: reductions in employee absenteeism due to noise exposures, reductions in employee injuries related to noise exposures, and reductions in human factor caused train accidents. In addition, qualitative benefits should accrue from improved cab crew communications, including: increased employee performance due to decreased noise exposures; decreased vision issues related to noise exposures; and decreased stress and fatigue.

B. Regulatory Flexibility Act of 1980 and Executive Order 13272

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires Federal agencies to review proposed and final rules to assess their impact on small entities. FRA has prepared and placed in the docket an Initial Regulatory Flexibility Assessment (IRFA), which assesses the impact of this proposed rule on small entities. Document inspection and copying facilities are available at Room PL–401 on the plaza level of the Nassif Building, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC. Photocopies may also be obtained by submitting a written request to the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590.

Executive Order No. 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' requires federal agencies, among other things, to notify the Chief Counsel for Advocacy of the

Small Business Administration (SBA) of any of its draft rules that will have a significant economic impact on a substantial number of small entities. The Executive Order also requires federal agencies to consider any comments provided by the SBA and to include in the preamble to the rule the agency's response to any written comments by the SBA, unless the agency head certifies that the inclusion of such material would not serve the public interest. 67 FR 53461 (Aug. 16, 2002).

The U.S. Small Business Administration (SBA) stipulates that the largest that a ''for-profit'' railroad business firm may be, and still be classified as a ''small entity,'' is 1,500 employees for ''Line-Haul Operating'' Railroads and 500 employees for ''Switching and Terminal Establishments.''[80] ''Small entity'' is defined in 5 U.S.C. 601 as a small business concern that is independently owned and operated and is not dominant in its field of operation. SBA's ''size standards'' may be altered by Federal agencies, upon consultation with SBA and in conjunction with public comment. Pursuant to that authority, FRA has published a final policy which formally establishes ''small entities'' as railroads that meet the line haulage revenue requirements of a Class III railroad.[81] The revenue requirements are currently $20 million or less in annual operating revenue. The $20 million limit (which is adjusted by applying the railroad revenue deflator adjustment)[82] is based on the Surface Transportation Board's (STB) threshold for a Class III railroad carrier. FRA uses the same revenue dollar limit to determine whether a railroad shipper or contractor is a small entity.

However, in this rulemaking, FRA proposes to define small entities by annual employee hours. A small entity is one that has ''less than 400,000 annual employee hours.'' FRA has used this definition in the past (*e.g.*, 49 CFR parts 217, 219, and 220) to alleviate reporting requirements. By using this definition, FRA is capturing most small entities that would be defined by the SBA as small businesses. FRA proposes to use this alternative definition of ''small entity'' in this proposed rulemaking and requests comments on its use.

FRA has identified approximately 410 small railroads that could potentially be affected by this proposed regulation.[83] FRA does not expect this regulation to impose a significant burden on these small railroads. In addition, FRA does not require Tourist, Steam or Historic operations to meet any of the proposed requirements. As a result, approximately 220 very small railroad operations will incur no burden from this proposed rulemaking.

Additionally, this proposed rule does not extend to contractors who operate historic equipment in occasional service, as long as those contractors have been provided with hearing protection and are required (where necessary) to use the hearing protection while operating the historic equipment. These contractors tend to work for very small businesses, and these contractors are likely to be current, former, or retired railroad employees. These operations would certainly be classified as small businesses. FRA does not know how many of these types of operations could potentially be affected by this proposed rule. However, since FRA's proposed regulation does not extend coverage to these operations, none of them will be impacted.

FRA's proposed rule requires railroads to establish a hearing conservation program for railroad operating employees who have noise exposures that equal or exceed an 8-hour time-weighted average of 85 dB(A), *i.e.*, the action level. Railroad noise monitoring data[84] indicates that only about 45 percent of the employee assignments would require inclusion in a hearing conservation program. Therefore, FRA expects that less than 50 percent of the affected employees on small railroads will be included in a hearing conservation program. FRA expects that after initial noise exposure monitoring, some small railroads will not need to establish hearing conservation programs, because none of their work assignments will meet or exceed the action level.

This proposed rule contains a few reporting and recordkeeping requirements. The requirements primarily involve records that are needed for medical purposes, compliance assessment, and program evaluation.

The impacts of this proposed rule result primarily from the requirements of the hearing conservation program. In general, the costs are proportional to the number of employees affected. Thus, the impact on small entities (which have fewer employees) should be less than that on medium and large railroads. In addition, most large and some medium railroads currently have voluntary and/or OSHA hearing conservation programs, which eases compliance with this proposed rule. FRA anticipates that the burdens will result from developing hearing conservation programs, conducting noise monitoring, providing hearing protectors, and maintaining locomotives in response to excessive noise reports.

The two requirements that have the greatest impact are (1) the audiometric testing requirement and (2) the training requirement. FRA's proposed audiometric testing program section requires railroads to establish and maintain an audiometric testing program for employees that are covered by the hearing conservation program. It requires railroads to establish a baseline audiogram and then to conduct periodic audiograms. It also specifies requirements for conducting, evaluating, and following-up with the audiograms. FRA estimates that the average cost of audiograms (*i.e.*, hearing tests) is $40 each, and that each audiogram will take an average of 25 minutes. FRA also proposes to require railroads to conduct periodic audiometric testing of covered employees at least once every three years. FRA requires railroads to offer audiograms to all covered employees annually.

FRA's training program, in general, is similar to OSHA's hearing conservation training program. FRA requires each employee to complete the hearing training program at least once every three years. By contrast, OSHA requires employees to complete a hearing training program at least once a year. FRA's triennial training requirement is consistent with OSHA's triennial audiometric testing requirement. FRA anticipates that the American Short Line and Regional Railroad Association (ASLRRA) will develop a generic training program for its members, which will ease the burden on small entities.

With respect to compliance, smaller railroads will have more time to comply. Railroads with less than 400,000 employee hours will receive additional time to comply with the three most significant burdens and costs. First, these railroads will have an additional 18 months to establish hearing conservation programs. Second, these railroads will have an additional year (12 months) to establish valid baseline audiograms for employees that have been placed in the FRA hearing

[80] *See* ''Table of Size Standards,'' U.S. Small Business Administration, 13 CFR part 121.

[81] *See* ''Final Policy Statement Concerning Small Entities Subject to the Railroad Safety Laws'' (68 FR 24891; May 9, 2003).

[82] For further information on the calculation of the specific dollar limit please, see 49 CFR part 1201.

[83] 680 railroads—220 (tourist, steam & historic) railroads—50 (large, medium, passenger, and commuter) railroads = 410 railroads.

[84] See FRA's Regulatory Impact Analysis, Appendix C.

conservation program. Third, these railroads will have an additional year (12 months) to establish hearing conservation training programs.

The rulemaking process for this proposed rule included outreach to small entities. This NPRM was produced in conjunction with the Railroad Safety Advisory Committee (RSAC). Representation on RSAC included the ASLRRA.

The IRFA concludes that this proposed rule will not have a significant economic impact on a substantial number of small entities. In order to determine the significance of the economic impact for the final rule's Regulatory Flexibility Assessment (RFA), FRA will review the comments from all interested parties on the potential economic impact on small entities of this proposed rulemaking. FRA will consider the comments, or lack thereof, when making a decision on the RFA for the final rule.

As noted above, Executive Order No. 13272 requires Federal agencies to notify SBA Office of Advocacy of any of its draft rules that would have a significant economic impact on a substantial number of small entities. Since FRA has determined that this proposed rule will not have significant impact on a substantial number of small entities, FRA has not provided notification to SBA.

C. Paperwork Reduction Act of 1995

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* The sections that contain the new information collection requirements and the estimated time to fulfill each requirement are as follows:

CFR Section—49	Respondent universe	Total annual responses	Average time per response	Total annual burden hours	Total annual burden cost
227.13—Waivers	460 Railroads	5 petitions	1 hour	5	$175
227.103—Noise Monitoring Program	460 Railroads	460 programs	2 hours/8 hours/600 hours	5,165	0 (incl in RIA)
—Notification to Employee of Monitoring.	460 Railroads	905 lists	30 minutes	453	15,855
127.107—Hearing Conservation Program (HCP).	460 Railroads	461 HCPs	150 hrs/2 hrs/31 hrs/7.5 hours	2,875	0 (incl. in RIA)
227.109—Audiometric Testing Prog.-Existing Empl..	78,000 Employees	60,000 audiogram + 18,000 audiogram.	7 min/25 min.	7,000 + 7,500.	0 (incl. in RIA)
—Periodic Audiograms	78,000 Employees	8,000 audiograms	25 minutes	3,333	0 (incl. in RIA)
—Evaluation of Audiograms	78,000 Employees	2,000 evaluations + 420 retests	6 min/2.5 hours	1,250	0 (incl. in RIA)
—Problem Audiograms	8,000 Employees	450 documents	10 minutes	8	280
—Follow-up Procedures—Notifications.	8,000 Employees	280 notifications	15 minutes	70	2,450
—Fitting/Training of Employees: Hearing Protectors.	240 Employees	240 training sess.	2 minutes	8	0 (incl. in RIA)
—Referrals For Clinical/Otological Examinations.	240 Employees	20 referrals/result	2 hours	40	4,800
—Notification to Employee of Need: Otological Exam.	240 Employees	20 notifications	5 minutes	2	70
—New Audiometric Interpretation	240 Employees	20 notifications	20 notifications	2	70
227.111—Audiometric Test Requirements.	1,000 Mobile Vans	1,000 tests	45 minutes	750	52,500
227.117—Hearing Protection Attenuation—Evaluation.	460 Railroads	50 evaluations	30 minutes	25	1,750
—Re-Evaluations	460 Railroads	10 re-evaluations	30 minutes	5	350
227.119—Hearing Conservation Training Prog—Development.	460 Railroads	461 programs	8 hours/2 hours/116 hours/.75 hour.	891	0 (incl. in RIA)
—Employee Training	460 Railroads	18,000 trained employees	30 minutes	9,000	0 (incl. in RIA)
227.121—Record Keeping—Authorization: Records.	460 Railroads	10 requests + 10 responses	10 min. + 15 min.	4	104
229.121—Locomotive Cab Noise—Tests/Certifications.	3 Equipment Manuf.	700 tests/certic.	40 min. + 5 min.	111	7,770
—Equipment Maintenance: Excessive Noise Reports.	460 Railroads	3,000 reports + 3,000 records	10 min + 5min.	750	21,750
—Maintenance Records	460 Railroads	2,250 records	8 minutes	300	0 (incl. in RIA)
—Internal Auditable Monitoring Systems.	460 Railroads	460 systems	36 min. +8.25 hour	506	0 (incl. in RIA)
Appendix H—Static Test Protocols/Records.	700 Locomotives	2 retests + 2 rec.	35 min. + 5 min.	1	0 (incl. in RIA)

All estimates include the time for reviewing instructions; searching existing data sources; gathering or maintaining the needed data; and reviewing the information. Pursuant to 44 U.S.C. 3506(c)(2)(B), FRA solicits comments concerning: Whether these information collection requirements are necessary for the proper performance of the functions of FRA, including whether the information has practical utility; the accuracy of FRA's estimates of the burden of the information collection requirements; the quality, utility, and clarity of the information to be collected; and whether the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology, may be minimized. For information or a copy of the paperwork package submitted to OMB, contact Mr. Robert Brogan, Information Clearance Officer, at 202–493–6292.

Organizations and individuals desiring to submit comments on the collection of information requirements should direct them to Mr. Robert Brogan, Federal Railroad Administration, 1120 Vermont Avenue, NW., Mail Stop 17, Washington, DC 20590. Comments may also be submitted via e-mail to Mr. Brogan at the following address: *Robert.Brogan@fra.dot.gov*.

OMB is required to make a decision concerning the collection of information requirements contained in this proposed rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment

to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

FRA is not authorized to impose a penalty on persons for violating information collection requirements which do not display a current OMB control number, if required. FRA intends to obtain current OMB control numbers for any new information collection requirements resulting from this rulemaking action prior to the effective date of a final rule. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**.

D. Federalism Implications

FRA has analyzed this proposed rule in accordance with the principles and criteria contained in Executive Order 13132 issued on August 4, 1999, which directs Federal agencies to exercise great care in establishing policies that have federalism implications. *See* 64 FR 43255.

The RSAC, which recommended the proposed rule, has as permanent members two organizations representing State and local interests: the American Association of State Highway and Transportation Officials (AASHTO) and the Association of State Rail Safety Managers (ASRSM). The RSAC regularly provides recommendations to the FRA Administrator for solutions to regulatory issues that reflect significant input from its State members. From the absence of further comment from these representatives, or of any other representatives of State government, FRA concludes that this proposed rule has no federalism implications.

E. Environmental Impact

FRA has evaluated these regulations in accordance with its procedures for ensuring full consideration of the environmental impact of FRA actions, as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, Executive Orders, and DOT Order 5610.1c. This proposed rule meets the criteria that establish this as a non-major action for environmental purposes.

F. Unfunded Mandates Reform Act of 1995

Pursuant to Section 201 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 2 U.S.C. 1531), each Federal agency ''shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law).'' Section 202 of the Act (2 U.S.C. 1532) further requires that ''before promulgating any general notice of proposed rulemaking that is likely to result in the promulgation of any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any 1 year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement'' detailing the effect on State, local, and tribal governments and the private sector. This proposed rule will not result in the expenditure, in the aggregate, of $100,000,000 or more in any one year, and thus preparation of such a statement is not required.

G. Energy Impact

Executive Order 13211 requires Federal agencies to prepare a Statement of Energy Effects for any ''significant energy action.'' *See* 66 FR 28355; May 22, 2001. Under the Executive Order a ''significant energy action'' is defined as any action by an agency that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1)(i) That is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. FRA has evaluated this final rule in accordance with Executive Order 13211. FRA has determined that this proposed rule is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Consequently, FRA has determined that this proposed rule is not a ''significant energy action'' within the meaning of the Executive Order.

H. Privacy Act

Anyone is able to search the electronic form of all comments received into any of DOT's 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 published in the **Federal Register** on April 11, 2000 (Volume 65, Number 70, Pages 19477–78) or you may visit *http://dms.dot.gov*.

List of Subjects

49 CFR Part 227

Locomotives, Noise control, Occupational safety and health, Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 229

Locomotives, Penalties, Railroad safety, Reporting and recordkeeping requirements.

The Proposed Rule

In consideration of the foregoing chapter II, subtitle B of title 49, Code of Federal Regulations is amended as follows:

PART 227—OCCUPATIONAL NOISE EXPOSURE

1. Part 227 is added to read as follows:

Subpart A—General

Sec.
227.1 Purpose and scope.
227.3 Application.
227.5 Definitions.
227.7 Preemptive effect.
227.9 Penalties.
227.11 Responsibility for compliance.
227.13 Waivers.
227.15 Information collection.

Subpart B—Occupational Noise Exposure for Railroad Operating Employees

227.101 Scope.
227.103 Noise monitoring program.
227.105 Protection of Employees.
227.107 Hearing conservation program.
227.109 Audiometric testing program.
227.111 Audiometric test requirements.
227.113 Noise operational controls.
227.115 Hearing protectors.
227.117 Hearing protector attenuation.
227.119 Training program.
227.121 Recordkeeping.
Appendix A to Part 227—Noise Exposure Computation
Appendix B to Part 227—Methods for Estimating the Adequacy of Hearing Protector Attenuation
Appendix C to Part 227—Audiometric Measuring Instruments
Appendix D to Party 227—Audiometric Test Rooms
Appendix E to Part 227—Acoustic Calibration of Audiometers
Appendix F to Part 227—Calculations and Application of Age Corrections to Audiograms
Appendix G to Part 227—Monitoring Noise Levels
Appendix H to Part 227—Schedule of Civil Penalties [Reserved]

Authority: 49 U.S.C. 20103, 20103 (note), 20701–20702; 49 CFR 1.49.

Subpart A—General

§ 227.1 Purpose and scope.

(a) The purpose of this part is to protect the occupational health and safety of employees whose predominant noise exposure occurs in the locomotive cab.

(b) This part prescribes minimum Federal health and safety standards for specified workplace safety subjects. This part does not restrict a railroad or railroad contractor from adopting and enforcing additional or more stringent requirements.

§ 227.3 Application.

(a) Except as provided in paragraph (b) of this section, this part applies to all railroads.

(b) This part does not apply to—

(1) A railroad that operates only on track inside an installation that is not part of the general railroad system of transportation;

(2) A rapid transit operation in an urban area that is not connected to the general railroad system of transportation;

(3) A railroad that operates tourist, scenic, historic, or excursion operations, whether on or off the general railroad system of transportation; or

(4) Employees of a foreign railroad whose primary reporting point is outside the U.S. while operating trains or conducting switching operations in the U.S. if: the government of that foreign railroad has implemented requirements for hearing conservation for railroad employees; the foreign railroad undertakes to comply with those requirements while operating within the U.S.; and FRA's Associate Administrator for Safety determines that the foreign requirements are consistent with the purpose and scope of this part 227. A ''foreign railroad'' refers to a railroad that is incorporated in a place outside the United States and is operated out of a foreign country but operates for some distance in the U.S.

§ 227.5 Definitions.

As used in this part—

Action level means an eight-hour time-weighted-average sound level (TWA) of 85 dB(A), or, equivalently, a dose of 50 percent, integrating all sound levels from 80 dB(A) to 130 dB(A).

Administrator means the Administrator of the Federal Railroad Administration or the Administrator's delegate.

Artifact means any signal received or recorded by a noise measuring instrument that is not related to occupational noise exposure and may adversely impact the accuracy of the occupational noise measurement.

Audiologist means a professional, specializing in the study and rehabilitation of hearing, who is certified by the American Speech-Language-Hearing Association (ASHA), or licensed by a state board of examiners.

Baseline audiogram means an audiogram, recorded in accordance with § 227.109, against which subsequent audiograms are compared to determine the extent of change of hearing level.

Class I, Class II, and Class III railroads have the meaning assigned by the regulations of the Surface Transportation Board (49 CFR part 120; General Instructions 1–1).

Continuous noise means variations in sound level that involve maxima at intervals of 1 second or less.

Decibel (dB) means a unit of measurement of sound pressure levels.

dB(A) means the sound pressure level in decibels measured on the A-weighted scale.

Employee means any individual who is engaged or compensated by a railroad or by a contractor to a railroad to perform any of the duties defined in this part.

Exchange rate means the change in sound level, in decibels, which would require halving or doubling of the allowable exposure time to maintain the same noise dose. For purposes of this part, the exchange rate is 5 decibels.

FRA means the Federal Railroad Administration.

Hearing protector means any device or material, which is capable of being worn on the head or in the ear canal, is designed wholly or in part to reduce the level of sound entering the ear, and has a scientifically accepted indicator of its noise reduction value.

Hertz (Hz) means a unit of measurement of frequency numerically equal to cycles per second.

Medical pathology means a condition or disease affecting the ear, which is medically or surgically treatable.

Noise operational controls means a method used to reduce noise exposure, other than hearing protectors or equipment modifications, by reducing the time a person is exposed to excessive noise.

Occasional service means service of not more than a total of 20 days in a calendar year.

Otolaryngologist means a physician specializing in diagnosis and treatment of disorders of the ear, nose, and throat.

Periodic audiogram is a follow-up audiogram conducted at regular intervals after the baseline audiogram.

Person means an entity of any type covered under 1 U.S.C. 1, including but not limited to the following: A railroad; a manager, supervisor, official, or other employee or agent of a railroad; an owner, manufacturer, lessor, or lessee of railroad equipment, track, or facilities; an independent contractor providing goods or services to a railroad; and any employee of such owner, manufacturer, lessor, lessee, or independent contractor.

Railroad means any form of non-highway ground transportation that runs on rails or electromagnetic guide-ways and any entity providing such transportation, including:

(1) Commuter or other short-haul railroad passenger service in a metropolitan or suburban area and commuter railroad service that was operated by the Consolidated Rail Corporation on January 1, 1979; and

(2) High speed ground transportation systems that connect metropolitan areas, without regard to whether those systems use new technologies not associated with traditional railroads. The term ''railroad'' is also intended to mean a person that provides transportation by railroad, whether directly or by contracting out operation of the railroad to another person. The term does not include rapid transit operations in an urban area that are not connected to the general railroad system of transportation.

Representative personal sampling means measurement of an employee's noise exposure that is representative of the exposures of other employees who operate similar equipment under similar conditions.

Sound level or Sound pressure level means ten times the common logarithm of the ratio of the square of the measured A-weighted sound pressure to the square of the standard reference pressure of twenty micropascals, measured in decibels. For purposes of this part, SLOW time response, in accordance with American National Standard (ANSI) S1.43–1997 or its successor, is required.

Standard threshold shift means a change in hearing sensitivity for the worse, relative to the baseline audiogram, or relative to the most recent revised baseline (where one has been established), of an average of 10 dB or more at 2000, 3000, and 4000 Hz in either ear.

Time-weighted-average eight-hour (or 8-hour TWA) means the sound level, which, if constant over 8 hours, would result in the same noise dose as is measured. For purposes of this part, the exchange rate is 5 decibels.

Tourist, scenic, historic, or excursion operations means railroad operations that carry passengers, often using antiquated equipment, with the

conveyance of the passengers to a particular destination not being the principal purpose.

§ 227.7 Preemptive effect.

Under 49 U.S.C. 20106, issuance of the regulations in this part preempts any State law, regulation, or order covering the same subject matter, except an additional or more stringent law, regulation, or order that is necessary to eliminate or reduce an essentially local safety hazard; is not incompatible with a law, regulation, or order of the United States Government; and does not impose an unreasonable burden on interstate commerce.

§ 227.9 Penalties.

(a) Any person who violates any requirement of this part or causes the violation of any such requirement is subject to a civil penalty of at least $500 and not more than $11,000 per violation, except that: Penalties may be assessed against individuals only for willful violations, and, where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury to persons, or has caused death or injury, a penalty not to exceed $22,000 per violation may be assessed. Each day a violation continues shall constitute a separate offense. See Appendix H to this part for a statement of agency civil penalty policy.

(b) Any person who knowingly and willfully falsifies a record or report required by this part may be subject to criminal penalties under 49 U.S.C. 21311.

§ 227.11 Responsibility for compliance.

Although the duties imposed by this part are generally stated in terms of the duty of a railroad, any person, including a contractor for a railroad, who performs any function covered by this part must perform that function in accordance with this part.

§ 227.13 Waivers.

(a) A person subject to a requirement of this part may petition the Administrator for a waiver of compliance with such requirement. The filing of such a petition does not affect that person's responsibility for compliance with that requirement while the petition is being considered.

(b) Each petition for waiver under this section must be filed in the manner and contain the information required by 49 CFR part 211.

(c) If the Administrator finds that a waiver of compliance is in the public interest and is consistent with railroad safety, the Administrator may grant the waiver subject to any conditions the Administrator deems necessary.

§ 227.15 Information collection.

(a) The information collection requirements of this part were reviewed by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and are assigned OMB control number 2130–NEW.

(b) The information collection requirements are found in the following sections: §§ 227.13, 227.103, 227.107, 227.109, 227.111, 227.117, 227.119, and 227.121.

Subpart B—Occupational Noise Exposure for Railroad Operating Employees

§ 227.101 Scope.

(a) This subpart shall apply to the working conditions of—

(1) Any person who regularly performs service subject to the provisions of the hours of service laws governing ''train employees'' (*see* 49 U.S.C. 21101(5) and 21103), but does not apply to:

(i) Employees who move locomotives only within the confines of locomotive repair or servicing areas, as provided in 49 CFR 218.5 and 218.29(a), or

(ii) Employees who move a locomotive or group of locomotives for distances of less than 100 feet and this incidental movement of a locomotive or locomotives is for inspection or maintenance purposes, or

(iii) Contractors who operate historic equipment in occasional service, provided that the contractors have been provided with hearing protectors and, where necessary, are required to use the hearing protectors while operating the historic equipment;

(2) Any direct supervisor of the persons described in paragraph (a)(1) of this section whose duties require frequent work in the locomotive cab; and

(3) At the election of the railroad, any other person (including a person excluded by paragraph (a)(1) of this section) whose duties require frequent work in the locomotive cab and whose primary noise exposure is reasonably expected to be experienced in the cab, if the position occupied by such person is designated in writing by the railroad, as required by § 227.121(d).

(b) Occupational noise exposure and hearing conservation for employees not covered by this subpart is governed by the appropriate occupational noise exposure regulation of the U.S. Department of Labor, Occupational Safety and Health Administration (29 CFR part 1910).

§ 227.103 Noise monitoring program.

(a) No later than [12 months after the effective date of the final rule] for class 1, passenger, and commuter railroads; [18 months after the effective date of the final rule] for railroads with 400,000 or more employee hours; and [30 months after the effective date of the final rule] for railroads with fewer than 400,000 employee hours, each railroad shall develop and implement a noise monitoring program to determine whether any employee covered by the scope of this subpart may be exposed to noise that may equal or exceed an 8-hour TWA of 85 dB(A).

(b) Sampling strategy. (1) In its monitoring program, the railroad shall use a sampling strategy that is designed to identify employees for inclusion in the hearing conservation program and to enable the proper selection of hearing protection.

(2) Where circumstances such as high worker mobility, significant variations in sound level, or a significant component of impulse noise make area monitoring generally inappropriate, the railroad shall use representative personal sampling to comply with the monitoring requirements of this section, unless the railroad can show that area sampling produces equivalent results.

(c) Noise measurements. (1) All continuous, intermittent, and impulse sound levels from 80 decibels to 130 decibels shall be integrated into the noise measurements.

(2) Noise measurements shall be made under typical operating conditions using a sound level meter conforming, at a minimum, to the requirements of ANSI S1.4–1983 (R2001), Type 2, and set to an A-weighted SLOW response; or using an integrated sound level meter conforming, at a minimum, to the requirements of ANSI S1.43–1997 (R2002), Type 2, and set to an A-weighted SLOW response; or using a noise dosimeter conforming, at a minimum, to the requirements of ANSI 1.25–1991 (R2002), and set to an A-weighted SLOW response.

(3) All instruments used to measure employee noise exposure shall be calibrated to ensure accurate measurements.

(d) The railroad shall repeat noise monitoring, consistent with the requirements of this section, whenever a change in operations, process, equipment, or controls increases noise exposures to the extent that:

(1) Additional employees may be exposed at or above the action level; or

(2) The attenuation provided by hearing protectors being used by employees may be inadequate to meet the requirements of this section.

(e) In administering the monitoring program, the railroad shall take into consideration the identification of work environments where the use of hearing protectors may be omitted.

(f) Observation of monitoring. The railroad shall provide affected employees or their representatives with an opportunity to observe any noise dose measurements conducted pursuant to this section.

(g) Reporting of monitoring results.

(1) The railroad shall notify each monitored employee of the results of the monitoring.

(2) The railroad shall post the monitoring results at the appropriate crew origination point for a minimum of 30 days. The posting should include sufficient information to permit other crews to understand the meaning of the results in the context of the operations monitored.

§ 227.105 Protection of employees.

(a) A railroad shall provide appropriate protection for its employees who are exposed to noise that exceeds the limits of those shown in Table 1 of this section, as measured on the dB(A) scale as set forth in appendix A of this part.

(b) In assessing whether exposures exceed 115 dB(A), as set forth in paragraph (a) and Table 1 of this section, the apparent source of the noise exposures shall be noted and measurement artifacts may be removed.

(c) Except as set forth in paragraph (d) of this section, exposure to continuous noise shall not exceed 115dB(A).

(d) Exposures to continuous noise greater than 115 dB(A) and equal to or less than 120dB(A) are permissible, so long as the total daily duration does not exceed 5 seconds.

TABLE 1.—PERMISSIBLE NOISE EXPOSURES [1]

Duration permitted in hours	Sound level in dB(A)
16	85
12	87
8	90
6	92
4	95
2	100
1	105
½	110
¼ or less	115

§ 227.107 Hearing conservation program.

Consistent with the requirements of the noise monitoring program, the railroad shall administer a continuing, effective hearing conservation program, as set forth in § 227.121, for all employees exposed to noise at or above the action level. For purposes of the hearing conservation program, employee noise exposure shall be computed in accordance with Table 1 in § 227.105 and with the tables in Appendix A of this part, and without regard to any attenuation provided by the use of hearing protectors.[1]

§ 227.109 Audiometric testing program.

(a) Each railroad shall establish and maintain an audiometric testing program as set forth in this section by making audiometric testing available to all its employees who are required to be included in a hearing conservation program pursuant to § 227.107.

(b) *Cost.* The audiometric tests shall be provided at no cost to employees.

(c) *Tests.* Audiometric tests shall be performed by:

(1) A licensed or certified audiologist, otolaryngologist, or other physician; or

(2) By a qualified technician who is certified by the Council of Accreditation in Occupational Hearing Conservation or any equivalent organization; or has satisfactorily demonstrated competence in administering audiometric examinations, obtaining valid audiograms, and properly using, maintaining, and checking calibration and proper functioning of the audiometers being used. A technician who performs audiometric tests must be responsible to an audiologist, otolaryngologist or physician.

(d) *Instruments.* All audiograms obtained pursuant to this section shall be obtained with instruments that meet the requirements of appendix C of this part: Audiometric Measuring Instruments.

(e) *Baseline audiogram.* This paragraph applies to employees who are required by § 227.107 to be included in a hearing conservation program as of [the effective date of the final rule].

(1) New employees. Except as provided in paragraph (e)(1)(i) of this section, the railroad shall establish a valid baseline audiogram within 6 months of the new employee's first tour of duty.

(i) Mobile test van exception. Where mobile test vans are used to meet the baseline audiogram requirement for new employees, the railroad shall obtain a valid baseline audiogram within 1 year of the new employee's first tour of duty.

(ii) [Reserved]

(2) Existing employees. (i) If the employee has not had a baseline audiogram as of [the effective date of the final rule], the railroad shall establish a valid baseline audiogram within two years of [the effective date of the final rule]. Railroads with less than 400,000 employee hours shall do so within 3 years.

(ii) If the employee has had a baseline audiogram as of [the effective date of the final rule] and it was obtained under conditions that satisfy the requirements found in 29 CFR 1910.95(h), the railroad must use that baseline audiogram.

(iii) If the employee has had a baseline audiogram as of [the effective date of the final rule], and it was obtained under conditions that satisfy the requirements in 29 CFR 1910.95(h)(1), but not the requirements found in 29 CFR 1910.95(h)(2) through (h)(5), the railroad may elect to use that baseline audiogram as long as the individual administering the Hearing Conservation Program makes a reasonable determination that the baseline audiogram is valid and is clinically consistent with the other materials in the employee's medical file.

(3) Testing to establish a baseline audiogram shall be preceded by at least 14 hours without exposure to occupational noise in excess of the level specified in § 227.115. Hearing protectors may be used as a substitute for the requirement that baseline audiograms be preceded by 14 hours without exposure to workplace noise.

(4) The railroad shall notify its employees of the need to avoid high levels of non-occupational noise exposure during the 14-hour period immediately preceding the audiometric examination.

(f) *Periodic audiogram.* (1) At least once a year after obtaining the baseline audiogram, the railroad shall offer an audiometric test to each employee included in the hearing conservation program.

(2) At least once every three years, the railroad shall require each employee included in the hearing conservation program to take an audiometric test.

(g) *Evaluation of audiogram.* (1) Each employee's periodic audiogram shall be compared to that employee's baseline audiogram to determine if the audiogram is valid and to determine if a standard threshold shift has occurred. This comparison may be done by a technician.

(2) If the periodic audiogram demonstrates a standard threshold shift, a railroad may obtain a retest within 90

[1] When the daily dose noise exposure is composed of two or more periods of noise exposure of different levels, their combined effect should be considered, rather than the individual effect of each. If the sum of the following fractions: C1/T1+C2/T2 Cn/Tn exceeds unity, then the mixed exposure should be considered to exceed the limit value. Cn indicates the total time of exposure at a specified noise level, and Tn indicates the total time of exposure permitted at that level. Exposure to impulsive or impact noise should not exceed 140 dB peak sound pressure level.

days. The railroad may consider the results of the retest as the periodic audiogram.

(3) The audiologist, otolaryngologist, or physician shall review problem audiograms and shall determine whether there is a need for further evaluation. A railroad shall provide all of the following information to the person performing this evaluation:

(i) The baseline audiogram of the employee to be evaluated;

(ii) The most recent audiogram of the employee to be evaluated;

(iii) Measurements of background sound pressure levels in the audiometric test room as required in appendix D of this part: Audiometric Test Rooms; and

(iv) Records of audiometer calibrations required by § 227.111.

(h) *Follow-up procedures.* (1) If a comparison of the periodic audiogram to the baseline audiogram indicates that a standard threshold shift has occurred, the railroad shall inform the employee in writing within 30 days of the determination.

(2) Unless a physician or audiologist determines that the standard threshold shift is not work-related or aggravated by occupational noise exposure, the railroad shall ensure that the following steps are taken:

(i) Employees not using hearing protectors shall be fitted with hearing protectors, shall be trained in their use and care, and shall be required to use them.

(ii) Employees already provided with hearing protectors shall be refitted, shall be retrained in the use of hearing protectors offering greater attenuation, if necessary, and shall be required to use them.

(iii) If subsequent audiometric testing is necessary or if the railroad suspects that a medical pathology of the ear is caused or aggravated by the wearing of hearing protectors, the railroad shall refer the employee for a clinical audiological evaluation or an otological examination.

(iv) If the railroad suspects that a medical pathology of the ear unrelated to the use of hearing protectors is present, the railroad shall inform the employee of the need for an otological examination.

(3) If subsequent audiometric testing of an employee whose exposure to noise is less than an 8-hour TWA of 90 decibels indicates that a standard threshold shift is not persistent, the railroad shall inform the employee of the new audiometric interpretation and may discontinue the required use of hearing protectors for that employee.

(i) *Revised baseline.* A periodic audiogram may be substituted for the baseline measurement by the audiologist, otolaryngologist, or physician who is evaluating the audiogram if:

(1) The standard threshold shift revealed by the audiogram is persistent; or

(2) The hearing threshold shown in the periodic audiogram indicates significant improvement over the baseline audiogram.

(j) *Standard threshold shift.* In determining whether a standard threshold shift has occurred, allowance may be made for the contribution of aging (presbycusis) to the change in hearing level by correcting the annual audiogram according to the procedure described in appendix F of this part: Calculation and Application of Age Correction to Audiograms.

§ 227.111 Audiometric test requirements.

(a) Audiometric tests shall be pure tone, air conduction, hearing threshold examinations, with test frequencies including 500, 1000, 2000, 3000, 4000, and 6000 Hz. Tests at each frequency shall be taken separately for each ear.

(b) Audiometric tests shall be conducted with audiometers (including microprocessor audiometers) that meet the specifications of and are maintained and used in accordance with ANSI S3.6–1996 ''Specification for Audiometers'' or its successor, which is incorporated by reference.

(c) Pulsed-tone and self-recording audiometers, where used, shall meet the requirements specified in appendix C of this part: Audiometric Measuring Instruments.

(d) Audiometric examinations shall be administered in a room meeting the requirements listed in appendix D of this part: Audiometric Test Rooms.

(e) Audiometer calibration. (1) The functional operation of the audiometer shall be checked before each day's use by testing a person with known, stable hearing thresholds or by appropriate calibration device, and by listening to the audiometer's output to make sure that the output is free from distorted or unwanted sounds. Deviations of 10 decibels or greater require an acoustic calibration.

(2) Audiometer calibration shall be checked acoustically at least annually in accordance with appendix E of this part: Acoustic Calibration of Audiometers. Test frequencies below 500 Hz and above 6000 Hz may be omitted from this check. Deviations of 15 decibels or greater require an exhaustive calibration.

(3) Except for audiometers used in mobile test vans, an exhaustive calibration shall be performed at least every two years in accordance with the ANSI S3.6–1996 ''Specification for Audiometers'' or its successor. Test frequencies below 500 Hz and above 6000 Hz may be omitted from this calibration. For audiometers used in mobile test vans, the exhaustive calibration shall be performed annually.

§ 227.113 Noise operational controls.

When employees are exposed to sound exceeding an 8-hour TWA of 90 dB(A), the railroad may use noise operational controls to reduce exposures below those required by Table 1 of § 227.105.

§ 227.115 Hearing protectors.

(a) When employees are exposed to sound exceeding an 8-hour TWA of 90 dB(A), the railroad shall require that hearing protectors be utilized to reduce exposures below those required by Table 1 of § 227.105.

(b) A railroad shall make hearing protectors available to all of its employees exposed to noise at or above the action level, at no cost to the employees.

(1) Hearing protectors shall be replaced as necessary.

(2) When offering hearing protectors, a railroad shall consider an employee's ability to understand and respond to voice radio communications and audible warnings.

(c) A railroad shall require the use of hearing protectors when:

(1) The employee is exposed to sound exceeding an 8-hour TWA of 90 dB(A); or

(2) The employee is exposed to sound levels that meet or exceed the action level, and the employee:

(i) Has not yet had a baseline audiogram established pursuant to § 227.109; or

(ii) Has experienced a standard threshold shift and is required to use hearing protectors under § 227.109(h).

(d) The railroad shall give employees the opportunity to select their hearing protectors from a variety of suitable hearing protectors. The selection shall include devices with a range of attenuation levels.

(e) The railroad shall provide training in the use and care of all hearing protectors provided to employees.

(f) The railroad shall ensure proper initial fitting and supervise the correct use of all hearing protectors.

§ 227.117 Hearing protector attenuation.

(a) A railroad shall evaluate hearing protector attenuation for the specific

noise environments in which the protector will be used. The railroad shall use one of the evaluation methods described in appendix B of this part: Methods for Estimating the Adequacy of Hearing Protection Attenuation or objective measurement.

(b) Hearing protectors shall attenuate employee exposure to an 8-hour TWA of 90 decibels or lower, as required by § 227.115.

(c) For employees who have experienced a standard threshold shift, hearing protectors must attenuate employee exposure to an 8-hour time-weighted average of 85 decibels or lower.

(d) The adequacy of hearing protector attenuation shall be re-evaluated whenever employee noise exposures increase to the extent that the hearing protectors provided may no longer provide adequate attenuation. A railroad shall provide more effective hearing protectors where necessary.

§ 227.119 Training program.

(a) The railroad shall institute an occupational noise and hearing conservation training program for all employees included in the hearing conservation program.

(1) The railroad shall offer the training program annually; and

(2) The railroad shall require each employee to complete the training at least once every three years.

(b) The railroad shall provide the training required by paragraph (a) of this section:

(1) For new employees, within six months after the employee's first tour of duty in a position identified as within the scope of this part.

(2) For existing employees as of [the effective date of the final rule], within two years of [the effective date of the final rule]. Railroads with fewer than 400,000 employee hours shall do so within 3 years.

(c) The training program shall include and the training materials shall reflect, at a minimum, information on all of the following:

(1) The effects of noise on hearing;

(2) The purpose of hearing protectors;

(3) The advantages, disadvantages, and attenuation of various types of hearing protectors;

(4) Instructions on selection, fitting, use, and care of hearing protectors;

(5) The purpose of audiometric testing, and an explanation of the test procedures;

(6) An explanation of noise operational controls, where used;

(7) General information concerning the expected range of workplace noise exposure levels associated with major categories of railroad equipment and operations (*e.g.*, switching and road assignments, hump yards near retarders, etc.) and appropriate reference to requirements of the railroad concerning use of hearing protectors;

(8) The purpose of noise monitoring and a general description of monitoring procedures;

(9) The availability of a copy of this part, an explanation of the requirements of this part as they affect the responsibilities of employees, and employees' rights to access records under this part;

(10) How to determine what can trigger an excessive noise report, pursuant to 49 CFR 229.121(b); and

(11) How to file an excessive noise report, pursuant to 49 CFR 229.121(b).

§ 227.121 Recordkeeping.

(a) *General requirements.* (1) *Availability of records.* (i) Each railroad required to maintain and retain records under this part shall make those records available for inspection and copying/photocopying to: the Administrator, upon request; and/or an employee, a former employee, or such person's representative, upon written authorization by such employee.

(ii) A regional or national labor representative may request copies of reports for specific locations. These reports will not contain identifying information of an employee unless an employee authorizes the release of such information in writing.

(2) *Electronic records.* All records required by this part may be kept in electronic form, if desired, by the railroad.

(3) *Transfer of records.* If a railroad ceases to do business, it shall transfer to the successor employer all records required to be maintained by this section, and the successor employer shall retain them for the remainder of the period prescribed in this section.

(b) *Exposure measurements.* The railroad shall:

(1) Maintain an accurate record of all employee exposure measurements required by § 227.103; and

(2) Retain these records for at least three years.

(c) *Audiometric tests.* The railroad shall:

(1) Maintain employee audiometric test records required by § 227.109, including:

(i) The name and job classification of the employee;

(ii) The date of the audiogram;

(iii) The examiner's name;

(iv) The date of the last acoustic or exhaustive calibration of the audiometer;

(v) Accurate records of the measurements of the background sound pressure levels in audiometric test rooms; and

(2) Retain these records for the duration of the covered employee's employment.

(d) *Positions and persons designated.* The railroad shall:

(1) Maintain a record of all positions or persons or both designated by the railroad to be placed in a Hearing Conservation Program pursuant to § 227.107.

(2) Retain these records for the duration of the designation.

(e) *Training program materials.* The railroad shall:

(1) Maintain copies of all training materials used to comply with § 227.119(c) and a record of employees trained.

(2) Retain these records for three years.

(f) *Standard threshold shift records.* The railroad shall:

(1) Maintain a record of all employees who have been found to have experienced a standard threshold shift within the prior calendar year and include all of the following information for each employee on the record:

(i) Date of the employee's baseline audiogram;

(ii) Date of the employee's most recent audiogram;

(iii) Date of the establishment of a standard threshold shift;

(iv) The employee's job code; and

(v) An indication of how many standard threshold shifts the employee has experienced in the past, if any.

(2) Retain these records for five years.

Appendix A to Part 227—Noise Exposure Computation

This appendix is mandatory.

I. Computation of Employee Noise Exposure

(1) Noise dose is computed using Table A–1 of this appendix as follows:

(i) When the sound level, L, is constant over the entire work shift, the noise dose, D, in percent, is given by: D=100 C/T, where C is the total length of the work day, in hours, and T is the reference duration corresponding to the measured sound level, L, as given in Table A–1 or by the formula shown as a footnote to that table.

(ii) When the workshift noise exposure is composed of two or more periods of noise at different levels, the total noise dose over the work day is given by: D = 100 (C1/T1+C2/T2+ . . . + Cn/Tn), where Cn indicates the total time of exposure at a specific noise level, and Tn indicates the reference duration for that level as given by Table A–1.

(2) The eight-hour time-weighted average sound level (TWA), in decibels, may be computed from the dose, in percent, by means of the formula: TWA=16.61 log10 (D/

100)+90. For an eight-hour workshift with the noise level constant over the entire shift, the TWA is equal to the measured sound level.

(3) A table relating dose and TWA is given in section II of this appendix.

TABLE A–1

A-weighted sound level, L (decibel)	Reference duration T (hour)
80	32
81	27.9
82	24.3
83	21.1
84	18.4
85	16
86	13.9
87	12.1
88	10.6
89	9.2
90	8
91	7.0
92	6.1
93	5.3
94	4.6
95	4
96	3.5
97	3.0
98	2.6
99	2.3
100	2
101	1.7
102	1.5
103	1.3
104	1.1
105	1
106	0.87
107	0.76
108	0.66
109	0.57
110	0.5
111	0.44
112	0.38
113	0.33
114	0.29
115	0.25
116	0.22
117	0.19
118	0.16
119	0.14
120	0.125
121	0.11
122	0.095
123	0.082
124	0.072
125	0.063
126	0.054
127	0.047
128	0.041
129	0.036
130	0.031

In the above table the reference duration, T, is computed by

$$T = \frac{8}{2^{(L-90)/5}}$$

Where L is the measured A-weighted sound level.

II. Conversion Between ''Dose'' and ''8-Hour Time-Weighted Average'' Sound Level

Compliance with subpart B of this part is determined by the amount of exposure to noise in the workplace. The amount of such exposure is usually measured with a dosimeter which gives a readout in terms of ''dose.'' In order to better understand the requirements of the regulation, dosimeter readings can be converted to an ''8-hour time-weighted average sound level.'' (TWA).

In order to convert the reading of a dosimeter into TWA, see Table A–2 of this appendix. This table applies to dosimeters that are set by the manufacturer to calculate dose or percent exposure according to the relationships in Table A–1. So, for example, a dose of 91 percent over an eight hour day results in a TWA of 89.3 dB, and a dose of 50 percent corresponds to a TWA of 85 dB.

If the dose as read on the dosimeter is less than or greater than the values found in Table A–2, the TWA may be calculated by using the formula: TWA=16.61 log10 (D/100)+90 where TWA=8-hour time-weighted average sound level and D=accumulated dose in percent exposure.

TABLE A–2.—CONVERSION FROM ''PERCENT NOISE EXPOSURE'' OR ''DOSE'' TO ''8-HOUR TIME-WEIGHTED AVERAGE SOUND LEVEL'' (TWA)

Dose or percent noise exposure	TWA
10	73.4
15	76.3
20	78.4
25	80.0
30	81.3
35	82.4
40	83.4
45	84.2
50	85.0
55	85.7
60	86.3
65	86.9
70	87.4
75	87.9
80	88.4
81	88.5
82	88.6
83	88.7
84	88.7
85	88.8
86	88.9
87	89.0
88	89.1
89	89.2
90	89.2
91	89.3
92	89.4
93	89.5
94	89.6
95	89.6
96	89.7
97	89.8
98	89.9
99	89.9
100	90.0
101	90.1
102	90.1
103	90.2
104	90.3

TABLE A–2.—CONVERSION FROM ''PERCENT NOISE EXPOSURE'' OR ''DOSE'' TO ''8-HOUR TIME-WEIGHTED AVERAGE SOUND LEVEL'' (TWA)—Continued

Dose or percent noise exposure	TWA
105	90.4
106	90.4
107	90.5
108	90.6
109	90.6
110	90.7
111	90.8
112	90.8
113	90.9
114	90.9
115	91.1
116	91.1
117	91.1
118	91.2
119	91.3
120	91.3
125	91.6
130	91.9
135	92.2
140	92.4
145	92.7
150	92.9
155	93.2
160	93.4
165	93.6
170	93.8
175	94.0
180	94.2
185	94.4
190	94.6
195	94.8
200	95.0
210	95.4
220	95.7
230	96.0
240	96.3
250	96.6
260	96.9
270	97.2
280	97.4
290	97.7
300	97.9
310	98.2
320	98.4
330	98.6
340	98.8
350	99.0
360	99.2
370	99.4
380	99.6
390	99.8
400	100.0
410	100.2
420	100.4
430	100.5
440	100.7
450	100.8
460	101.0
470	101.2
480	101.3
490	101.5
500	101.6
510	101.8
520	101.9
530	102.0
540	102.2

TABLE A–2.—CONVERSION FROM ''PERCENT NOISE EXPOSURE'' OR ''DOSE'' TO ''8-HOUR TIME-WEIGHTED AVERAGE SOUND LEVEL'' (TWA)—Continued

Dose or percent noise exposure	TWA
550	102.3
560	102.4
570	102.6
580	102.7
590	102.8
600	102.9
610	103.0
620	103.2
630	103.3
640	103.4
650	103.5
660	103.6
670	103.7
680	103.8
690	103.9
700	104.0
710	104.1
720	104.2
730	104.3
740	104.4
750	104.5
760	104.6
770	104.7
780	104.8
790	104.9
800	105.0
810	105.1
820	105.2
830	105.3
840	105.4
850	105.4
860	105.5
870	105.6
880	105.7
890	105.8
900	105.8
910	105.9
920	106.0
930	106.1
940	106.2
950	106.2
960	106.3
970	106.4
980	106.5
990	106.5
999	106.6

Appendix B to Part 227—Methods for Estimating the Adequacy of Hearing Protector Attenuation

This appendix is mandatory.

For employees who have experienced a significant threshold shift, hearing protector attenuation must be sufficient to reduce employee exposure to a TWA of 85 dB. Employers must select one of the following methods by which to estimate the adequacy of hearing protector attenuation.

The most convenient method is the Noise Reduction Rating (NRR) developed by the Environmental Protection Agency (EPA). According to EPA regulations, the NRR must be shown on the hearing protector package. The NRR is then related to an individual worker's noise environment in order to assess the adequacy of the attenuation of a given hearing protector. This appendix describes four methods of using the NRR to determine whether a particular hearing protector provides adequate protection within a given exposure environment. Selection among the four procedures is dependent upon the employer's noise measuring instruments.

Instead of using the NRR, employers may evaluate the adequacy of hearing protector attenuation by using one of the three methods developed by the National Institute for Occupational Safety and Health (NIOSH), which are described in the ''List of Personal Hearing Protectors and Attenuation Data,'' HEW Publication No. 76–120, 1975, pages 21–37. These methods are known as NIOSH methods 1B1, 1B2 and 1B3. The NRR described below is a simplification of NIOSH method 1B2. The most complex method is NIOSH method 1B1, which is probably the most accurate method since it uses the largest amount of spectral information from the individual employee's noise environment. As in the case of the NRR method described below, if one of the NIOSH methods is used, the selected method must be applied to an individual's noise environment to assess the adequacy of the attenuation. Employers should be careful to take a sufficient number of measurements in order to achieve a representative sample for each time segment.

Note: The employer must remember that calculated attenuation values reflect realistic values only to the extent that the protectors are properly fitted and worn.

When using the NRR to assess hearing protector adequacy, one of the following methods must be used:

(i) When using a dosimeter that is capable of C-weighted measurements:

(A) Obtain the employee's C-weighted dose for the entire workshift, and convert to TWA (see appendix A, II).

(B) Subtract the NRR from the C-weighted TWA to obtain the estimated A-weighted TWA under the ear protector.

(ii) When using a dosimeter that is not capable of C-weighted measurements, the following method may be used:

(A) Convert the A-weighted dose to TWA (see appendix A).

(B) Subtract 7 dB from the NRR.

(C) Subtract the remainder from the A-weighted TWA to obtain the estimated A-weighted TWA under the ear protector.

(iii) When using a sound level meter set to the A-weighting network:

(A) Obtain the employee's A-weighted TWA.

(B) Subtract 7 dB from the NRR, and subtract the remainder from the A-weighted TWA to obtain the estimated A-weighted TWA under the ear protector.

(iv) When using a sound level meter set on the C-weighting network:

(A) Obtain a representative sample of the C-weighted sound levels in the employee's environment.

(B) Subtract the NRR from the C-weighted average sound level to obtain the estimated A-weighted TWA under the ear protector.

(v) When using area monitoring procedures and a sound level meter set to the A-weighing network.

(A) Obtain a representative sound level for the area in question.

(B) Subtract 7 dB from the NRR and subtract the remainder from the A-weighted sound level for that area.

(vi) When using area monitoring procedures and a sound level meter set to the C-weighting network:

(A) Obtain a representative sound level for the area in question.

(B) Subtract the NRR from the C-weighted sound level for that area.

Appendix C to Part 227—Audiometric Measuring Instruments

This appendix is mandatory.

1. In the event that pulsed-tone audiometers are used, they shall have a tone on-time of at least 200 milliseconds.

2. Self-recording audiometers shall comply with the following requirements:

(A) The chart upon which the audiogram is traced shall have lines at positions corresponding to all multiples of 10 dB hearing level within the intensity range spanned by the audiometer. The lines shall be equally spaced and shall be separated by at least ¼ inch. Additional increments are optional. The audiogram pen tracings shall not exceed 2 dB in width.

(B) It shall be possible to set the stylus manually at the 10 dB increment lines for calibration purposes.

(C) The slewing rate for the audiometer attenuator shall not be more than 6 dB/second except that an initial slewing rate greater than 6 dB/second is permitted at the beginning of each new test frequency, but only until the second subject response.

(D) The audiometer shall remain at each required test frequency for 30 seconds (+/-3 seconds). The audiogram shall be clearly marked at each change of frequency and the actual frequency change of the audiometer shall not deviate from the frequency boundaries marked on the audiogram by more than 3 seconds.

(E) It must be possible at each test frequency to place a horizontal line segment parallel to the time axis on the audiogram, such that the audiometric tracing crosses the line segment at least six times at that test frequency. At each test frequency, the threshold shall be the average of the midpoints of the tracing excursions.

Appendix D to Part 227—Audiometric Test Rooms

This appendix is mandatory.

Rooms used for audiometric testing shall not have background sound pressure levels exceeding those in Table D–1 of this appendix when measured by equipment conforming at least to the Type 2 requirements of ANSI S1.4–1983 (R2001), ''Specification for Sound Level Meters'' and to the Class II requirements of ANSI S1.11–1971 (R1976), ''Specification for Octave, Half-Octave, and Third-Octave Band Filter Sets.''

TABLE D–1.—MAXIMUM ALLOWABLE OCTAVE-BAND SOUND PRESSURE LEVELS FOR AUDIOMETRIC TEST ROOMS

Octave-band center frequency (Hz)	500	1000	2000	4000	8000
Sound pressure level (dB)	40	40	47	57	62

Appendix E to Part 227—Acoustic Calibration of Audiometers

This appendix is mandatory.

Audiometer calibration shall be checked acoustically, at least annually, according to the procedures described in this appendix. The equipment necessary to perform these measurements is a sound level meter, octave-band filter set, and a National Bureau of Standards 9A coupler. In making these measurements, the accuracy of the calibrating equipment shall be sufficient to determine that the audiometer is within the tolerances permitted by ANSI S3.6–1996, ''Specification for Audiometers.''

(1) Sound Pressure Output Check.

A. Place the earphone coupler over the microphone of the sound level meter and place the earphone on the coupler.

B. Set the audiometer's hearing threshold level (HTL) dial to 70 dB.

C. Measure the sound pressure level of the tones at each test frequency from 500 Hz through 6000 Hz for each earphone.

D. At each frequency, the readout on the sound level meter should correspond to the levels in Table E–1 or Table E–2 of this appendix, as appropriate, for the type of earphone, in the column entitled ''sound level meter reading.''

(2) Linearity Check.

A. With the earphone in place, set the frequency to 1000 Hz and the HTL dial on the audiometer to 70 dB.

B. Measure the sound levels in the coupler at each 10 dB decrement from 70 dB to 10 dB, noting the sound level meter reading at each setting.

C. For each 10 dB decrement on the audiometer, the sound level meter should indicate a corresponding 10 dB decrease.

D. This measurement may be made electrically with a voltmeter connected to the earphone terminals.

(3) Tolerances.

When any of the measured sound levels deviate from the levels in Table E–1 or Table E–2 by 3 dB at any test frequency between 500 and 3000 Hz, 4 dB at 4000 Hz, or 5 dB at 6000 Hz, an exhaustive calibration is advised. An exhaustive calibration is required if the deviations are greater than 15 dB or greater at any test frequency.

TABLE E–1.—REFERENCE THRESHOLD LEVELS FOR TELEPHONICS—TDH–39 EARPHONES

Frequency, Hz	Reference threshold level for TDH–39 earphones dB	Sound level meter reading, dB
500	11.5	81.5
1000	7	77
2000	9	79
3000	10	80
4000	9.5	79.5
6000	15.5	85.5

TABLE E–2.—REFERENCE THRESHOLD LEVELS FOR TELEPHONICS—TDH–49 EARPHONES

Frequency, Hz	Reference threshold level for TDH–49 earphones dB	Sound level meter reading, dB
500	13.5	83.5
1000	7.5	77.5
2000	11	81.0
3000	9.5	79.5
4000	10.5	80.5
6000	13.5	83.5

Appendix F to Part 227—Calculations and Application of Age Corrections to Audiograms

This appendix is non-mandatory.

In determining whether a standard threshold shift (STS) has occurred, allowance may be made for the contribution of aging to the change in hearing level by adjusting the most recent audiogram. If the employer chooses to adjust the audiogram, the employer shall follow the procedure described in this appendix. This procedure and the age correction tables were developed by the National Institute for Occupational Safety and Health in a criteria document. See ''Criteria for a Recommended Standard: Occupational Exposure to Noise,'' Department of Health and Human Services (NIOSH) Publication No. 98–126.

For each audiometric test frequency;

(i) Determine from Tables F–1 or F–2 of this appendix the age correction values for the employee by:

(A) Finding the age at which the most recent audiogram was taken and recording the corresponding values of age corrections at 1000 Hz through 6000 Hz;

(B) Finding the age at which the baseline audiogram was taken and recording the corresponding values of age corrections at 1000 Hz through 6000 Hz.

(ii) Subtract the values found in step (i)(B) from the value found in step (i)(A).

(iii)The differences calculated in step (ii) represented that portion of the change in hearing that may be due to aging.

Example: Employee is a 32-year-old male. The audiometric history for his right ear is shown in decibels below.

Employee's age	Audiometric test frequency (Hz)				
	1000	2000	3000	4000	6000
26	10	5	5	10	5
*27	0	0	0	5	5
28	0	0	0	10	5
29	5	0	5	15	5
30	0	5	10	20	10
31	5	10	20	15	15
*32	5	10	10	25	20

The audiogram at age 27 is considered the baseline since it shows the best hearing threshold levels. Asterisks have been used to identify the baseline and most recent audiogram. A threshold shift of 20 dB exists at 4000 Hz between the audiograms taken at ages 27 and 32.

(The threshold shift is computed by subtracting the hearing threshold at age 27, which was 5, from the hearing threshold at age 32, which is 25). A retest audiogram has confirmed this shift. The contribution of aging to this change in hearing may be estimated in the following manner:

Go to Table F–1 and find the age correction values (in dB) for 4000 Hz at age 27 and age 32.

	Frequency (Hz)				
	1000	2000	3000	4000	6000
Age 32	6	5	7	10	14
Age 27	5	4	6	7	11
Difference	1	1	1	3	3

The difference represents the amount of hearing loss that may be attributed to aging in the time period between the baseline audiogram and the most recent audiogram. In this example, the difference at 4000 Hz is 3 dB. This value is subtracted from the hearing level at 4000 Hz, which in the most recent audiogram is 25, yielding 22 after adjustment. Then the hearing threshold in the baseline audiogram at 4000 Hz (5) is subtracted from the adjusted annual audiogram hearing threshold at 4000 Hz (22). Thus the age-corrected threshold shift would be 17 dB (as opposed to a threshold shift of 20 dB without age correction).

TABLE F–1.—AGE CORRECTION VALUES IN DECIBELS FOR MALES

Years	Audiometric Test Frequencies (Hz)				
	1000	2000	3000	4000	6000
20 or younger	5	3	4	5	8
21	5	3	4	5	8
22	5	3	4	5	8
23	5	3	4	6	9
24	5	3	5	6	9
25	5	3	5	7	10
26	5	4	5	7	10
27	5	4	6	7	11
28	6	4	6	8	11
29	6	4	6	8	12
30	6	4	6	9	12
31	6	4	7	9	13
32	6	5	7	10	14
33	6	5	7	10	14
34	6	5	8	11	15
35	7	5	8	11	15
36	7	5	9	12	16
37	7	6	9	12	17
38	7	6	9	13	17
39	7	6	10	14	18
40	7	6	10	14	19
41	7	6	10	14	20
42	8	7	11	16	20
43	8	7	12	16	21
44	8	7	12	17	22
45	8	7	13	18	23
46	8	8	13	19	24
47	8	8	14	19	24
48	9	8	14	20	25
49	9	9	15	21	26
50	9	9	16	22	27
51	9	9	16	23	28
52	9	10	17	24	29
53	9	10	18	25	30
54	10	10	18	26	31
55	10	11	19	27	32
56	10	11	20	28	34
57	10	11	21	29	35
58	10	12	22	31	36
59	11	12	22	32	37
60 or older	11	13	23	33	38

TABLE F–2.—AGE CORRECTION VALUES IN DECIBELS FOR FEMALES

Years	Audiometric Test Frequencies (Hz)				
	1000	2000	3000	4000	6000
20 or younger	7	4	3	3	6
21	7	4	4	3	6
22	7	4	4	4	6
23	7	5	4	4	7
24	7	5	4	4	7

TABLE F–2.—AGE CORRECTION VALUES IN DECIBELS FOR FEMALES—Continued

Years	Audiometric Test Frequencies (Hz)				
	1000	2000	3000	4000	6000
25	8	5	4	4	7
26	8	5	5	4	8
27	8	5	5	5	8
28	8	5	5	5	8
29	8	5	5	5	9
30	8	6	5	5	9
31	8	6	6	5	9
32	9	6	6	6	10
33	9	6	6	6	10
34	9	6	6	6	10
35	9	6	7	7	11
36	9	7	7	7	11
37	9	7	7	7	12
38	10	7	7	7	12
39	10	7	8	8	12
40	10	7	8	8	13
41	10	8	8	8	13
42	10	8	9	9	13
43	11	8	9	9	14
44	11	8	9	9	14
45	11	8	10	10	15
46	11	9	10	10	15
47	11	9	10	11	16
48	12	9	11	11	16
49	12	9	11	11	16
50	12	10	11	12	17
51	12	10	12	12	17
52	12	10	12	13	18
53	13	10	13	13	18
54	13	11	13	14	19
55	13	11	14	14	19
56	13	11	14	15	20
57	13	11	15	15	20
58	14	12	15	16	21
59	14	12	16	16	21
60 or older	14	12	16	17	22

Appendix G to Part 227—Monitoring Noise Levels

This appendix is non-mandatory. This appendix provides information to help employers comply with the noise monitoring obligations that are part of this hearing conservation regulation.

What Is the Purpose of Noise Monitoring?

This regulation requires that employees be placed in a hearing conservation program if they are exposed to average noise levels of 85 dB or greater during an 8 hour workday. In order to determine if exposures are at or above this level, it may be necessary to measure or monitor the actual noise levels in the workplace and to estimate the noise exposure or ''dose'' received by employees during the workday.

When Is it Necessary To Implement a Noise Monitoring Program?

It is not necessary for every employer to measure workplace noise. Noise monitoring or measuring must be conducted only when exposures are at or above 85 dB. Factors which suggest that noise exposures in the workplace may be at this level include employee complaints about the loudness of noise, indications that employees are losing their hearing, or noisy conditions which make normal conversation difficult. The employer should also consider any information available regarding noise emitted from specific machines. In addition, actual workplace noise measurements can suggest whether or not a monitoring program should be initiated.

How Is Noise Measured?

Basically, there are two different instruments to measure noise exposures: the sound level meter and the dosimeter. A sound level meter is a device that measures the intensity of sound at a given moment. Since sound level meters provide a measure of sound intensity at only one point in time, it is generally necessary to take a number of measurements at different times during the day to estimate noise exposure over a workday. If noise levels fluctuate, the amount of time noise remains at each of the various measured levels must be determined. To estimate employee noise exposures with a sound level meter it is also generally necessary to take several measurements at different locations within the workplace. After appropriate sound level meter readings are obtained, people sometimes draw ''maps'' of the sound levels within different areas of the workplace. By using a sound level ''map'' and information on employee locations throughout the day, estimates of individual exposure levels can be developed. This measurement method is generally referred to as area noise monitoring.

A dosimeter is like a sound level meter except that it stores sound level measurements and integrates these measurements over time, providing an average noise exposure reading for a given period of time, such as an 8-hour workday. With a dosimeter, a microphone is attached to the employee's clothing and the exposure measurement is simply read at the end of the desired time period. A reader may be used to read-out the dosimeter's measurements. Since the dosimeter is worn by the employee, it measures noise levels in those locations in which the employee travels. A sound level meter can also be positioned within the immediate vicinity of the exposed worker to obtain an individual exposure estimate. Such procedures are generally referred to as personal noise monitoring.

Area monitoring can be used to estimate noise exposure when the noise levels are relatively constant and employees are not mobile. In workplaces where employees move about in different areas or where the noise intensity tends to fluctuate over time, noise exposure is generally more accurately

estimated by the personal monitoring approach.

In situations where personal monitoring is appropriate, proper positioning of the microphone is necessary to obtain accurate measurements. With a dosimeter, the microphone is generally located on the shoulder and remains in that position for the entire workday. With a sound level meter, the microphone is stationed near the employee's head, and the instrument is usually held by an individual who follows the employee as he or she moves about.

Manufacturer's instructions, contained in dosimeter and sound level meter operating manuals, should be followed for calibration and maintenance. To ensure accurate results, it is considered good professional practice to calibrate instruments before and after each use.

How Often Is it Necessary To Monitor Noise Levels?

This part requires that when there are significant changes in machinery or production processes that may result in increased noise levels, remonitoring must be conducted to determine whether additional employees need to be included in the hearing conservation program. Many companies choose to remonitor periodically (once every year or two) to ensure that all exposed employees are included in their hearing conservation programs.

Where Can Equipment and Technical Advice Be Obtained?

Noise monitoring equipment may be either purchased or rented. Sound level meters cost about $500 to $1,000, while dosimeters range in price from about $750 to $1,500. Smaller companies may find it more economical to rent equipment rather than to purchase it. Names of equipment suppliers may be found in the telephone book (Yellow Pages) under headings such as: ''Safety Equipment,'' ''Industrial Hygiene,'' or ''Engineers—Acoustical.'' In addition to providing information on obtaining noise monitoring equipment, many companies and individuals included under such listings can provide professional advice on how to conduct a valid noise monitoring program. Some audiological testing firms and industrial hygiene firms also provide noise monitoring services. Universities with audiology, industrial hygiene, or acoustical engineering departments may also provide information or may be able to help employers meet their obligations under this part.

Free, on-site assistance may be obtained from OSHA-supported state and private consultation organizations. These safety and health consultative entities generally give priority to the needs of small businesses.

Appendix H to Part 227—Schedule of Civil Penalties [Reserved]

PART 229—[AMENDED]

2. The authority citation for part 229 continues to read as follows:

Authority: 49 U.S.C. 20102–03, 20107, 20133, 20137–38, 20143, 20701–03, 21301–02, 21304; 49 CFR 1.49.

3. Section 229.4 is amended by revising paragraph (b) to read as follows:

§ 229.4 Information collection.

* * * * *

(b) The information collection requirements are found in the following sections: §§ 229.9, 229.17, 229.21, 229.23, 229.25, 229.27, 229.29, 229.31, 229.33, 229.55, 229.103, 229.105, 229.113, 229.121, 229.135, and Appendix H to part 229.

4. Section 229.5 is amended by removing paragraph designations (a) through (p), by transferring the definition of *Electronic air brake* to proper alphabetical order (immediately preceding the definition of *Event recorder*), and adding, in alphabetical order, the following definitions.

§ 229.5 Definitions.

* * * * *

Decibel (dB) means a unit of measurement of sound pressure levels.

dB(A) means the sound pressure level in decibels measured on the A-weighted scale.

* * * * *

Excessive noise report means a report by a locomotive cab occupant that the locomotive is producing an unusual level of noise that significantly interferes with normal cab communications or that is a concern with respect to hearing conservation.

* * * * *

Upper 99% confidence limit means the noise level below which 99% of all noise level measurements must lie.

* * * * *

5. Section 229.121 is revised to read as follows:

§ 229.121 Locomotive cab noise.

(a) *Performance standards for locomotives.* (1) When tested for static noise in accordance with paragraph (a)(3) of this section, all locomotives of each design or model that are manufactured after January 1, 2005 shall average less than or equal to 85 dB(A), with an upper 99% confidence limit of 87 dB(A). The railroad may rely on certification from the equipment manufacturer for a production run that this standard is met. The manufacturer may determine the average by testing a representative sample of locomotives or an initial series or locomotives, provided that there are suitable manufacturing quality controls and verification procedures in place to ensure product consistency.

(2) In the maintenance of locomotives that are manufactured in accordance with paragraph (a)(1) of this section, a railroad shall not make any alterations that cause the average sound level for that locomotive design or model to exceed 82 dB(A) if the average sound level for a locomotive design or model is less than 82 dB(A); and the railroad shall not make any alterations that cause the average sound level for that locomotive design or model to increase to 85 dB(A) if the average sound level for a locomotive design or model is between, or includes, 82 dB(A) to 85 dB(A),

(3) The railroad or manufacturer shall follow the static test protocols set forth in appendix H of this part to determine compliance with paragraph (a)(1) of this section; and, to the extent reasonably necessary to evaluate the effect of alterations during maintenance, to determine compliance with paragraph (a)(2) of this section.

(b) *Equipment maintenance.* (1) If a railroad receives an excessive noise report, and if the condition giving rise to the noise is not required to be immediately corrected under this part 229, the railroad shall maintain a record of the report, and repair or replace the item identified as substantially contributing to the noise and shall do so:

(i) On or before the next periodic inspection required by § 229.23; or

(ii) At the time of the next major equipment repairs commonly used for the particular type of maintenance needed, if the railroad determines that the repair or replacement of the item requires significant shop or material resources that are not readily available.

(2) Items that may lead a locomotive cab occupant to file an excessive noise report include, but are not limited to: defective cab window seals; defective cab door seals; broken or inoperative windows; deteriorated insulation or insulation that has been removed for other reasons; broken or inoperative doors; and air brakes that vent inside of the cab.

(3) The railroad has an obligation to respond to an excessive noise report filed by a locomotive cab occupant. The railroad meets its obligations to respond to an excessive noise report if the railroad makes a good faith effort to identify the cause of the reported noise and, where the railroad is successful in determining the cause, if the railroad repairs or replaces the item(s) causing the noise.

(4) *Recordkeeping.* (i) The railroad shall maintain a record, either written or electronic, of any excessive noise report, inspection, test, maintenance, replacement, or repair completed pursuant to paragraph (b) of this section and the date(s) on which that inspection, test, maintenance, replacement, or repair occurred.

(ii) The railroad shall retain these records for 92 days if they are made pursuant to § 229.21; or for 1 year if they are made pursuant to § 229.23.

(iii) The railroad shall establish an internal, auditable monitoring system that contains these records.

Appendices D Through G—[Reserved]

6. Appendices D through G are added to Part 229 and reserved.

7. Appendix H is added to Part 229 to read as follows:

Appendix H to Part 229—Static Noise Test Protocols—In-Cab Static

This appendix prescribes the procedures for the in-cab static measurements of locomotives.

I. Measurement Instrumentation

The instrumentation used should conform to the following:

An integrating-averaging sound level meter shall meet all the requirements of ANSI S1.43–1997, ''Specification for Integrating-Averaging Sound Level Meters'' for a Type 1 instrument. In the event that a Type 1 instrument is not available, the measurements may be conducted with a Type 2 instrument. The acoustic calibrator shall meet the requirement of the ANSI S1. 40–1984 (R1997), ''Specification for Acoustical Calibrators.''

II. Test Site Requirements

The test site shall meet the following requirements:

(1) The locomotive to be tested should not be positioned where large reflective surfaces are directly adjacent to or within 25 feet of the locomotive cab.

(2) The locomotive to be tested should not be positioned where other locomotives or rail cars are present on directly adjacent tracks next to or within 25 feet of the locomotive cab.

(3) All windows, doors, cabinets seals, *etc.,* must be installed in the locomotive cab and be closed.

(4) The locomotive must be running for sufficient time before the test to be at normal operating temperature.

(5) The heating, ventilation and air conditioning (HVAC) system or a dedicated heating or air conditioner system must be operating on high, and the vents must be open and unobstructed.

(6) The locomotive shall not be tested in any site specifically designed to artificially lower in-cab noise levels.

III. Procedures for Measurement

(1) L_{av} means the A-weighted, equivalent sound level using a 5 dB exchange rate, and the sound level meter shall be set for A-weighting with slow response.

(2) The sound level meter shall be calibrated with the acoustic calibrator immediately before and after the in-cab static tests. The calibration levels shall be recorded.

(3) Any change in the before and after calibration level(s) shall be less than 0.5 dB.

(4) The sound level meter shall be measured at each of the following locations:

(A) 30 inches above the center of the left seat;

(B) Centered in the middle of the cab between the right and left seats, and 56 inches above the floor;

(C) 30 inches above the center of the right seat; and

(D) One foot (0.3 meters) from the center of the back interior wall of the cab and 56 inches above the floor. [See Figure 1]

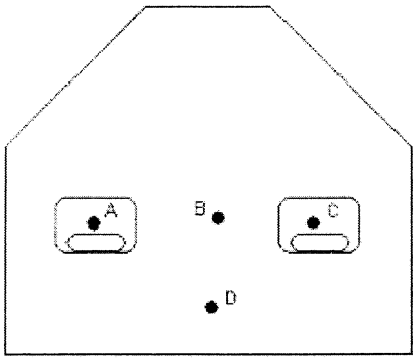

Figure 1. Microphone Locations inside Typical Locomotive Cab

(5) The observer shall stand as far from the microphone as possible. No more than two people (tester, observers or crew members) shall be inside the cab during measurements.

(6) The locomotive shall be tested under self-loading conditions if so equipped. If the locomotive is not equipped with self load, the locomotive shall be tested with no-load (No-load defined as maximum RPM—no electric load) and an adjustment of 3 dB added to the measured level.

(7) The sound level shall be recorded at the highest horsepower or throttle setting.

(8) After the engine speed has become constant and the in-cab noise is continuous, the A weighted L_{av} sound level shall be measured using a 1 second sampling interval for a minimum duration of 30 seconds at each measurement position.

(9) The highest L_{av} of the 4 measurement positions shall be used for determining compliance with § 229.121(a).

(10) A locomotive that has failed to meet the static test requirements of this part may be re-tested in accordance with the requirements in section II of this appendix.

IV. Recordkeeping

To demonstrate compliance, the entity conducting the test shall maintain records of the following data. The records created under this procedure shall be retained and made readily accessible for review for a minimum of three years. All records may be maintained in either written or electronic form.

(1) Name(s) of persons conducting the test, and the date of the test.

(2) Description of locomotive being tested, including: make, model number, serial number, and date of manufacture.

(3) Description of sound level meter and calibrator, including: make, model, type, serial number, and manufacturer's calibration date.

(4) The recorded measurement during calibration and for each microphone location during operating conditions.

(5) Other information as appropriate to describe the testing conditions and procedure, including whether or not the locomotive was tested under self-loading conditions, or not.

(6) Where a locomotive fails a test and is re-tested under the provisions of section III(9) of this appendix, the suspected reason(s) for the failure.

Issued in Washington, DC, on June 9, 2004.

Allan Rutter,

Federal Railroad Administrator.

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Part III

Department of Commerce

National Oceanic and Atmospheric Administration

15 CFR Part 902 and 50 CFR Part 648

Fisheries of the Northeastern United States; Atlantic Sea Scallop Fishery; Amendment 10; Final Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 902 and 50 CFR Part 648

[Docket No. 040210050–4166–03; I.D. 011204A]

RIN 0648–AN16

Fisheries of the Northeastern United States; Atlantic Sea Scallop Fishery; Amendment 10

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

ACTION: Final rule.

SUMMARY: NMFS is implementing approved measures contained in Amendment 10 to the Atlantic Sea Scallop Fishery Management Plan (FMP), developed by the New England Fishery Management Council (Council). Amendment 10 includes a long-term, comprehensive program to manage the sea scallop fishery through an area rotation management program to maximize scallop yield. Areas will be defined and will be closed and re-opened to fishing on a rotational basis, depending on the condition and size of the scallop resource in the areas. This rule includes measures to minimize the adverse effects of fishing on Essential Fish Habitat (EFH) to the extent practicable. Amendment 10 also includes updated days-at-sea (DAS) allocations, measures to minimize bycatch to the extent practicable, and other measures to make the management program more effective, efficient, and flexible. In addition, NMFS publishes the Office of Management and Budget (OMB) control numbers for collection-of-information requirements contained in this final rule.

DATES: Effective July 23, 2004 except for §§ 648.53(b)(2), which is effective June 23, 2004, and § 648.51(b)(3)(ii), which is effective December 23, 2004.

ADDRESSES: Copies of Amendment 10, its Regulatory Impact Review (RIR), including the Initial Regulatory Flexibility Analysis (IRFA), and the Final Supplemental Environmental Impact Statement (FSEIS) are available on request from Paul J. Howard, Executive Director, New England Fishery Management Council, The Tannery Mill #2, 50 Water Street, Newburyport, MA 01950. These documents are also available online at *http://www.nefmc.org.* NMFS prepared a Final Regulatory Flexibility Analysis (FRFA), which is contained in the Classification section of the preamble of this rule. Copies of the FRFA, Record of Decision (ROD), and the Small Entity Compliance Guide are available from the Regional Administrator, Northeast Regional Office, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298, and are also available via the internet at *http://www.nero.nmfs.gov.*

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted to Patricia A. Kurkul at the above address and to David Rostker at OMB by e-mail to *David_Rostker@omb.eop.gov*, or by fax to (202) 395–7285.

FOR FURTHER INFORMATION CONTACT: Peter W. Christopher, Fishery Policy Analyst, 978–281–9288; fax 978–281–9135.

SUPPLEMENTARY INFORMATION:

Background

This final rule implements the approved measures of Amendment 10, which was partially approved by NMFS on behalf of the Secretary of Commerce (Secretary) on April 14, 2004. A proposed rule for this action was published on February 26, 2004 (69 FR 8915), with public comments accepted through March 29, 2004. The details of the development of Amendment 10 were contained in the preamble of the proposed rule and are not repeated here. In the proposed rule, NMFS requested comment on all proposed measures, but specifically highlighted five issues for which NMFS had concern. The five highlighted issues were: Scallop fishing access in the groundfish closed areas; cooperative industry surveys; the increase in the minimum ring size for scallop dredges; implementation of an observer set-aside program; and the title of the proposed Mid-Atlantic (MA) closed area. A discussion of these issues, including NMFS consideration of public comments on the issues, follows.

1. Scallop Fishing Access in Groundfish Closed Areas

NMFS expressed concern in the proposed rule with respect to Amendment 10's inclusion of the groundfish closed areas as part of the area rotation scheme. Although Amendment 10 contemplates access to the three groundfish closed areas, it is not possible to enact the access program for those areas through this action. Complementary action must be taken under the Northeast Multispecies FMP (Multispecies FMP) to authorize access because these areas were closed by the Multispecies FMP to protect groundfish. Amendment 10 is implemented with initial DAS established at a level that is consistent with an area rotation program that includes scallop fishing access to the groundfish closed areas. The initial DAS under Amendment 10 are 42, 17, and 4 for full-time, part-time, and occasional vessels, respectively. The proposed rule included a provision that would increase DAS on August 15, 2004, to 62, 25, and 5 for full-time, part-time, and occasional vessels, respectively, if a final rule to allow access to the groundfish closed areas is not published by August 15, 2004. The Council has adopted and submitted Framework 16 to the Scallop FMP and Framework 39 to the NE Multispecies FMP (Joint Frameworks 16/39) to allow such access, but NMFS remains concerned that it may not be possible to implement the measures proposed in Joint Frameworks 16/39, if approved, by the August 15, 2004, date. If approved, a delay in implementing Joint Frameworks 16/39 beyond the default date would complicate implementation of the groundfish closed area access program proposed by the Council in Joint Frameworks 16/39. To help alleviate timing concerns, this final rule changes the default date for increasing DAS to September 15, 2004, at the request of the Council and other commenters. Since the default date is an administrative matter, NMFS has determined that it is consistent with Amendment 10 to make the change. Amendment 10 implements lower DAS initially to allow the DAS to be increased if necessary. Extending the default date by one month will not cause any detriment to conservation of the scallop resource or to the goals and objectives of the FMP, consistent with Amendment 10. However, it would still be a complication if Joint Frameworks 16/39 are approved and a final rule is not published by September 15, 2004.

2. Cooperative Industry Surveys

NMFS raised concern regarding the cooperative industry resource survey provision and has disapproved the measure in Amendment 10. The basis for the disapproval is provided in the Disapproved Measures section of the preamble of this final rule.

3. Minimum Ring Size Increase

This final rule increases the minimum ring size for scallop dredges from 3.5 inches (8.9 cm) to 4 inches (10.2 cm). NMFS specifically sought comment on whether it would be feasible to implement the gear conversion requirement upon initial implementation of Amendment 10.

With the exception of a comment from the Council agreeing with the proposed 30-day delay in effectiveness for the 4-inch (10.2-cm) ring size increase in the Hudson Canyon Area, and a 6-month delay elsewhere, NMFS received no written comments on this issue. Other comments on the ring size increase pertained to other issues, which are addressed in the ''Response to Comments'' and ''FRFA'' sections of the preamble of this final rule. Therefore, this final rule implements the 4-inch (10.2-cm) ring requirement for the Hudson Canyon Access Area 30 days after publication of this final rule in the **Federal Register**, and 6 months after publication of this final rule in the **Federal Register** for all other areas.

4. DAS Set-Aside for Observer Coverage

NMFS expressed concern in the proposed rule about effective implementation of the DAS set-aside for observer coverage to help defray the cost of observers on open area trips. Implementation of this measure will be complicated because it requires allocation of additional fishing time that is based on several variables, including random selection of vessels to carry an observer, actual trip length, DAS and observer cost equivalents (*i.e.*, how many days of fishing is equal to the cost of carrying an observer for 1 day, or for a trip), catch rates, and scallop value. This issue was the subject of significant comment from the public. After consideration of public comments on the issue, NMFS determined that, for each Open Area trip on which an observer is carried, the vessel's DAS will accrue at a reduced rate. Based on the analysis in Amendment 10, this reduced rate will initially be an adjustment factor of 0.86 DAS for every DAS fished with an observer on board. For example, if a vessel fishes for 10 actual DAS with an observer on board in an Open Area, the DAS charged for that trip will be 8.6 DAS. The result is the same as if a vessel were allocated additional DAS at a rate of 0.14 DAS per actual DAS fished with an observer on board, as described in the proposed rule. The change is being made because commenters felt it was more useful to them than an after-the-fact adjustment.

Since the publication of the proposed rule, NMFS has determined that the cost of observers for scallop vessels will be $719.12 per day for the 2004 fishing year. Although this amount may change annually, the 0.86 DAS adjustment factor should provide sufficient additional fishing opportunity to help compensate for that cost. If costs change, the Administrator, Northeast Region, NMFS (Regional Administrator), will re-evaluate the compensating amount of DAS and possession limit that would be appropriate to offset the cost of observers. The proposed rule included regulatory text that would have codified the proposed 0.14 DAS multiplier. The regulatory text in this final rule does not specify the adjustment factor in order to preserve the Regional Administrator's flexibility to adjust the compensation when necessary to reflect changes in observer cost and projected catch rates. Likewise, the amount of the additional possession limit allowed for vessels carrying observers in Scallop Access Areas is not specified in the regulatory text of this final rule to preserve the Regional Administrator's flexibility.

5. MA Closed Area

NMFS sought public comment on how to clarify the designation of the area proposed in Amendment 10 to avoid confusion with another area reportedly known as the ''Elephant Trunk'' on Georges Bank. The Council recommended keeping the designation as the ''Elephant Trunk'' closed area, and no other comments were received on this issue. This final rule therefore maintains the designation of the area as the ''Elephant Trunk'' closed area.

Disapproved Measures

After reviewing Amendment 10, its supporting analysis and public comments received on the amendment and its proposed rule, NMFS, on behalf of the Secretary, has disapproved two measures in Amendment 10, as submitted, based on NMFS's determination that the measures are inconsistent with one or more of the National Standards or required provisions of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The disapproved measures are: The measure restricting limited access scallop vessels to a possession limit of 40 lb (18.14 kg) of shucked, or 5 U.S. bushel (176.2 L) of in-shell scallops, while fishing outside of scallop DAS; and the provision that required a cooperative industry resource survey to be conducted.

The measure that would have restricted limited access scallop vessels fishing outside of scallop DAS to a possession limit of up to 40 lb (18.14 kg) (*i.e.*, the incidental amount of scallops) of shucked scallops, or 5 U.S. bushels (176.2 L) of in-shell scallops, was disapproved because it is inconsistent with National Standard 2 and section 303(a)(1) of the Magnuson-Stevens Act. The possession restriction for limited access scallop vessels fishing outside of DAS has no clearly documented conservation purpose and is not supported by the best available scientific information, as required by National Standard 2 of the Magnuson-Stevens Act. Also, the measure is not necessary and appropriate for the conservation of the fishery, as required under section 303(a)(1) of the Magnuson-Stevens Act.

The data and analyses in Amendment 10 demonstrate that, while landings of scallops by vessels fishing outside of scallop DAS (limited access and General Category vessels) have increased dramatically from approximately 400,000 lb (181.4 mt) to over 1 million lb (453.6 mt) over the past 3 years, landings from the limited access vessels fishing outside of scallop DAS were relatively steady at about 210,000 lb (95.2 mt) in 2000 and 2001, and appear to have decreased in 2002. The proposed measure to restrict limited access scallop vessels was determined to be insufficient to address the growth in landings made outside of DAS by both limited access and General Category vessels. Although measures to control effort outside of DAS may be warranted, such action would require more comprehensive development to ensure that the measures are necessary and appropriate to achieve meaningful conservation benefits.

The measure that required a cooperative resource survey to be conducted annually was disapproved because it was not sufficiently developed to be implemented effectively and to provide useful information to manage the fishery. Therefore, it is inconsistent with section 303(a)(1)(A) of the Magnuson-Stevens Act, which requires measures that are necessary and appropriate for the conservation and management of the fishery. There is no assurance, even through the total allowable catch (TAC) and DAS set-aside program, that the results of the proposed survey would be ready for use when needed, if, for instance, no vessels came forward to participate in the survey. The disapproval of this proposed provision as a mandatory requirement of the FMP does not preclude the use of cooperative survey information, should such surveys be carried out. The survey remains the top priority in the research set-aside request for proposals (RFP) for the scallop fishery, and a resource survey program approved for set-aside funding could be used to modify the rotation program, as intended by the Council.

Approved Measures

NMFS approved the remainder of the measures included in Amendment 10, although not all approved measures require regulatory text in this final rule. In order to provide the public with the clearest information possible on the numerous changes to the scallop regulations that result from the implementation of Amendment 10, NMFS is publishing in this final rule the entirety of the regulations in 50 CFR part 648, subpart D, that pertain to the scallop fishery (both the existing and new regulations). A general summary of the approved measures and their implementing regulations follow.

This final rule also includes some non-substantive revisions to the existing text in subpart D that were not part of Amendment 10; these revisions remove obsolete language and improve the organization and clarity of the regulations.

1. Overfishing Definition

Amendment 10 maintains the existing overfishing definition in the FMP, but increases the minimum biomass threshold from $\frac{1}{4}B_{MAX}$ to $\frac{1}{2}B_{MAX}$, to be consistent with the National Standard Guidelines. Full descriptions of the overfishing definition and biological reference points used in the FMP can be found in the FSEIS for Amendment 10. Annual determinations of the status of the resource will be based on the resource conditions and fishery performance relative to biomass and fishing mortality reference points for the combined Georges Bank (GB) and Mid-Atlantic (MA) scallop resource. Amendment 10 includes new guidelines for the Council to use during the development of biennial or more frequent framework adjustments that would assure that the management measures implemented in the future would prevent overfishing and achieve optimum yield (OY) on a continuing basis The framework process approved in Amendment 10 and implemented through this final rule will allow the PDT and the Council the flexibility to take the existing status of the resource into account, determine optimum yield-per-recruit based on the condition of the scallop resource, and devise appropriate measures to assure that OY is achieved on a continuing basis. The achievement of optimum yield-per-recruit from the resource as available for harvest in the upcoming fishing years could result in differential fishing mortality rates for various spatial components, as long as OY is achieved for the resource as a whole.

2. Area Rotation

Under area rotation, as approved in Amendment 10, three types of areas are established: Rotational Closed Areas; Sea Scallop Access Areas; and Open Areas. Rotational Closed Areas are closed to all scallop harvest as a result of large concentrations of fast-growing, small scallops. Sea Scallop Access Areas are re-opened closed areas or areas needing area-specific effort or harvest controls. Sea Scallop Access Areas have area-specific effort allocation programs, or ''Area Access Programs,'' as described below, established to prevent rapid harvest of the scallop resource within the areas. Vessel transit with gear stowed is allowed for both Sea Scallop Access Areas and Rotational Closed Areas. Open Areas are all areas without area-specific controls. In general, Open Areas are subject to DAS and gear restrictions with no possession limit and trip limitations other than those specified for General Category vessels and vessels fishing for scallops outside of scallop DAS. As a result of public comment on the proposed rule, this final rule adds appropriate definitions to § 648.2 to clarify the meaning of some of the area rotation terms.

The Council considered various approaches to area rotation and adopted an approach that provides flexibility to define future rotational areas. This final rule implements the ''fully adaptive area rotation scheme,'' which allows more specific area definitions and management controls compared to the fixed-boundary alternatives considered by the Council.

Amendment 10 establishes Rotational Area Closures for areas of small sea scallops, closing areas before the scallops are exposed to fishing. Scallops grow fastest when they are very small and protection of these small scallops through area closures is critical in the rotational management of the scallop resource. After a period of closure, and after evaluation according to the criteria and procedures established in Amendment 10, the areas will re-open for scallop fishing, when the scallops are larger and more suitable for harvest. This process boosts scallop meat yield and yield per recruit. The fully adaptive area rotation scheme in Amendment 10 establishes no pre-defined conditions for area closures and reopenings, except that areas will close when the expected annual increase in exploitable biomass in an area exceeds 30 percent, and areas will re-open when the expected annual increase in exploitable biomass in an area is less than 15 percent. There are no standard closure area boundaries, dimensions, or durations. This area rotation program is based entirely on changing conditions of the scallop resource. The fully adaptive area rotation scheme includes guidelines as part of the biennial framework process that will be used to establish the rotational areas.

3. Initial Area Rotation

Amendment 10 includes two areas in the MA as part of the initial area rotation scheme. First, the Hudson Canyon Access Area, with redefined boundaries, is maintained continues as a controlled access scallop fishing area. Emergency regulations implemented on March 1, 2004 (69 FR 9970), allowed full-time scallop vessels to take four trips into the area, and part-time and occasional vessels to take one trip into the area. These trip allocations are maintained under Amendment 10. Second, an area is closed that includes the lower portion of the existing Hudson Canyon Access Area, and an adjacent area. The new closed area is called the ''Elephant Trunk Area.'' Fishing for scallops and possession of scallops, except for transiting, is prohibited in the Elephant Trunk Area through February 2007.

4. Area-Specific DAS and Trip Allocations for Limited Access Vessels

Amendment 10 limits fishing by limited access scallop vessels under area access programs in order to prevent rapid harvest of scallops in controlled access areas. Limits on fishing include: Area-specific DAS allocations; a number of DAS to be charged for each closed area trip, regardless of trip length; a total number of trips allowed into access areas by permit category, with corresponding area-specific limits on the number of trips; and a maximum sea scallop possession limit per trip. These limits are specified based upon a target TAC for each area and assumptions about the level of effort that would be required to harvest the target TAC. The harvest of scallops at a level at or above the target TAC will not result in a closure of the area. Rather, landings relative to the target TAC will be evaluated through biennial, or more frequent, reviews of the fishery.

Unused controlled access DAS cannot be carried forward into the next fishing year. The area target TAC, DAS allocations, maximum number of trips and possession limit, and number of DAS charged per trip are calculated to optimize yield while reducing the potential for overexploitation of the resource in the open fishing areas.

Amendment 10 includes specific measures that are part of the rotational

area access program for the Hudson Canyon Access Area, based on a target TAC of 18,789,999 lb (8,523 mt) in 2004, and 14,956,160 lb (6,784 mt) in 2005. DAS assignments for the 2004 and 2005 fishing years are in trip-length blocks of 12 DAS, four trips for full-time vessels and one trip for part-time and occasional vessels, and a trip possession limit of 18,000 lb (8,164.7 kg), consistent with a 1,500-lb (680-kg) per day catch rate. Each vessel will be charged 12 DAS for each trip, regardless of actual trip length. Trip length DAS charge and possession limits will be re-evaluated for future years through the framework adjustment process, beginning with the development of the first biennial framework in 2005, which would be effective March 1, 2006.

5. One-for-One Controlled Access Trip Exchanges

The controlled area access program allocates each category of Limited Access scallop vessel a total number of trips into controlled access areas, with a maximum number of trips by area. When more than one Sea Scallop Access Area is specified, Limited Access scallop vessel owners may exchange trips in the areas on a one-for-one basis to take advantage of fishing area preferences. For example, a vessel owner in the north with an allocated trip in a southern area may exchange a trip in a northern area with a vessel owner in the south. The northern vessel would thus gain one trip in the northern area, but would give up one trip in the southern area. The total number of trips in each area would be unchanged, assuming each vessel takes all of its allocated trips. The one-for-one trip exchange provision requires more than one area to be managed under a controlled access program.

6. Compensation for Sea Scallop Access Area Trips Terminated Early

Vessel owners may request that NMFS allow compensation for a Sea Scallop Access Area trip that is terminated before the vessel has fully attained the possession limit allocated to an access area trip. Such trips are allowed without counting as one of the initially allocated trips and at a reduced DAS charge and possession limit. The vessel owner is required to submit information pertaining to the terminated trip, including the reason for terminating the trip (which may be for unforeseen events, emergencies, safety reasons, or other reasons deemed appropriate by the captain) and verification of the pounds of scallop landed when the vessel returned to port. The Regional Administrator shall review the information to verify the possession limit and the DAS charge that would apply to the makeup trip. This provision promotes vessel and crew safety by allowing vessels to exit Sea Scallop Access Areas without losing most of a trip into the area. It also reduces concern regarding the requirement that a portion of a scallop vessel's trips be taken in the Sea Scallop Access Areas.

7. Gear Restrictions

The minimum size of the metal rings used to construct the chain bag in scallop dredge gear is increased from 3.5 inches (8.9 cm) to 4 inches (10.2 cm) in diameter. The new minimum ring size is intended to improve yield from the scallop resource by promoting harvest of larger scallops with higher meat weights. All scallop dredges onboard vessels conducting a Hudson Canyon Area controlled access trip are required to comply with the requirement by July 23, 2004. Vessels fishing in the Open Areas are required to use 4-inch (10.2-cm) rings by December 23, 2004. The ring size increase is required earlier in the Hudson Canyon Access Area because the improved selectivity of the larger rings would help achieve the objective of the controlled access program, to improve yield. The 6-month delay in effectiveness in open areas allows vessel owners time to convert their gear and adjust to the overall requirement and cost associated with the gear conversion.

This final rule also requires all scallop dredge twine tops to be constructed of mesh with a minimum size of 10 inches (25.4 cm), inside measure, for both diamond and square mesh. The increase in the twine top mesh size is intended to minimize bycatch and bycatch mortality by improving escapement of some species of finfish.

8. EFH Closures

This rule designates areas closed to scallop fishing to minimize the impacts of scallop gear on EFH to the extent practicable. These areas are within the areas currently closed under the Northeast Multispecies FMP to protect groundfish (Closed Area I, Closed Area II, and the Nantucket Lightship Closed Area). These areas do not include the portions of the groundfish closed areas that were previously opened to the scallop fishery under the Scallop Framework 13 Closed Area Access Program. The EFH closed areas include areas designated as EFH for several finfish species.

9. Data Collection, Monitoring, and Scallop Research

Vessels issued federal scallop permits are required by the Regional Administrator to carry an observer onboard if requested, with the related costs being borne by the vessel. To partially or entirely defray these costs, vessels carrying an observer are allowed to land more scallops or receive DAS compensation. This final rule establishes a 1-percent set-aside of the total DAS in Open Areas and the target TAC within the Sea Scallop Access Areas to help vessels pay for the cost of observers. The cost of observers will be $719.12 per day for the 2004 fishing year and may change in the future. The set-asides for observers are intended to improve data on scallop catch and bycatch.

Amendment 10 also establishes a DAS set-aside from Open Area DAS and a TAC set-aside from Sea Scallop Access Areas to supplement the available funding for research. Amendment 10 expands the research objectives to be pursued using this set-aside to include cooperative industry scallop resource survey work as the highest research priority, as well as habitat-related research, and research to identify potential solutions to bycatch of fish and sea turtles. The TAC set-aside made available for the research is 2 percent of the target TAC within the Area Access Program. In addition, 2 percent of the Open Area DAS allocation is set aside to help fund scallop related research. A request for proposals was published in the **Federal Register** on April 15, 2004 (69 FR 19983), which solicited proposals for research that would begin in the 2004 fishing year. The research set-aside program promotes cooperative research related to the scallop resource and fishery.

10. Framework Adjustment Process

This rule implements a biennial framework adjustment process for changing area rotation closed areas and area re-openings, setting DAS allocations, and making other management adjustments. In addition to a change from the current annual process to a biennial process, the new framework procedures ensure that OY is achieved and overfishing is prevented on a continuing basis, through consideration of the resource condition by the Scallop Plan Development Team (PDT). In addition to the measures already included in the FMP, this final rule specifies that changes in the following measures can be enacted through framework action: Size and configuration of rotational management

areas; controlled access seasons to minimize bycatch and maximize yield; area-specific DAS or trip allocations; amount and duration of TAC specifications following re-opening; limits on number of closures; TAC or DAS set-asides for funding research; priorities for scallop-related research that is funded by a set-aside from scallop management allocations; finfish TACs for controlled access areas; finfish possession limits; sea sampling frequency; and area-specific gear limits and specifications.

11. Proactive Protected Species Program

To reduce the risk of takes of sea turtles and other species protected under the Endangered Species Act by fishing gear used in the scallop fishery, this rule includes a mechanism, through the framework process, to close areas, establish seasons, implement gear modifications, or implement other measures through the framework adjustment process. As new information about sea turtles and other protected species becomes available, particularly if interactions between protected species and the scallop fishery increase beyond anticipated levels, the Council will propose actions to mitigate takes.

Response to Comments

General Comments on Amendment 10

Comment 1: One commenter stated that fisheries should not be allowed to continue to fish at maximum sustainable yield and that doing so constitutes overfishing.

Response: Section 303(a)(3) of the Magnuson-Stevens Act requires NMFS to assess and specify the present and probable future condition of, and the maximum sustainable yield, and optimum yield from, the fishery, and include a summary of the information utilized in making such specification. Amendment 10 fulfills this requirement. Amendment 10 adequately documents that the scallop fishery is managed to achieve OY, as required by National Standard 1 of the Magnuson-Stevens Act, and measures under Amendment 10 have been determined to be consistent with that requirement. The FMP establishes fishing mortality and biomass targets that are the reference points by which the fishery is managed. Fishing mortality and biomass thresholds also determine when more restrictive measures are necessary to prevent overfishing and maintain a sustainable biomass.

Comment 2: One commenter recommended that NMFS reduce DAS by 50 percent in 2004 and 10 percent every year thereafter.

Response: Such reductions in DAS are excessive, given the current status of the scallop resource, and would prevent the achievement of OY. The scallop resource is currently rebuilt and large reductions in DAS without measures to compensate for the lack of harvest would cause the FMP to be inconsistent with National Standard 1 and other provisions of the Magnuson-Stevens Act and the control rule established for the scallop fishery.

Comment 3: One commenter requested that NMFS include an explanation of B_{MAX} and other scientific terms in rules published in the **Federal Register** so that readers can understand the terminology.

Response: Definitions for reference points that are commonly used in overfishing definitions are found in the Magnuson-Stevens Act Provisions, 50 CFR part 600. Relative to the scallop fishery, a definition of B_{MAX} is included in the Glossary of the Amendment 10 FSEIS (Section 15.0) and is included in the Amendment 10 FSEIS in Section 5.1.1 (*See* **ADDRESSES**). NMFS will continue to try to define terms that may be unfamiliar in its rulemaking.

Comment 4: One commenter was concerned that NMFS had not made a determination that the measures contained in the proposed rule were consistent with the Magnuson-Stevens Act.

Response: Before partially approving Amendment 10 and issuing this final rule, NMFS determined that the approved measures and this final rule are consistent with the Magnuson-Stevens Act and other applicable law. These determinations cannot be made until NMFS completes the review and decision-making process mandated by the Magnuson-Stevens Act as to whether to approve, partially approve, or disapprove an FMP or amendment.

Comment 5: One commenter stated that dredging is highly ''anti-environmental'' and, along with trawl gear, should be prohibited.

Response: Scallop fishing with dredges and trawls can have adverse impacts on the environment, at least in certain habitats. However, the Magnuson-Stevens Act requires that fisheries be managed to achieve OY, while taking into consideration impacts on the physical, biological, economic, and social environments. The FSEIS (*see* **ADDRESSES**) evaluates the impacts of scallop fishing on the environment, and this rule implements measures to mitigate those impacts, to the extent practicable.

Comment 6: Two commenters stated that the Amendment 10 National Environmental Policy Act (NEPA) process was flawed throughout Amendment 10's development because the Council failed to fully develop and adequately analyze alternatives that were recommended and that would incorporate habitat protections and bycatch measures into any rotational management program. The commenters stated and that such flaws need to be corrected before NMFS takes action.

Response: NMFS fully complied with NEPA and the NEPA process in the development and partial approval of Amendment 10. Over the course of the 4 years during which Amendment 10 was developed, the Council considered a wide range of alternatives with varying environmental impacts and obtained extensive public input throughout the process. To evaluate EFH impacts, the Council devoted significant effort to coordinate the work conducted by groundfish, scallop, and habitat technical teams to develop alternatives to minimize the impacts of fishing on EFH to the extent practicable. Numerous advisory panel meetings were held to develop a wide range of alternatives to address EFH and bycatch in the management of the scallop fishery. The commenters suggest that certain alternatives they advanced were either ignored or unjustly rejected. The FSEIS fully considered all of these comments, as seen in the discussion of alternatives in the FSEIS, including some alternatives considered but rejected by the Council. Many of the alternatives in Amendment 10 are representative of those suggested by the commenters. The Council and NMFS fully considered all reasonable alternatives in light of the scope and context of Amendment 10. Responses to comments regarding the incorporation of EFH and bycatch protection into area management programs are provided in responses to Comments 9 and 29.

Comments on EFH Measures

Comment 7: One group commented that Amendment 10 fails to minimize to the extent practicable the adverse effects of fishing on EFH to the extent practicable.

Response: Amendment 10 considered a wide range of alternatives for minimizing the adverse effects of fishing on EFH and conducted a practicability analysis for each alternative. The practicability analysis followed the guidelines published in the EFH regulations (50 CFR part 600, subpart J) and considered the nature and extent of the adverse effect on EFH and the long and short-term costs and benefits of potential management measures to EFH, associated fisheries, and the Nation, consistent with National Standard 7.

The practicability analysis (FSEIS Section 8.5.6.4) shows that Habitat Alternatives 2, 6, 11, and 12 are all practicable, and the remainder of the Habitat Alternatives are not practicable. All four practicable alternatives were approved and are being implemented as a suite, to minimize the adverse effects of fishing on EFH.

Comment 8: One group commented that, of the habitat alternatives adequately analyzed in the FSEIS, Alternative 3a (area closures to protect hard-bottom habitat) comes closest to fulfilling NMFS's responsibilities to minimize habitat impacts because it would provide the most protection for most sensitive habitats.

Response: The commenter incorrectly characterizes NMFS's legal responsibilities to minimize adverse effects of fishing on habitat to the extent practicable. Specifically, the comment mistakenly seems to equate the NMFS's statutory responsibility of minimizing habitat impacts to the extent ''practicable'' with the concept of minimizing impacts to the extent ''possible.'' The term ''possible'' would require the agency to implement virtually any feasible measure that addresses EFH, whereas the term ''practicable'' allows NMFS to consider, weigh, and balance the alternatives in light of the national standards and other Magnuson-Stevens Act requirements, and in accordance with the EFH regulations.

NMFS carefully considered Habitat Alternative 3a. Ultimately, however, NMFS determined that the suite of alternatives making up the approved measures would provide habitat protection, minimize adverse effects to the extent practicable, consistent with the guidelines specified in the EFH regulations, and better balance the overall objectives of the various national standards and required provisions of the Magnuson-Stevens Act than would Habitat Alternative 3a. Although Habitat Alternative 3a was shown to provide more protection to EFH than some of the other habitat alternatives, it was also found to be impracticable (FSEIS Section 8.5.6.4.3). This alternative would have dramatic social and economic impacts by creating significant revenue losses to the scallop fishery, the groundfish fishery, and other fisheries, as well as inequitable port and community impacts. NMFS must implement EFH management measures that are practicable, as well as compliant with the national standards and other required provisions of the Magnuson-Stevens Act.

Comment 9: One group commented that NMFS should also recommend Habitat Alternatives 10 and 13 as practicable measures to minimize habitat impacts.

Response: The analysis in the FSEIS (Section 8.5.6.4.11) shows that Habitat Alternative 10 (restriction on the use of rock chains) is not practicable when balancing the potential benefits to EFH with safety-at-sea issues and economic costs to the industry, as specified by EFH regulations. Habitat Alternative 13 (rotational management based upon habitat protection) was included in conceptual form, without specified parameters. Despite the efforts of the Council and NMFS, specific criteria for controlling the frequency, duration, and intensity of scallop fishing could not be defined for this alternative in time for this action. Even so, this conceptual alternative was considered and included for analysis in the FSEIS (Section 5.3.4.13). Although Habitat Alternative 13 as a whole was not determined to be readily practicable, aspects of the alternative can be found within alternatives contained in Amendment 10. Specifically, the analysis of Habitat Alternative 13 (FSEIS Section 8.5.4.13) recognizes that two alternatives developed to improve scallop yield also utilize habitat benefits as criteria for determining the status of rotational management areas (Alternative 5.2.1.5—Adaptive closures and re-openings with fixed boundaries and mortality targets; Alternative 5.2.1.7—Area-based management with area specific fishing mortality targets without formal area rotation). These two analyzed alternatives advance the concept of including habitat concerns in rotational area management.

Comment 10: One group commented that the FSEIS failed to include an alternative establishing additional Habitat Areas of Particular Concern (HAPC) and Habitat Research Areas.

Response: Neither the Magnuson-Stevens Act nor the EFH regulations mandate the establishment of HAPCs as part of the development of an FMP. However, the Council has established a process for identifying HAPCs and is currently seeking public comment on this issue as part of the development of EFH Omnibus Amendment 2 (69 FR 8367, February 24, 2004). Because of the integrated nature of EFH for all species, it is more appropriate for a comprehensive EFH management action to explore the need for a Habitat Research Area, instead of approaching this issue on an FMP-by-FMP basis, as suggested. This is the rationale that was used to consider and reject this alternative as part of Amendment 10. The concept of a Habitat Research Area is being addressed by the EFH Omnibus Amendment 2.

Comment 11: One commenter stated that the socio-economic analysis in Amendment 10, relative to measures to protect EFH continues to be inadequate. The commenter states that the analysis focuses almost exclusively on the potential adverse economic impacts of implementing closed areas to protect EFH and offers no discussion of the economic benefits that can be realized by protecting sensitive and important habitat areas. The commenter states that the analysis also fails to analyze the potential economic benefits that are likely to result from improved spawning success and recruitment associated with habitat closed areas, including improvements to cod and other groundfish species currently experiencing historically low recruitment, which the commenter states is due to habitat alteration.

Response: The social and economic analyses, which were conducted using the best available science, adequately consider benefits as well as costs of habitat impacts. The FSEIS provides a comparison of the benefits of the EFH measures to the environment with the economic costs of implementing the measures on the industry. By considering these analyses and comparisons, the Council and NMFS were able to make an informed decision on the alternatives by determining their benefits and practicability.

Comment 12: One commenter stated that too much of the habitat data contained in the document are ''stale'' and of questionable utility, and that the supposed seabed impacts of scallop dredging continue to be measured using suspect and perhaps inapplicable means, and are often vastly overstated.

Response: The habitat data utilized in the FSEIS is the best available science. In fact, the habitat metrics analysis is an innovative approach, utilizing the best available science from a variety of sources from within the region and incorporating it into a Geographic Information System for geo-spacial analysis (See FSEIS Section 8.5.1 for methodology). The consideration of seabed impacts associated with scallop dredging was based on a review of recent literature from within the region, which utilized dredges that are identical or similar to those used in New England—New Bedford style dredge (FSEIS Section 7.2.6.2.4.6.2).

Comment 13: One commenter supported reliance on existing measures as a practicable means to reduce impacts of the scallop fishery on EFH, such as the present DAS program and the rotational closure system.

Response: Utilizing existing measures to minimize the adverse effects of fishing on EFH is contained within Habitat Alternative 2. Although this alternative provides a benefit to EFH through reductions in DAS as well as other measures that reduce effort or area swept by the dredge, it does not alone best satisfy, on balance, the Magnuson-Stevens Act requirement to minimize to the extent practicable the adverse effects of fishing on EFH. Habitat Alternatives 6, 11, and 12 were also shown to be practicable alternatives (FSEIS Section 8.5.6). This suite of management measures fulfills the Magnuson-Stevens Act requirement to minimize to the extent practicable the adverse effects of fishing on EFH.

Comment 14: One commenter opposed the need for habitat closures in Amendment 10 but stated that, of the closure alternatives presented, Habitat Alternative 6 selected for adoption in Amendment 10 was the best.

Response: Habitat Alternative 6 was selected for implementation. The analysis in the FSEIS shows that this alternative provides a significant amount of EFH protection (FSEIS Section 8.5.2.2). In addition, this closure alternative provided the best balance, in considerations of EFH regulations, insofar as it protects habitat without causing significant revenue losses for the scallop, groundfish, monkfish, or other fisheries. Accordingly, NMFS found it to be practicable and appropriate to implement (FSEIS Section 8.5.6.4.6).

Comment 15: One commenter opposed 4-inch (10.2-cm) rings as a habitat measure on grounds that it will have increased impacts on EFH.

Response: The anlaysis provided in the FSEIS (Section 8.5.4.11) recognizes that initially there may be an increase in the area swept by dredges in order to compensate for more escapement of smaller scallops through larger rings. But this result is likely to diminish significantly after the first year as the average size of scallops increases throughout the range of the fishery. The result of the increased size composition of the scallop resource is expected to be a decrease in area swept. In the long-term, area swept is expected to be approximately 15 percent lower than Amendment 10 alternatives with 3.5-inch (8.9-cm) rings. Therefore, the long-term benefits to habitat outweigh the short-term impacts.

Comment 16: One commenter expressed concern about the habitat impact analysis in the FSEIS, asserting that the sediment maps continue to be used in ways that are not appropriate; that much more of the recent scientific studies on mobile gear impacts on the seabed are not included; that many of the projected impacts are based on different gear (*e.g.*, European toothed dredge) or on different types of bottom not found in the Atlantic scallop fishery; and that many of the basic analytical flaws remain to be addressed.

Response: NMFS disagrees with this characterization of the analysis. The sediment data utilized in the analysis are the only data available that span the entire region. Although some other data exist, they do not cover a sufficiently large geographic area to be useful for a comprehensive evaluation of regional closure options. The limitations of the data are recognized in the FSEIS (Section 8.5.2.1) and are taken into account within the analyses. The FSEIS contains the most recent available scientific information pertaining to the effects of bottom-tending mobile gear and provides a literature review summarizing this recent information (FSEIS Section 7.2.6.2.4.6). Studies related to the effects of bottom-tending mobile gear on habitat are continually being published. However, not all studies are relevant to the Northeast, either due to the habitat type studied or the gear utilized. Recent studies that are not relevant to the Northeast or unpublished reports or reports that were not available to the authors of the document, were not included. Although the FSEIS references some large-scale comprehensive studies on the effects of trawls and dredges on habitat, and summarizes those findings, the gear effects determinations (FSEIS Section 7.2.6.3.4.) are based primarily upon existing regional literature, the results of a Northeast Region Gear Effects Workshop, the distribution of fishing in the Northeast region, and the vulnerability of EFH to the types of disturbances caused by gear used in the Northeast.

Comment 17. One group stated that NMFS must revise the description of scallop dredge gear in the FSEIS because it is inaccurate and misleading.

Response: Appendix VI of the FSEIS describes the New Bedford style scallop dredge. Much of the description of this gear is based upon the results and report of the 2001 Northeast Gear Effects Workshop, as well as on published literature on this gear. The description describes those elements of the dredge that contact the bottom. It was not, however, the purpose of the gear description section to discuss the potential habitat impacts associated with this gear. The effects of this gear on habitat are more fully described in FSEIS Section 7.2.6.2.4.6.2, based upon published scientific literature.

Comment 18: One group commented that NMFS must revise the gear impacts analysis to take into account the recovery time for gravel habitat.

Response: The Council and NMFS took habitat recovery time, including gravel habitat recovery time, into account when developing Amendment 10. The FSEIS in Section 7.2.6.3.4 discusses adverse impacts. Forty-four relevant peer-reviewed and non-peer-reviewed publications were included in the literature review comprising the best available science on the subject. Recovery rates were provided when reported by the authors of the scientific studies. Discrepancies between recovery rates listed in tables 139–142 and those reported by the 2001 Gear Effects Workshop are due to the subjective nature of the responses provided by the Workshop participants compared to the research results published by various authors. Therefore, NMFS is confident that the best available science was utilized in the fishing gear effects analysis consistent with National Standard 2.

Comment 19: One group commented that NMFS must reject Habitat Alternative 2 because it specifically relies on the purported incidental benefits of non-habitat related measures in the FMP.

Response: Habitat Alternative 2 is not the only alternative being relied upon to minimize the adverse effects of fishing on EFH. It represents only a part of a strategy for habitat impact reduction, and should not be considered in isolation. The strategy for minimizing the adverse effects of fishing on EFH to the extent practicable includes the effort reductions provided in Habitat Alternatives 2 and 7, the direct benefits of closing areas to bottom-tending mobile gear in Habitat Alternative 6, and the indirect benefits of habitat research in Habitat Alternative 12. The EFH regulations specifically require that the evaluation of fishing effects should list management actions that minimize potential adverse effects on EFH and describe the benefits of those actions to EFH. Habitat Alternative 2 includes approximately 16 measures that will be implemented to achieve the non-habitat goals of Amendment 10 and provides indirect net benefits to EFH (*see* analysis in Section 8.5.4.2 of the FSEIS and Table 221).

Comment 20: One group commented that NMFS must partially reject the proposed GB habitat closures in Habitat Alternative 6 because it weakens habitat protection compared to the No Action Alternative.

Response: Implementation of Habitat Alternative 6 establishes a series of

habitat closed areas within the Gulf Of Maine (GOM), GB, and Southern New England (SNE), which prohibit the use of scallop dredges and scallop trawls. These closed areas total 4,041 square nautical miles and encompass 7.9 percent of the total of all vulnerable EFH for all 43 species/life stages (17.4 percent of juvenile cod EFH) (*see* Table 203 in the FSEIS).

However, it is not the amount of area closed that provides the basis of comparison between Alternative 6 and the No-Action Alternative, so much as it is the purposes for the closures in the respective alternatives. Alternative 6 is intended to directly protect habitat from the adverse impacts from bottom-tending mobile gear used in the scallop fishery. In other words, Habitat Alternative 6 provides closures specifically to protect EFH, whereas the No-Action Alternative considers closures, not specifically for any habitat reason (although habitat might incidentally benefit), but for purposes related to groundfish mortality. Because the No-Action Alternative closures are established for reasons other than habitat protection, the areas under that alternative are available to access by various bottom-tending mobile gears, and such closures might prove to be more temporary, intermittent, and less valuable for habitat as compared to the specific habitat protections afforded under Alternative 6 (FSEIS Section 8.5.4.1). Accordingly, the No-Action Alternative is not directly comparable to Alternative 6 because of the type of closure it represents, and its listing in the various tables in Section 8.5 of the FSEIS is more to provide both context and a point of reference for closed area alternatives. This is why Section 8.5.3 of the FSEIS (EFH Benefits of Habitat Alternatives) does not compare the No Action Alternative to the 12 closed area alternatives.

Alternative 6 does not weaken EFH protection for any species and, in fact, the FSEIS shows that Habitat Alternative 6 is a more effective alternative. It provides permanent or better defined EFH protection in comparison to the zero permanent or indefinite protection provided by the No Action Alternative.

Comment 21: One commenter indicated that NMFS must partially reject and revise the DEIS to identify, develop, and adopt a broad range of alternatives that protect various percentages, including 100 percent of juvenile cod EFH and known complex gravel areas, from scallop dredging and other bottom-tending mobile gear.

Response: NMFS believes that the Amendment 10 FSEIS contains a broad range of reasonable alternatives, which has provided the Council and NMFS with the ability to make an informed decision on Amendment 10. NEPA does not require that every conceivable alternative be analyzed, but rather only reasonable alternatives. These alternatives must be viewed holistically, and not in isolation.

The Amendment 10 FSEIS concludes (Section 7.2.6.3) that there are 24 managed species, and 43 distinct life stages, that have EFH that is vulnerable to the effects of bottom-tending mobile gear. The Magnuson-Stevens Act requirement for Amendment 10 is to minimize, to the extent practicable, the adverse effects of scallop fishing on the EFH of these 43 species/lifestages, not all of which utilize or require the same habitat type (FSEIS Table 215). Amendment 10 undertook an approach to balance EFH protections among all 43 species/lifestages instead of targeting minimization measures on one or a few species/lifestages. Amendment 10 contains a series of management measures that represent several major strategies for providing direct and indirect protection to a wide variety of vulnerable EFH.

As stated in Response to Comment 20 above, implementation of Habitat Alternative 6 establishes a series of habitat closed areas within the GOM, GB, and SNE that prohibit the use of scallop dredges and scallop trawls. These closed areas total 4,041 square nautical miles and encompass 7.9 percent of the total of all vulnerable EFH for all 43 species/life stages and 17.4 percent of juvenile cod EFH (*see* Table 203 in the FSEIS). Therefore, juvenile cod EFH, as well as the EFH of 40 other species/life stages, is afforded direct protection against the adverse impacts from bottom-tending mobile gear.

The FSEIS concludes that complex hard-bottom (gravel) habitats are vulnerable to the adverse effects of bottom-tending mobile gear. However, the FSEIS also shows that hard-bottom sediments are not the only vulnerable EFH. The EFH for other species found in sand, soft sediments, silt, mud, and soft mud have also been determined to be highly vulnerable to the adverse effects of bottom-tending mobile gear (Table 215 of FSEIS). Amendment 10 provides a balanced approach to EFH protection and protection of these substrate types.

The substrate analysis provided in the FSEIS (Section 8.5.2.1) shows the percent composition within each closed area based upon six sediment characteristics: Bedrock, gravel, gravelly sand, sand, muddy sand, and mud. Table 201 in the FSEIS shows that, out of the 83,550 square nautical miles included in the Northwest Atlantic analysis area, 53,856 square nautical miles are composed of sand/gravelly sand representing 64 percent of the entire area. Less than 1 percent of the Northwest Atlantic analysis area has been mapped as gravel or bedrock. These complex hard bottom areas of bedrock and gravel are not uniformly distributed (*see* Map 53 and 55 of the FSEIS) and are difficult to encompass in closed areas without including large amounts of sand and other substrates. The closed area alternatives analyzed in the FSEIS encompass anywhere from 0 to 72 percent of the mapped gravel areas. Habitat Alternative 6 includes all substrate types representing vulnerable EFH, except bedrock. Compared to the Northwest Atlantic analysis area, Alternative 6 includes 17 percent of the gravel, 16 percent of the gravelly sand, 5 percent of the sand, 6 percent of the muddy sand, and 2 percent of the mud (Table 201 of the FSEIS).

Comment 22: One commenter urged NMFS to partially reject and modify Amendment 10 to include mitigation measures to protect mapped gravel habitats in areas within Closed Area 1, the Nantucket Lightship Closed Area, and rotational management areas proposed to be opened to scallop dredging.

Response: See response to Comment 21 above. In addition, NMFS is limited in its authority pursuant to Section 304(a)(3) and could not unilaterally include additional management alternatives.

Comment 23: One group urged NMFS to consider development of a rotational management alternative based on the group's proposals submitted to the Council during the scoping process and its comments submitted in 2001 on Amendment 10.

Response: Consideration of rotational management based on habitat and bycatch protection is discussed in the response to comments 9 and 29. NMFS and the Council considered all of the group's proposals provided during scoping, and did, in fact, adopt aspects of the proposals. In response to this comment submitted on the DSEIS, NMFS prepared a summary of the proposals and their resulting alternatives in response to Comment 115 included in Section 19, ''Response to Comments,'' of the FSEIS (*see* **ADDRESSES**).

Comment 24: One group urged NMFS to implement an interim closure via emergency rule to establish: (1) A no-trawl/dredge zone in the top 30–50 percentile of designated juvenile GB cod

EFH; and (2) sufficient protection to protect known complex gravel habitats on the northern edge of GB and in areas west of the Great South Channel.

Response: This was not a measure considered in Amendment 10. NMFS cannot initiate such emergency rule making to implement the recommended closures unless it can be determined that an emergency justifying such closures exists, and the commenter offers no justification that such an emergency exists.

Comment 25: One commenter stated that NMFS failed to mention that the Council, through Framework Adjustment 16 to the FMP, replaced Habitat Alternative 6 in Amendment 10 with Habitat Alternative 10b, and that the Amendment 10 FSEIS fails to notify the public of this change.

Response: Joint Frameworks 16/39 have been submitted to NMFS for review and approval, but the Council had not approved any alternatives for Joint Frameworks 16/39 prior to the publishing of the FSEIS for Amendment 10. The Amendment 10 FSEIS repeatedly recognizes that a framework adjustment is a necessary next step in scallop rotational area management. The FSEIS also recognizes that there are some differences between habitat closed area alternatives in Scallop Amendment 10 and Groundfish Amendment 13 and that Habitat Alternative 6 could be replaced by Habitat Alternative 10b from Groundfish Amendment 13 (See Table 151 in FSEIS). However, the Council and NMFS have not yet taken final action on Joint Frameworks 16/39 and will not take final action until the NEPA process has been completed. One of the critical issues that will be evaluated in the Joint Frameworks 16/39 with respect to any reconfiguration of habitat closed areas under Amendment 10 is whether or not there will be a change in overall EFH protections.

Comment 26: One commenter stated that the information included in Amendment 10 does not support the closures included in Amendment 10 to minimize the adverse effects of scallop fishing on EFH to the extent practicable. The commenter states that EFH closure alternatives included in Addendum I to the Amendment 10 FSEIS would be better suited to minimize the adverse effects of scallop fishing on EFH to the extent practicable, and that NMFS could defer action to close areas until a future action.

Response: The EFH alternatives implemented by this final rule were determined to minimize adverse effects of fishing on EFH to the extent practicable in accordance with all applicable law, as is more fully discussed in responses to Comments 7 through 11 above.

Comments on Bycatch

Comment 27: Two commenters stated that Amendment 10 does not meet Magnuson-Stevens Act requirements to minimize bycatch and bycatch mortality to the extent practicable. One of commenters recommended that NMFS adopt long-term closures for bycatch.

Response: The Council considered several alternatives designed to minimize bycatch and bycatch mortality to the extent practicable, including seasonal and long-term closures, gear restrictions, and area rotation based on the protection of species caught as bycatch. In considering national standards and other Magnuson-Stevens Act provisions and bycatch reduction measures already in place with the impacts of additional bycatch measures, the Council determined, and NMFS agrees, that the proposed large area closure alternatives were not practicable because of the negative overall impacts on scallop vessels that would result, combined with existing closed areas and area rotation measures. The gear modifications and combined effect of other management measures and effort reductions already in place and included in Amendment 10 are expected to reduce bycatch of small scallops, finfish vulnerable to capture in scallop dredges, skates, and monkfish.

Comment 28: One commenter stated that Amendment 10 relies on a single measure to reduce bycatch (10-inch (25.4-cm) twine tops), which does not address barndoor skate bycatch.

Response: Numerous scallop management measures are already in place that significantly reduce bycatch, such as DAS restrictions, crew size, closed areas, and gear restrictions. In addition, the Council considered several additional alternatives to reduce bycatch in the scallop fishery, including gear modifications and time and area closures, and recommended those measures necessary to reduce bycatch to the extent practicable. The rationale for the bycatch measures included in Amendment 10 and for those not recommended as part of Amendment 10 is included in Table 1, and Sections 5.1, 6.1.9 and 8.3 of the FSEIS. Amendment 10 increases the minimum twine-top mesh size for scallop dredges from 8 inches (20.3 cm) to 10 (25.4 cm) inches to reduce bycatch and concluded that the rotational management fishing restrictions and area closures would further minimize bycatch and bycatch mortality. The increased twine-top mesh size has proven to be an effective measure to reduce bycatch, particularly of flounder species often caught by scallop dredge gear. Area rotation area access programs and area closures are projected to further reduce bycatch by limiting fishing time and preventing access to some areas. Amendment 10 does not include additional closures specifically to reduce finfish bycatch because the information available was inadequate to clearly demonstrate that specific area closures would be effective. In addition, in view of closed areas already established under the Multispecies FMP and rotational closures implemented by Amendment 10, additional closures for bycatch protection would not be practicable because, while the bycatch reduction was not quantifiable, the negative impacts on the fishery were, and the impacts were determined to be significant. Future area access programs may establish TAC levels for bycatch species that would stop scallop fishing in an access area when the TAC for the bycatch species is attained. The Council has adopted such a provision for yellowtail flounder as part of Joint Frameworks 16/39, which has been submitted to NMFS for review and implementation.

The Council considered several alternatives to minimize bycatch, including skate species and barndoor skate in particular. Although information supported measures designed to minimize finfish bycatch overall, the Council, did not have information available to identify measures specifically to reduce the bycatch of skates. Amendment 10 therefore relies on reductions in fishing time associated with increased fishing efficiency with 4-inch (10.2-cm) rings in the long-term and area rotation. Skates are also known to be less susceptible to discard mortality than other species. Nevertheless, the Council and NMFS remain concerned about bycatch of skate species and will continue to seek ways to minimize their catch in the scallop fishery.

Comment 29. One group commented that the FSEIS failed to adequately develop and analyze an area-based management and rotation plan based bycatch protection.

Response: The effects of area rotation is expected to also provide benefits for finfish species caught as bycatch. Area rotation is expected to improve scallop fishing efficiency which would in turn reduce bycatch as tow times decrease. The Council did not consider an alternative that would have resulted in rotational area management based in part on bycatch, because there is insufficient information to support such a management approach at this time.

Comment 30: One commenter supported measures to reduce bycatch, specifically the 10-inch (25.4-cm) twine-top requirement, and the proactive protected species program.

Response: NMFS agrees that the 10-inch (25.4-cm) twine top requirement will reduce bycatch in the scallop fishery. The proactive protected species program will enable the Council to address new information regarding interactions between the scallop fishery and sea turtles it becomes available.

Comment 31: Two groups commented that Amendment 10 fails to establish a standardized bycatch reporting methodology to assess the amount and type of bycatch occurring in the scallop fishery.

Response: In accordance with the Magnuson-Stevens Act, NMFS is developing a nationwide bycatch protocol that describes common elements of a standardized bycatch reporting methodology (SBRM) for fisheries under NMFS's jurisdiction. Consistent with this protocol, the FMP and Amendment 10 contain many measures that satisfy the elements of the SBRM, which will further develop the bycatch reporting methodology to assess the amount and type of bycatch in the scallop fishery. To assess bycatch, the scallop fishery relies mainly on mandatory data collection program (vessel trip reporting and dealer reporting) that has been in effect since 1994, combined with a fishery observer program. The Fisheries Observer Program provides the most reliable bycatch information and is the foundation of bycatch estimates used in Amendment 10. Amendment 10 provides for enhanced sea sampling by expanding the scallop TAC and DAS set-aside program that compensates vessels for carrying an observer when fishing outside of access areas under DAS. The set-aside program therefore would increase the number of observers that can be dedicated to the scallop fishery by supplementing NMFS's observer funding. The additional data will improve estimates of the amount and type of bycatch occurring in the scallop fishery. The mechanism for establishing observer set asides of TAC and DAS is a permanent measure, but future framework actions could adjust the amount of the set-asides, if necessary to provide more data. The vessel trip report (VTR) requires vessel operators to report discards by species, although the VTRs alone are not sufficient to adequately estimate bycatch. Scallop vessels are fully equipped to report bycatch through their vessel monitoring systems and would be required to do so if hard TACs are enacted for scallops or yellowtail flounder under Joint Frameworks 16/39. Further, new electronic dealer reporting requirements are in place and will improve real-time data for landed components of catch in scallop and other fisheries.

Comment 32: One commenter stated that the bycatch assessment analysis relies on incomplete and outdated data.

Response: The analysis of bycatch is based on the best available data, including observed sea scallop trips and VTR. The Amendment 10 analysis relies on observed trips pooled over several years (for a total of 28,000 observed tows) and observer data from the controlled access programs in groundfish closed areas and the Hudson Canyon Access Area. Although these data could be significantly augmented, no other reliable data was available for use in Amendment 10. The analyses are included in the Amendment 10 FSEIS in Section 7.2.4.1, Section 8.3, and Appendix IX.

Comment 33: Two commenters stated that the level of observer coverage expected in the scallop fishery, including coverage resulting from the TAC and DAS set-asides, is insufficient to characterize bycatch and bycatch mortality, including takes of threatened and endangered sea turtles. The commenters recommended that NMFS require 50 percent observer coverage in the MA and 20 percent coverage on GB based on a study conducted in 2003 on the level of observer coverage needed to estimate bycatch.

Response: The cited study (conducted in 2003 on the level of observer coverage needed to estimate bycatch) recommended that in the absence of available data, coverage rates of 20 to 50 percent were appropriate, based on results of two simulation studies. The study also recommended that when information about expected rarity, distribution, and variability of bycatch species is available, it should be used to construct appropriate stratification schemes to reduce the amount of sampling effort required to achieve a given level of precision. Because existing observer data are available from the sea scallop fishery, these data were used to design a stratified random sampling regime. Sampling is expected to provide estimates of sea turtle bycatch with a coefficient of variation of 30 percent. This coverage, combined with coverage anticipated from the TAC and DAS set-asides, will substantially reduce the coefficient of variation for species of finfish caught as bycatch in the scallop fishery, but the amount of the reduction will vary from stock to stock. Results from the current plan will be used to refine or revise the sampling design in future years, and adjust set-aside amounts, as appropriate.

Comment 34: One commenter stated that Amendment 10 does not consider an adequate range of alternatives and mitigating measures to protect sea turtles and that NMFS would likely take no action to protect sea turtles in the next 3 years.

Response: The Council considered the interactions between the scallop fishery and sea turtles throughout its development of Amendment 10, which is fully documented in the amendment and the biological opinion (BO) conducted regarding impacts of the FMP and the scallop fishery on sea turtles. Although the Council considered alternatives that would have closed areas in the MA to scallop fishing, it could not be determined whether the resulting redistribution of effort throughout the rest of the MA would increase or decrease fishery interactions with sea turtles, which occur seasonally throughout the MA.

The ''Proactive Protected Species Program'' included in Amendment 10 provides an abbreviated mechanism for the Council to use to recommend management measures based on new information obtained about sea turtle and scallop fishery interaction. The increased observer coverage in the scallop fishery as a result of Amendment 10 should provide additional data on sea turtle takes that could be used to develop future measures. On February 23, 2004, NMFS completed a BO under Section 7 of the Endangered Species Act (ESA) that concluded that the continued operation of the scallop fishery, including measures proposed in Amendment 10, is expected to adversely affect endangered and threatened sea turtles (loggerhead, Kemp's ridley, green, and leatherback), but would not jeopardize the continued existence of these species. In the incidental take statement (ITS), the BO considered new information that identified 12 sea turtles taken in the scallop fishery outside of the MA Access Areas through October 2003. The BO anticipates the take of up to 111 animals of the affected species annually in the scallop fishery. Sea turtle takes in excess of the ITS, or new information that reveals effects of the fishery that were not previously considered during consultation, would require NMFS to reinitiate Section 7 consultation and would trigger the Council's development of measures to mitigate takes under the Proactive Protected Species Program.

As part of the TAC set-aside program under Framework 15 to the FMP, NMFS

authorized a research project to be conducted during the 2004 fishing year which were designed to identify gear modifications that may reduce captures of sea turtles in scallop dredges. Preliminary results reported by the participants are promising, indicating that increasing the amount of chain gear used in the opening on the bottom of the dredge is reducing sea turtle captures. The BO utilized some of the new information acquired through this research. Final work and analysis of the research is being conducted, and could, following review, be used to develop a management action under the Proactive Protected Species Program.

Comment 35: Twenty-eight comments were received in opposition to the proposed restriction on limited access scallop vessels fishing outside of DAS. U.S. Representatives Saxton (NJ); LoBiondo (NJ); Smith (NJ); and Pallone (NJ); Senators Lautenberg (NJ) and Corzine (NJ); the Mid-Atlantic Fishery Management Council (Mid-Atlantic Council); several fishermen; and industry representatives commented that NMFS should disapprove the proposed measure because limited access scallop vessel owners from NJ, who account for the majority of the landings of scallops by limited access scallop vessels fishing outside of scallop DAS, would be severely and unequally impacted by the measure. They stated that the 400-lb (181.4-kg) limit contributes to these vessels' economic viability and allows them to maintain crews between DAS trips and that no other similar restrictions were planned for general category vessels or for vessels fishing under combination permits. Comments also stated that the measure was not supported by the best available scientific information.

Response: For the reasons stated in the Background section of the preamble of this final rule, the proposed restriction on limited access vessels fishing outside of scallop DAS was disapproved.

Comment 36: One commenter supported the area rotation program and the measures to ensure flexibility under area rotation.

Response: NMFS agrees that area rotation and the measures to promote flexibility are appropriate for scallop management and is implementing this system through this final rule.

Comment 37: One commenter opposed area rotation because it would result in confusion about where vessels can fish.

Response: Rotational area management will apply only to vessels issued scallop permits. No new restrictions will be placed on vessels fishing for other species within the regulations for that fishery. Scallop vessel owners will receive a Small Entity Compliance Guide that will adequately explain the new provisions implemented by this final rule. In the future, scallop vessel owners will be informed of any changes to the area rotation management scheme so that they will be prepared for new area openings and closures.

Comment 38: One commenter supported the Hudson Canyon access program and encouraged swift closure of the Elephant Trunk area.

Response: NMFS has approved these measures in Amendment 10 and is implementing them through this final rule.

Comment 39: One commenter stated that access to groundfish closed areas is vital to the success of Amendment 10.

Response: Scallop fishing within the groundfish closed areas would provide long-term benefits to the scallop fishery by allowing scallop fishing effort to occur on large concentrations of scallops within the areas. However, access to the groundfish areas must be approved through an action consistent with and promulgated under the Northeast Multispecies FMP. The Council has recently approved and submitted to NMFS for review Joint Frameworks 16/39 for this purpose.

Comment 40: The Council recommended that the name of the closed area in the MA remain the Elephant Trunk closed area.

Response: NMFS received no other comments on this issue indicating that the use of the name ''Elephant Trunk'' would be confusing. Therefore this final rule does not rename that area.

Comment 41: One commenter expressed concern about allowing general category vessels to retain 400 lb of scallops within Sea Scallop Access Areas.

Response: NMFS determined that the intent of the Council was to allow general category vessels to retain up to 400 lb (181.4 kg) of shucked scallops or 50 U.S. bu (17.6 L) of in-shell scallops per trip inside Sea Scallop Access Areas and that such access was adequately justified in the Amendment 10 FSEIS. Therefore, this measure was approved in Amendment 10 and is implemented through this final rule.

Comment 42: Two commenters opposed the DAS allocation system in Amendment 10 that specifically allocates DAS to the access areas. One of the comments stated that, for larger vessels that typically harvest more than 18,000 lb (8,164.7 kg) of scallops per trip, the new access area possession limit would result in a significant decrease in scallop supply for the processing company. Requiring vessels to fish within the access areas may reduce product quality and may jeopardize the safety of the crews. One commenter stated that economic impacts of area-specific DAS is not well explained and that significant economic impacts would result. Nevertheless, the commenter supported the area-specific effort allocation scheme because it would stabilize the management program and provide for OY on a continuing basis. The commenter urged NMFS to implement the broken trip provision to offset negative impacts of the new program.

Response: The economic impacts of area rotation and effort allocation schemes are presented in Section 8.7 of the FSEIS. The analysis thoroughly compares alternatives. It is expected that most limited access scallop vessels will fish within the Sea Scallop Access Areas so that they make use of all of the available fishing opportunities. Social impacts are more difficult to assess, since the impacts would depend on preferences of vessel owners and the ability for vessel owners to adapt to the new measures. The social impacts are described in Section 8.8 of the FSEIS.

The 18,000 lb (8,164.7 kg) possession limit was determined by the Council to meet the fishing mortality objectives of the area rotation program and allow effort to be spread evenly among the scallop fleet. A higher possession limit would have resulted in fewer trips because it would take less time to harvest the TAC. Variable trip limits by vessel size was not considered.

NMFS agrees that the broken trip provision, as well as the one-for-one trip exchange provision, will offset the potential adverse effects of the more rigid effort allocation system.

Comment 43: One commenter stated that requiring DAS use in access areas is not in the best interest of the resource or the industry and that area management should be to protect juvenile scallops and groundfish only, not to manage the way that vessels fish.

Response: Amendment 10 implements an area-based management program that directs scallop fishing effort into areas where carefully considered levels of fishing effort is allowed. Therefore, management of scallop fishing effort in the areas is critical to prevent overfishing and promote achievement of OY.

Comment 44: One commenter expressed concern that the broken trip provision eliminated the ability for vessel operators to determine the need to terminate a Sea Scallop Access Area trip.

Response: It was not NMFS's intent to eliminate such flexibility, and this final rule clarifies that vessel operators will have the discretion to terminate Sea Scallop Access Area trips as necessary.

Comment 45: One commenter supported the provision that allows vessels to be compensated for trips that were terminated early. The commenter expressed concern that the provision included in the proposed rule did not allow the flexibility for the vessel captains to determine the need to terminate trips.

Response: The broken trip provision is included in this final rule, with some modifications as identified in the Changes from Proposed Rule to Final Rule section of this preamble. NMFS did not intend to eliminate captain discretion in determining whether or not it is appropriate to leave an access area. This final rule clarifies this issue.

Comment 46: One Commenter stated that there should be no compensation for vessels that terminate trips early and that, if included, the process would complicate administration and enforcement of the FMP measures.

Response: The measure is necessary to mitigate the constraints of the more inflexible system of area-specific effort allocation and to enhance the ability of the scallop fishery to achieve OY. While the measure that allows vessels to resume trips that have been terminated early may make the FMP somewhat more difficult to administer, NMFS has determined that the measure is feasible.

Comment 47: One Commenter expressed concern about the regulations pertaining to Sea Scallop Access Area one-for-one trip exchanges. The Commenter suggested that vessel owners should be allowed to conduct the exchanges and simply notify NMFS when the exchange has been made.

Response: NMFS must retain administration responsibilities for the one-for-one trip exchange program in order to ensure that vessels involved in an exchange have adequate trips to exchange. This administration will be particularly important in 2004 because numerous vessels have already taken trips into the Hudson Canyon Access Area, limiting trip exchange availability.

Comment 48: One Commenter opposed the program that allows one-for-one exchanges of Sea Scallop Access Area trips because it is confusing.

Response: While the trip exchange provision may appear to be somewhat complicated, it is necessary to provide flexibility for vessel owners that may not be able to make long trips to fish in distant Sea Scallop Access Areas. Such vessel owners could exchange a trip in an area inaccessible to them for a trip in a more accessible area. There would be no net change in the total number of trips for each area. NMFS will fully explain the trip exchange program in its Small Entity Compliance Guide for Amendment 10, which will be sent to all permit holders in the fishery.

Comment 49: Two Commenters urged NMFS to change the DAS default trigger date in Amendment 10 to September, to avoid confusion and complications when/if Joint Frameworks 16/39 are implemented.

Response: Because changing the default date in the final rule to September 15, 2004, is an administrative matter based on timing of Joint Frameworks 16/39, with no conservation impacts, the suggested change has been made in the final rule.

Comment 50: One Commenter stated that the increase in the dredge gear ring size from 3.5 to 4 inches (8.9 to 10.2 cm) in the Open Areas is not supported by analyses in the FSEIS and would cause significant economic harm to the scallop industry.

Response: The Amendment 10 analyses show that, over the long-term, 4-inch (10.2-cm) rings would improve yields from the scallop resource, reduce bottom area swept, and increase revenues. Amendment 10 establishes a long-term management approach that incorporates a wide range of measures to improve yield from the scallop resource while protecting EFH and minimizing bycatch to the extent practicable. The analysis shows that revenues for the first several years of management under Amendment 10 may be negatively affected by the ring size increase. However, the higher escapement of small scallops due to the use of 4-inch (10.2-cm) rings means that over time, more scallops will grow to a larger size. Over time, the composition of the scallop catch with 4-inch (10.2-cm) rings will be predominated by larger, more valuable scallops than would be possible using 3.5-inch (8.9-cm) rings. Over the long-term, therefore, the use of 4-inch (10.2-cm) rings would increase efficiency and catch of larger scallops, improve yields from the scallop resource, and increase revenues. More fishing effort may be spent initially by vessels to make up for potential losses in catch associated with the larger dredge ring size increase, thereby decreasing the short-term benefits to EFH and the insustry. However, this measure is consistent with achievement of the long-term goals of Amendment 10, and is supported by the Amendment 10 analyses.

Comment 51: The Council recommended a 4 to 6-week delay in the effective date of the 4-inch (10.2-cm) ring requirement in the Hudson Canyon Access Area and a 6-month delay for all other areas, as proposed in Amendment 10.

Response: This final rule reflects the Council's recommended delay in effectiveness.

Comment 52: One Commenter stated that the reasons for not adopting 12-inch (30.5-cm) twine top mesh size was due to projected economic losses resulting from a loss of scallop catch, and an increase in tow times resulting from reduced catch efficiency.

Response: This rationale is provided in the Amendment 10 FSEIS. NMFS has therefore decided to approve the Council's recommendation and implement the 10-inch (25.4 cm) twine top mesh size.

Comment 53: One Commenter supported observer and research TAC and DAS set-asides, but cautioned NMFS to not let the research TAC and DAS set-aside program to delay research.

Response: NMFS will make efforts to ensure that research is not impeded by the review process involved in the research TAC and DAS set-aside program. The Request for Proposals was published on April 15, 2004 (69 FR 19983) and NMFS has initiated the review process for submitted projects.

Comment 54: The Council recommended that the amount of DAS compensation for vessels carrying an observer should not be uniform for all trips.

Response: NMFS agrees and has clarified the requirement in this final rule.

Comment 55: One commenter stated that the full costs of observers should be paid by industry, that there should not be an allowance for extra DAS for vessels with observers, and that a high fee for vessels to fish should be established to help build funds for observers.

Response: NMFS cannot provide adequate observer coverage on scallop fishing trips without supplementary funding and industry payment of observer costs. Therefore, the FMP has effectively incorporated TAC set-asides to help defray the cost of observers incurred by scallop vessels. With the DAS and TAC set-aside system, the industry can be compensated for the costs of observers at no detriment to the scallop resource. Both the amount of DAS and TAC allowed to compensate for the cost of observers are factored into the estimation of the overall TAC and DAS estimated to achieve the fishing mortality and biomass goals of the FMP.

Comment 56: One commenter expressed concern that the cost of

observers included in the proposed rule was excessive and that the compensation program is poorly explained and would likely not provide sufficient compensation for vessels carrying observers. The commenter urged NMFS to clarify the costs of observers and the administration of the DAS set-aside program in the final rule, and suggested that trips with observers be charged a reduced rate of DAS. If the TAC and DAS set-asides are fully utilized prior to the end of the fishing year, NMFS notes that vessel owners requested to carry observers will have to bear the costs.

Response: The proposed rule indicated a cost of $1,100 per day for observers based on information available at the time the proposed rule was published. However, after the proposed rule was published, NMFS determined that the daily cost of observers is $719.12 in 2004 rather than the previous estimate of $1,100 per day. The Council provided an example of how the DAS set-aside compensation system would work in a hypothetical example in Section 5.1.8.1 of the FSEIS. This example used a daily cost of observers equal to $800 and estimated that a DAS adjustment factor of about 0.14 would be sufficient for vessel owners to pay for the cost. The analysis included in Section 8.2.4.2 of the FSEIS was used to determine the appropriate DAS adjustment factor that would provide sufficient observer coverage, while providing sufficient funds for vessels to receive compensation for carrying an observer. NMFS has again reviewed the information and taken the commenter's suggestions into consideration. NMFS has revised the regulations in this final rule such that vessels carrying an observer will initially be charged DAS at a rate of 0.86 DAS per actual DAS fished. This system, rather than adding DAS to a vessel's allocation, will be easier to administer with respect to trips taken at the end of the year, and will allow carry over DAS to be calculated more easily.

Comment 57: One commenter urged NMFS to eliminate the framework process from the FMP because the framework process ignores the requirements of the Magnuson-Stevens Act and other applicable law and is not consistent with Congress's intent.

Response: The framework process is a valid and legal method of adjusting fishery management measures. The FMP includes a set of management measures that can be adjusted through the abbreviated framework process which allows for more timely modifications in response to changing fishery, resource, and/or environmental conditions.

Comment 58: One commenter recommended that the framework process not include a consideration of the impacts of measures on EFH.

Response: The Council and NMFS are required by the Magnuson-Stevens Act to evaluate the impacts of management measures on EFH and the consistency of the measures with the Magnuson-Stevens Act EFH requirements. A framework action, however, need not implement management measures to minimize the impacts of fishing on EFH if the Council determines that such measures are not necessary or are outside of the scope of the framework it is developing, and the framework measures are consistent with Magnuson-Stevens Act EFH requirements. Mitigating measures should be considered if adverse effects of the fishery on EFH are potentially increased by a management action (*e.g.*, opening a closed area with highly sensitive EFH).

Comment 59: One commenter opposed the 2-year framework cycle stating that the Council's intent was to adjust DAS and area rotation every year.

Response: The Council recommended that the scheduled framework actions should occur every 2 years and that scheduled annual adjustments would be eliminated. However, this final rule allows that Council the flexibility to develop framework actions more frequently, as necessary.

Comment 60: One commenter expressed concern regarding the framework process that requires the Council's scallop PDT to recommend measures to ensure OY. The commenter stated that the process is illegal and is an attempt by NMFS to impose the new overfishing definition that was considered but rejected by the Council in development of Amendment 10.

Response: Because of the potential effect of long-term area closures, the existing overfishing definition is not sufficient by itself to assure OY from the areas open to fishing. The framework process approved in Amendment 10 and implemented through this final rule will allow the PDT and the Council the flexibility to take the existing status of the resource into account, determine optimum yield-per-recruit based on the condition of the scallop resource, and devise appropriate measures to assure that OY is achieved on a continuing basis. The achievement of optimum yield-per-recruit from the resource as available for harvest in the upcoming fishing years could result in differential fishing mortality rates for various spatial components, as long as OY is achieved for the resource as a whole. This process is intended to be more flexible than the new overfishing definition that was considered but rejected by the Council.

Comment 61: The Council commented that the cooperative industry survey is an integral part of the area rotation program adopted by the Council and must be used to provide data at the level of detail necessary for use in recommending adjustments to the rotation program. The Council commented that there is no precedent for including the details of a survey in an amendment or framework, and that such details would only constrain the survey. The Council commented that the research TAC set-aside would provide sufficient funds and ability for the surveys to be completed.

Response: For the reasons described in the ''Disapproved Measures'' section of the preamble to this final rule, NMFS disapproved the cooperative industry resource survey provision.

Comment 62: One commenter recommended that the scallop research section of the scallop regulations classify cooperative industry resource surveys as scientific research.

Response: The cooperative industry resource survey provision was disapproved.

Comment 63: One commenter stated that the scallop fishing industry should not be allowed to conduct cooperative research.

Response: The scallop industry has been actively involved in research aimed at assisting management decisions for more than 4 years through formal research set-aside programs. The industry has assisted NMFS and academics in conducting research with results that have been used frequently by fishery managers. It is critical that industry remain involved as active participants in the research process. Amendment 10 therefore establishes a research set-aside of TAC and DAS to help fund research while taking into consideration the amount of biological removal from the scallop resource.

Comment 64: One commenter stated that the cooperative industry survey is critical to the success of the fully adaptive area rotation program, but there is no detailed plan to implement the program. However, the commenter stated that the failure to establish protocols for the cooperative industry research program is not critical.

Response: NMFS agrees that surveys with more resolution than the NMFS Scallop Survey would help refine fishing area definitions areas to apply management measures more precisely. However, NMFS disapproved the measure for the reasons discussed in the ''Disapproved Measures'' section of the preamble of this final rule.

Comments on Economic Impacts

Comment 65: One commenter stated that the social and economic impacts analyses are insufficient and are misleading because they use 1996 dollar values to evaluate impacts. The commenter urged NMFS to incorporate more recent economic data.

Response: At the time that Amendment 10 was completed, existing guidance from the Office of Management and Budget was that analyses should use 1996 dollars as a baseline, with subsequent year's dollar values discounted to be consistent with the value of 1996 dollars. The Council's economic analysis complied with this guidance by using 1996 dollars to evaluate the economic impacts of measures. Comparisons of all of the considered alternatives is facilitated by the use of a single dollar value, taking out the effect of inflation. Nevertheless, the FSEIS includes some references to more recent values, so reasonable comparisons can still be made.

Comment 66: The Council suggests that the estimated compliance cost to the industry for the broken trip provision is an upper limit, and would not likely be exceeded.

Response: For the purpose of estimating compliance cost, the proposed rule estimated the maximum number of respondents to evaluate compliance costs. Otherwise, compliance costs would be underestimated.

Comment 67: The Council commented that the differential effects of area rotation are expected to vary, because areas of varying recruitment would result in varying closed and access area designations, not, as explained in the proposed rule, because of the different mobility of vessels and different reactions by the industry.

Response: While NMFS does not disagree, the discussion in the proposed rule was taken from the Council's discussion of distributional impacts included in Section 9.2.3 of the FSEIS.

Comment 68: The Council commented that the economic impacts analysis of the proposed restriction on limited access scallop vessels fishing outside of the DAS program might be strengthened by estimating the potential loss of DAS and revenues for limited access vessels if there were reductions in DAS caused by an increase in scallop landings by vessels fishing outside of DAS.

Response: NMFS disapproved the proposed restriction on limited access scallop vessels for the reasons specified in the ''Disapproved Measures'' section of the preamble of this final rule.

Comment 69: The Council considers increased efficiency of 4-inch (10.2-cm) rings to be the primary reason for selecting the 4-inch ring alternatives over the 3.5-inch (8.9-cm) ring alternatives rather than the reductions in bycatch and epifaunal displacement.

Response: The Council comment focused on only one portion of the discussion of economic impacts included in the IRFA. The discussion of increased efficiency of the 4-inch (10.2-cm) rings was included in the discussion of the impacts of the 4-inch (10.2-cm) ring requirement. In addition to that discussion, NMFS relied on the discussion provided by the Council in its IRFA in Section 9.0 of the FSEIS.

Comment 70: The Council stated that fishing by multispecies and monkfish vessels in closed areas has been prohibited since 1994, rather than 2001, as specified in the IRFA section of the proposed rule.

Response: NMFS agrees and notes this correction.

Comment 71: One commenter supported the collection-of-information requirements included in the proposed rule.

Response: NMFS agrees that the collection-of-information requirements are necessary for the management of the scallop fishery and implements them through this final rule.

Comment 72: The Small Business Administration, Office for Advocacy (Advocacy) expressed concerns about the economic impacts presented in the IRFA relative to the increase in scallop dredge minimum ring size, the cost of observer coverage and compensation through the DAS set-aside, and the potential effects of the regulations on vessels ending access area trips early.

Response: The FRFA included in this final rule clarifies the impacts of the Amendment 10 management measures on small businesses. Specific responses to the comments related to the IRFA are included in the FRFA and in responses to Comments 65 through 71.

Comments on the Proposed Regulatory Text

Comment 73: One commenter and the Council expressed concern that the proposed rule contained regulations that continued to refer to required effort reductions and rebuilding, despite the finding that the scallop resource is rebuilt and that additional effort reductions are not required for rebuilding.

Response: This final rule revises the regulatory text to include a more general characterization of the requirements so that they will be appropriate under any resource and fishing condition.

Comment 74: Two commenters requested that the final rule provide a definition of ''Open Areas.''

Response: NMFS has clarified the final rule by including definitions of ''Open Areas,'' ''Sea Scallop Access Areas,'' and ''Rotational Closed Areas.''

Comment 75: The Council provided suggestions on how to clarify the regulations in this final rule. Those changes that NMFS agreed are necessary and appropriate are described in the ''Changes from Proposed Rule to Final Rule'' section of the preamble of this final rule. The following suggested changes were not made for the reasons described below.

Comment 75a: The Council recommended that the prohibitions regarding possession of scallops within Rotational Closed Areas, Sea Scallop Access Areas, and EFH Closed areas be changed to allow transiting of the areas with scallops on board.

Response: NMFS has clarified the prohibition in this final rule. Section 648.14(a)(110) prohibits the possession of scallops that were caught in the areas, not possession of scallops caught in other areas. Section 648.14(a)(111) allows vessels to transit the areas with scallops on board.

Comment 75b: The Council suggested that the 4-inch (10.2-cm) ring requirement may require a modification to the regulation that requires a minimum number of rows of rings specified in § 648.51(b)(4) and that NMFS should obtain expert advice to determine if a change is appropriate.

Response: NMFS consulted with a gear research expert, who recommended against such a change. Given the lack of further advice from the Council, NMFS has not changed the requirement.

Comment 75c: The Council recommended changes to the regulatory text in relation to the proposed restriction on limited access scallop vessels fishing outside the scallop DAS program.

Response: Because NMFS disapproved this measure, all regulations included in the proposed rule relative to this measure were eliminated from this final rule.

Comment 75d: The Council recommended that § 648.56 include data collection requirements associated with scallop research.

Response: The recommended requirement would duplicate the reporting requirements specified in the TAC and DAS set-aside Request for Proposal and Federal Grant process. It is therefore not necessary to include the reporting requirement in the scallop regulations.

Comment 75e: The Council recommended that this final rule contain regulations associated with the cooperative industry survey.

Response: NMFS disapproved this measure for the reasons described in the ''Disapproved Measures'' section of the preamble of this final rule.

Comment 75f: The Council recommended that this final rule include, in the Framework Adjustment section of the scallop regulations at § 648.55, a detailed description of the area rotation process that would provide the Council with guidance for future actions to develop area rotation schemes.

Response: NMFS has made one change regarding this issue in the final rule to specify that Rotational Closed Areas will be considered where projected annual change in the scallop biomass exceeds 30 percent and that Sea Scallop Access Area openings will be considered where the projected change in the scallop biomass is less than 15 percent. All of the other factors referred to by the Council remain specified as guidelines, as described in Section 5.1.3.2.1 of the Amendment 10 FSEIS. Therefore, they are not included in this final rule as specific regulatory requirements for the Council to consider. The Council should refer back to the Amendment 10 document for guidance for development of future area rotation schemes.

Comment 75g: The Council recommended that this final rule include the Council's research priorities in § 648.56.

Response: NMFS believes that inclusion of research priorities in the scallop regulations would unnecessarily constrain the Council's future modification of priorities and they are therefore not included in this final rule. Research priorities may be modified by the Council at any time, and changes will be reflected in future RFP's published in association with research TAC and DAS set-aside program.

Changes From the Proposed Rule

NMFS has made several changes to the proposed rule as a result of public comment and because of the disapproval of two of the management measures proposed in Amendment 10. Other changes are technical or administrative in nature and clarify or otherwise enhance administration and/or enforcement of the fishery management program. These changes are listed below in the order that they appear in the regulations.

In § 648.2, definitions for ''Open areas,'' ''Rotational Closed Areas,'' and ''Sea scallop Access Areas'' are added in response to comments from the Council and the public to clarify references to these categories of areas in the regulations.

In § 648.10, paragraph (b) is reformatted, consistent with the final rule published for Amendment 13 to the Northeast Multispecies FMP (69 FR 22906, April 27, 2004).

Several changes were made in § 648.14 to eliminate changes to the prohibitions included in the proposed rule that would have resulted from the implementation of the disapproved restriction on limited access scallop vessels. Other changes to § 648.14 from the proposed rule were necessary to clarify the prohibitions and resulted in minor reformatting of the prohibitions.

In § 648.51, paragraph (b)(3)(ii) is modified based on public comment to ensure that the minimum ring size required under § 648.60(a)(6) is consistent with the minimum ring size restriction in § 648.60(b)(3).

In § 648.52, restrictions on the possession limit that would have been imposed by the disapproved restriction on limited access vessels have been removed.

In § 648.53, paragraph (b)(3) is redesignated as paragraph (b)(2) and paragraph (b)(2) is redesignated as paragraph (b)(3) to provide clarity in the transition between the emergency action currently in place and Amendment 10.

In § 648.53, the table in redesignated paragraph (b)(2) is revised to include the 2006 DAS allocations as recommended by the Council.

In § 648.53, paragraph (b)(4) is revised to move the DAS default date from August 15, 2004, to September 15, 2004, as requested by the Council and public comment.

In § 648.53, paragraph (c) is revised to better reflect the Council's recommendation that limited access vessels be allocated a maximum number of total trips in Sea Scallop Access Areas that can be taken in each Sea Scallop Access Area, provided the number of trips taken in an area does not exceed the maximum allowed number of trips for that area.

In § 648.53, paragraph (d) is revised to require that the Council adjusts the 2006 DAS allocations included in the table in § 648.53(b)(2) to ensure that management measures including DAS achieve OY.

In § 648.53, paragraph (e) clarifies the end-of-year carry-over for open area DAS at the request of the Council.

In § 648.53, paragraph (f) makes a technical change for determining how to account for DAS accrual for vessels that are carrying an at-sea observer by reducing DAS charge, rather than adding DAS.

In § 648.53, paragraph (h)(1) clarifies the DAS set-aside mechanism to clarify that DAS for research and observer coverage are deducted from the total available DAS, as recommended by the Council and public comment. This paragraph also incorporates an increase in the DAS set-aside amount if the 2004 DAS default is enacted on September 15, 2004, consistent with the recommendation of the Council.

In § 648.54, references to ''fishing mortality and effort reduction objectives'' have been changed to ''biomass and fishing mortality/effort limit objectives'' consistent with the recommendation of the Council and public comment.

In § 648.55, paragraph (a) is modified to better reflect the Council's recommendation that the selection of Rotational Closed Areas and Sea Scallop Access Areas be based on biomass growth rate, as approved by the Council and recommended in the Council's comment letter on the proposed rule.

In § 648.55, the proactive protected resources program in paragraph (e) is described in more detail, as recommended by the Council.

In § 648.55, the conversion from square miles to square kilometers is corrected in paragraph (g), as recommend by the Council and public comment.

In § 648.57, the area designations are clarified in paragraph (a) consistent with the area definitions in § 648.2. The reservation of paragraph (b) is not necessary and is deleted.

In § 648.59, the coordinates for the Hudson Canyon Sea Scallop Access Area have been corrected in paragraph (a)(2), as recommended by the Council.

In § 648.59, paragraph (c) is added to clarify the maximum number of trips, out of the total number of Sea Scallop Access Area trips, that can be taken in the Hudson Canyon Sea Scallop Access Area, as recommended by the Council.

In § 648.60, paragraph (a)(3) is reformatted and a table is included to clarify the trip and DAS charge per trip for Sea Scallop Access Areas, as recommended by the Council.

In § 648.60, the May 1 deadline for one-for-one trip exchanges in paragraph (3)(ii) (which was paragraph (3)(iv) in the proposed rule) has been changed to June 1, consistent with Amendment 10, as submitted, and the Council's recommendation in its comment letter. In addition, the review process for trip exchanges has been clarified based on public comment.

In § 648.60, based on the Council's and other commenters'

recommendations, paragraph (c) is changed to eliminate reasons for terminating a Sea Scallop Access Area trip to allow vessel operators the discretion to determine if a Sea Scallop Access Area trip should be terminated early. In addition, the regulations in paragraph (c) are clarified to reflect that DAS will be charged for the additional trip, but that vessels are not restricted to the reduced number of DAS, and that vessels are restricted by a reduced possession limit on the additional trip.

In § 648.61, the coordinates for the NLCA EFH Closure in paragraph (c) are corrected, as requested by the Council.

In § 648.61, paragraph (d) is re-designated as the Western Gulf of Maine EFH Closure, which was inadvertently omitted from the proposed rule, as identified by the Council. Paragraph (e) is added as the provision allowing transiting of the EFH closures by vessels with scallops on board.

In § 648.80(b)(11)(ii)(C), the minimum dredge gear twine top mesh size for scallop vessels fishing in the Southern New England Scallop Dredge Exemption is changed from 8 inches (20.3 cm) to 10 inches (25.4 cm), consistent with measures implemented for scallop vessels in this final rule.

In § 648.81(g)(2)(iii), the minimum dredge gear twine top mesh size for scallop vessels fishing in the Georges Bank Seasonal Closed Area is changed from 8 inches (20.3 cm) to 10 inches (25.4 cm), consistent with measures implemented for scallop vessels in this final rule.

Pursuant to the Paperwork Reduction Act (PRA), Part 902 of title 15 CFR displays control numbers assigned to NMFS information collection requirements by OMB. This part fulfills the requirements of section 3506(c)(1)(B)(i) of the PRA, which requires that agencies display a current control number, assigned by the Director of OMB, for each agency information collection requirement. This final rule codifies OMB control numbers for 0648–0491 for §§ 648.53 and 648.60.

Classification

The Regional Administrator determined that the FMP amendment implemented by this rule is necessary for the conservation and management of the Atlantic sea scallop fishery and is consistent with the Magnuson-Stevens Act and other applicable law.

The DAS allocations implemented in this final rule are less restrictive than the DAS allocations currently in effect through emergency action implemented on March 1, 2004 (69 FR 9970). Among other measures, this action implements DAS allocations of 42, 17, and 4 DAS for full-time, part-time, and occasional scallop vessels, respectively. Scallop vessels are precluded from exceeding the DAS that are allocated to the vessel based on its permit category. If continued in effect, limited access scallop vessels would only be able to continue fishing under the 34 full-time, 14 part-time, and 3 occasional DAS allocations, compared to 42 full-time, 17 part-time and 4 occasional DAS allocations approved in Amendment 10 and that are included in this final rule. NMFS is aware that some vessels are nearing the utilization of all of their DAS and cannot make additional trips until the DAS are increased under this final rule implementing Amendment 10. There are no conservation risks associated with the higher DAS allocations implemented under Amendment 10. Therefore the 30-day delay in effectiveness for the DAS allocations included in § 648.53(b)(2) under 5 U.S.C. 553(d)(1) is not applicable because this portion of the final rule relieves a restriction.

A notice of availability of the FSEIS, which analyzed the impacts of all of the measures under consideration in Amendment 10, was published on February 20, 2004 (69 FR 7941). Through the FSEIS, NMFS analyzed all reasonable alternatives to the measures being implemented, associated environmental impacts, the extent to which the impacts could be mitigated, and considered the objectives of the action in light of statutory mandates, including the Magnuson-Stevens Act. NMFS also considered public and agency comments received during the EIS review periods. In balancing the analysis and public interest, NMFS has decided to partially approve the Council's recommended measures. NMFS also concludes that all practicable means to avoid, minimize, or compensate for environmental harm from the proposed action have been adopted. A copy of the Record of Decision as required by NEPA for Amendment 10 is available from the Regional Administrator (*see* **ADDRESSES**).

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

The National Marine Fisheries Service (NMFS), pursuant to section 604 of the Regulatory Flexibility Act (RFA), has prepared this final regulatory flexibility analysis (FRFA) in support of Amendment 10. The FRFA describes the economic impact that this final rule along with other non-preferred alternatives will have on small entities.

The FRFA incorporates the economic impacts and analysis summarized in the initial regulatory flexibility analysis (IRFA) for the proposed rule to implement Amendment 10 (69 FR 8915, February 26, 2004), the comments and responses in the final rule, and the corresponding economic analyses prepared for Amendment 10 (*e.g.*, the FSEIS and the Regulatory Impact Review (RIR)). The contents of these incorporated documents are not repeated in detail here. A copy of the IRFA, the RIR and the FSEIS are available from NMFS, Northeast Regional Office and on the Northeast Regional Office Website (*see* **ADDRESSES**). A description of the reasons why this action is being considered, the objectives of, and legal basis for, the final rule is found in Amendment 10 and the preamble to the proposed and final rules.

Description of Small Entities to Which the Rule Will Apply

The measures included in Amendment 10 could impact any commercial vessel issued a Federal sea scallop vessel permit. All of these vessels are considered small business entities for purposes of the RFA because all of them grossed less than $3.5 million according to the dealer reports for the 2001 and 2002 fishing years. There are two main components of the scallop fleet: Vessels eligible to participate in the limited access sector of the fleet and vessels that participate in the open access General Category sector of the fleet. Limited access vessels are issued permits to fish for scallops on a Full-time, Part-time or Occasional basis. In 2001, there were 252 Full-time permits, 38 Part-time permits, and 20 Occasional permits. In 2002, there were 270 Full-time permits, 31 part time permits, and 19 Occasional permits. Because the fishing year ends on the last day of February of each year, 2003 vessel permit information was incomplete at the time the Amendment 10 analysis was completed. Much of the economic impacts analysis is based on the 2001 and 2002 fishing years; 2001 and 2002 were the last 2 years with complete permit information. According to the most recent vessel permit records for 2003, there were 278 Full-time limited access vessels, 32 Part-time limited access vessels, and 16 Occasional vessels. In addition, there were 2,293, 2,493, and 2,257 vessels issued permits to fish in the General Category in 2001, 2002, and 2003, respectively. Annual scallop revenue for the limited access sector averaged from $615,000 to $665,600 for Full-time vessels, $194,790 to $209,750 for Part-

time vessels, and $14,400 to $42,500 for Occasional vessels during the 2001 and 2002 fishing years. Total revenues per vessel, including revenues from species other than scallops, exceeded these amounts, but were less than $3.5 million per vessel.

Two criteria, disproportionality and profitability, were considered in determining the significance of regulatory impacts. The disproportionality criterion compares the effects of the regulatory action on small versus large entities. Because all of the vessels permitted to harvest sea scallops are considered to be small entities, there are no disproportional impacts on these entities. Due to a lack of individual vessel cost data, the analyses performed for this proposed rule use increases in fleet revenue as a proxy for vessel profitability.

A Summary of the Significant Issues Raised by the Public Comments in Response to the IRFA, a Summary of the Assessment of the Agency of Such Issues, and a Statement of Any Changes Made in the Proposed Rule as a Result of Such Comments

NMFS received several comments on the proposed rule including comments on the IRFA and comments that directly or indirectly dealt with economic impacts to small entities (vessels) resulting from the management measures presented in the proposed rule to implement Amendment 10.

Two commercial fishermen and an industry representative submitted comments regarding the efficacy of the area rotation program in regard to increasing economic returns to the scallop fleet, as follows:

Comment A: Commenters supporting the program stated that area rotation would contribute to continued high yield and value from the scallop fishery.

Response: The economic analysis concludes that the area rotation program will allow individual vessels to be more profitable by allowing them to increase their landings per unit of effort and to harvest scallops of higher yield that may have higher value in the marketplace, in the long-term.

Comment B: One member of the public opposed area rotation because of its complexity.

Response: Although Amendment 10 creates, on a comprehensive basis, a new management concept, NMFS does not believe that the new measures are overly complex. Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 requires the agency to explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a small entity compliance guide was prepared. The guide will be sent to all holders of permits issued for the Atlantic scallop fishery which sufficiently explains the area rotation and other measures implemented by the final rule. A NMFS contact person is listed on the guide for further assistance.

Comment C: Two scallop industry members commented that the area access effort allocation system that allocates DAS specifically for vessels to use within the access areas eliminates vessel flexibility.

Response: While the restrictions may limit flexibility in area choice, the program is necessary to protect the scallop resource while allowing vessels to increase their profitability in both the short and long term by allowing vessels to fish in areas that are known to have higher catch per unit of effort and yield associated with maintenance of stocks comprised of larger scallops. DAS is the management vehicle which will allow area allocation to be successful.

Comment D: Several commenters including the Mid-Atlantic Fishery Management Council urged NMFS to disapprove the measure that would restrict landings of scallops to 40 lb (18.14 kg) from 400 lb (181.4 kg) for limited access scallop vessels not fishing under DAS.

Response: NMFS has disapproved the 40 lb limit and will continue to allow limited access scallop vessels to retain up to 400 lb (181.4 kg). The economic impact of the disapproval will be positive vis-a-vis the proposed rule. However, there is no change from the status quo where 400 lb (181.4 kg)is currently allowed.

The Small Business Administration's Office of Advocacy (Advocacy) submitted comments on the proposed rule pertaining to the IRFA. These comments were similar to comments submitted by an industry representative organization. Comments E through G below describe the comments submitted by both Advocacy and the industry representative organization.

Comment E: In regard to the gear modifications required under Amendment 10, the RFA allows an agency to perform qualitative analysis when quantitative data is not available. Advocacy is concerned about the assumptions used in the qualitative analysis to determine the economic impact is beneficial. The IRFA states that the change in ring size from 3.5 inches (8.9 cm) to 4 inches (10.2 cm) could result in a loss of about a million pounds over the first ten years of the requirement by allowing escapement of scallops, increased tow times, and increased bycatch. Advocacy questioned the conclusion that the overall benefits will be positive and questioned the conclusion that the long term impact will be beneficial if the industry is losing revenue while incurring costs. Advocacy suggests that NMFS clearly delineate its assumption and provide data to verify its assertions, including information on the number of years that it may take for the scallop fisheries to break even and the number of entities that may be forced to exit the market before the target date that the industry will begin to experience the long term benefits. Instead of implementing this requirement without fully understanding its impact, Advocacy recommends that NMFS make the requirement optional rather than mandatory until NMFS can perform an analysis that will provide the industry with verifiable data regarding potential economic impact to small scallop vessels.

Response: When combined with the area rotation program, management measures under Amendment 10 including 4-inch (10.2-cm) rings, are expected to result in a zero to one million-pound (453.6-mt) increase in landings compared to the status quo in the first year with increases in successive years as the average scallop size increases. However, the 4-inch (10.2-cm) ring size results in landings from the scallop fleet of approximately 1 million pounds (452.6 mt) lower per year with a concomitant decrease in revenues (depending upon price) when compared to the same management measures with 3.5-inch (8.9-cm) rings. With access to groundfish closed areas, landings could increase by 7–24 million lb (3,175—10,886 mt) with 4-inch (10.2-cm) rings when compared to the status quo. The status quo option estimates a harvest of thirty-two million pounds (14,515 mt) per year (not thirty-two million pounds (14,515 mt) over the ten-year period as reported in footnote 9 of Advocacy's comments). Therefore, the resulting reduction in poundage from the increase to 4-inch (10.2-cm) rings compared to the same measures with 3.5-inch (8.9-cm) rings would be approximately 3.1 percent in the first year of the program. NMFS therefore agrees with Advocacy that 3.5-inch (8.9-cm) rings combined with a rotation program could represent a significant alternative. However, in the first ten years of the rotation plan, producer surplus, as measured in cumulative present value, is expected to be approximately $805 million for 3.5-inch (8.9-cm) rings vs $801 million for 4-inch (10.2-cm) rings (Table 305) while in

years 11 through 20 of the plan, producer surplus is expected to be $611 for 3.5-inch (8.9 cm) rings and $623 million for 4-inch (10.2-cm) rings (Table 309). While the impacts of 3.5-inch (8.9-cm) versus 4-inch (10.2-cm) rings for the 2 time periods are not significantly different because of high variability of the producer surplus estimate, the value of bycatch reduction, decreased habitat impact, and general conservation benefits of having a stock comprised of larger scallops supports the Council's determination of a more positive impact in the long-term. While Advocacy makes a valid point that increased tow times and escapement of smaller scallops may increase costs per unit of effort in the short term, the IRFA explains that the decrease in mortality on small scallops will increase the meat yield per scallop and concomitant revenues will increase since this would improve dredge efficiency in terms of scallop meats per tow in the long term. It is this potential increase in dredge productivity that Amendment 10 cites in its conclusion that the increase in ring size would have a positive economic impact in the long term. The IRFA also describes the results of recent studies that show an increase in dredge efficiency and a decrease in contact with the bottom, potentially reducing both bycatch and impacts on habitat consistent with the intent of the Magnuson-Stevens Act. The proposed alternative will have the effect of conserving the stocks of scallops by allowing the survival of smaller scallops and increasing the average size of scallop and fecundity of the stock consistent with National Standard 1 of the Magnuson-Stevens Act. The IRFA explains that the Council mitigated the effects of the 4-inch (10.2-cm) rings by coincidentally implementing an area rotation program which would allow increased annual harvest of 33 to 68 million lb (14,968 to 30,844 mt), as discussed below. In addition, there is expected to be mitigating effect by delaying this requirement for vessels fishing in the Open Areas for the first 6 months of the program. The requirement to use a 4-inch (10.2 cm) ring size is not expected to cause any vessel to retire from the fishery.

Comment F: Advocacy questioned NMFS observer cost estimate of $1,100 listed under the Reporting and Recordkeeping requirements section of the IRFA. NMFS also does not explain the methodology used to determine the 0.14 DAS adjustment given to vessels as compensation for observer costs.

Response: The $1,100 estimate was included in the proposed rule based on the estimated cost at the time the proposed rule was prepared and published. The current actual per day cost of carrying an observer, as charged by an outside contractor, is $719.12 per day. The 0.14 DAS adjustment factor was used in the proposed rule based on an analysis provided in Section 8 of the Amendment 10 FSEIS that provided a range of adjustment factors, the compensation that could be expected from the range of factors, and the DAS set-aside use rates resulting from the range of factors. The 0.14 DAS adjustment factor was selected because the resulting compensation and DAS set-aside use rate fell in the middle of the range provided in the analysis. This adjustment factor was shown to generate approximately $750 in revenue per day. The revenue calculation depends upon LPUE and the price of scallops for a given trip. Based on the analysis in Amendment 10, NMFS concludes that the 0.14 multiplier will result in an appropriate buffer between actual observer cost and revenue earned considering the variability in the harvest and price of sea scallops. However, NMFS has changed the way in which the factor will be applied. Rather than adding DAS to a vessel's DAS allocation for each DAS used, in 2004 and 2005, NMFS will apply a reduceed DAS accrual rate of 0.86 DAS for each DAS fished. This factor may change based on changing costs of observers. The resulting compensation is this same.

Comment G: The program to compensate for sea scallop access area trips that are terminated early alters the Council's intent because it would penalize the vessel for early termination if the Regional Administrator does not approve an adjustment request. NMFS is placing the captains in a position where they have to determine whether they should risk being penalized if the Regional Administrator decides that the situation was not an emergency. This type of dilemma could be harmful to the fishing industry from both the safety and economic standpoints.

Response: NMFS requires an accurate accounting system to determine the amount of DAS/poundage to be restored on a broken trip, so NMFS must maintain an oversight role for this measure. The language in the preamble to the final rule and regulations regarding broken trips clearly specify that vessel captains will have complete authority to identify the need to end a closed area trip, without any requirement for NMFS to concur in the decision. The regulatory text has been changed in this final rule to clarify that intent.

Comment H: An industry representative recommends against approving the use of the 4-inch (10.2-cm) rings. At a minimum, their introduction should be delayed by a minimum of six months following the implementation of the final rule.

Response: With the exception of the Hudson Canyon area, NMFS agrees with the recommendation to the extent that the commenter requests a 6 month delay in implementation. This would have the effect of mitigating the cost of new gear as discussed below.

Description of the Steps the Agency Has Taken To Minimize the Significant Economic Impact on Small Entities Consistent With the Stated Objectives of Applicable Statutes, Including a Statement of the Factual, Policy, and Legal Reasons for Selecting the Alternative Adopted in the Final Rule and Why Each One of the Other Significant Alternatives to the Rule Considered by the Agency Which Affect the Impact on Small Entities Was Rejected

Numerous measures being implemented by this rule are being implemented in a manner that will minimize the economic impact on federal scallop permit holders. The area rotation program could allow scallop vessels to increase annual harvests from 33 to 68 million lb (14,968 to 30,844 mt) depending upon the rotation strategy and the ability to fish in multispecies closed areas. In assessing the overall economic impact to scallop vessels, the average scallop vessel should, at a minimum, break even in the first year of the rotation program because landings, even with no access to groundfish closed areas would increase to 33 to 34 million lb (14,968 to 15,422 mt) from a status quo of 32 million lb (14,514 mt). A zero to 1 million lb (453.6 mt) increase in landings would be expected from status quo even with 4-inch (10.2-cm) rings. With access to groundfish closed areas, subject to approval of Joint Frameworks 16/39, landings could increase from 32 million lb (14,514 mt) to 39–56 million lb (17,690 to 25,401 mt). In conclusion, although short term reductions in revenue are expected to result from the increase in ring size, overall economic impacts to scallop vessels from Amendment 10 are positive when considering all management measures due to increased fishing efficiency and improved yield and value from the scallop resource. The requirement to use a 4-inch (10.2-cm) ring size is not expected to cause any vessel to retire from the fishery.

The six-month delay in the implementation of the 4-inch (10.2-cm)

ring size will mitigate a large portion of the cost of new scallop ring bags since these gears are replaced frequently. The replacement of rings is more frequent if the vessel has fished in an area with a hard bottom as opposed to a soft or sandy bottom.

To mitigate the adverse impacts from area-specific controlled access trips, the final rule implements three measures: The one-to-one exchange of Sea Scallop Access Area trips; compensation for Sea Scallop Access Area trips terminated early; and compensation for the cost of carrying observers on scallop fishing trips. In addition, NMFS disapproved the measure that would have restricted limited access vessels from fishing for scallops outside of DAS. The one-to-one exchange of Sea Scallop Access Area trips is expected to provide flexibility to vessel owners in determining which areas to fish, thereby reducing costs and increasing revenues and profitability for vessels that take advantage of the voluntary trip exchange program. However, there will be some minor transaction costs associated with the exchange of the controlled area trips with another vessel, relating to the requirement to request the exchange form from NMFS. The net impacts of exchange should result in an increase in profitability for those participating vessels. Vessels that terminate a Sea Scallop Access Area trip will be compensated by being granted an additional trip, with the DAS and possession limit based on the amount of scallops landed and the number of DAS fished on the terminated trip. This will provide flexibility and promote safety at sea by allowing vessel captains to terminate a Sea Scallop Access Area trip if necessary, knowing that some compensation is possible. Providing DAS and TAC set-asides for vessels to use to help defray the cost of observers will help offset the negative effects associated with the cost to industry of carrying an observer.

The measures approved in Amendment 10 will function as a set of integrated measures that are designed to achieve a number of conservation and management objectives while minimizing the economic impacts on the industry, to the extent possible. Primarily, the measures in Amendment 10 would improve yield from the scallop resource, increase fishing efficiency, reduce fishing time, and reduce bycatch and adverse impacts on EFH. The Council NMFS considered all of the alternatives analyzed in the FSEIS and determined that the measures implemented by this final rule are preferable in terms of minimizing overall adverse impacts compared to benefits and ability to achieve the objectives of Amendment 10, the Magnuson-Stevens Act requirements, and all applicable law.

There are significant alternatives that were considered in Amendment 10 and that were described in the IRFA.The alternatives considered by the Council included the no action alternative (continuation of measures implemented by Amendment 7 to the FMP), and the status quo alternative (DAS and area management designed to meet fishing mortality and biomass objectives specified in Amendment 7 to the FMP). In addition, the Council considered alternatives with no area rotation component, as well as various rotational management alternatives with fixed area boundaries, various closure durations, and inflexible/mechanical rotation schemes. These were examined with both 3.5-inch (8.9-cm) and 4-inch (10.2-cm) ring requirements.

The area rotation program implemented in this final rule was found to have positive impacts compared to alternatives that did not include area rotation. This is because it protects small scallops during periods of their highest growth rates, and allows the boundaries of closed areas to be determined more accurately, improving both yield and fishing efficiency. The area rotation program also results in higher benefits compared to other rotational management alternatives with mechanical rotation and/or fixed boundaries.

The results also showed that area rotation combined with 3.5-inch (8.9-cm) rings could result in slightly higher economic benefits in the first 10 years of implementation, than area rotation combined with the proposed 4-inch (10.2-cm) ring size. Four-inch rings result in slightly lower landings, about a million pounds per year on the average, compared to the 3.5-inch (8.9-cm) ring options during the first 10 years from 2003 to 2013 under all scenarios. However, over the long term, the increase in ring size yields higher benefits than those achieved with the smaller ring size. In years 11 through 20 of the plan, producer surplus is expected to be $611 for 3.5-inch (8.9 cm) rings and $623 million for 4-inch (10.2-cm) rings (Table 309 in the FSEIS). While the impacts of 3.5-inch (8.9-cm) versus 4-inch (10.2-cm) rings for the 2 time periods are not significantly different because of high variability of the producer surplus estimate, the value of bycatch reduction, decreased habitat impact, and general conservation benefits of having a stock comprised of larger scallops supports the determination of a more positive impact in the long-term.

In addition, analysis of the ring size indicates that the 4-inch (10.2-cm) rings are preferable over the long-term because they reduce mortality on small scallops and, as a result improve yield and increase scallop revenues. By improving dredge efficiency in harvesting larger scallops, the use of 4-inch (10.2-cm) rings would also reduce bottom contact time, potentially reducing both bycatch of other species and impacts on habitat. Thus, the Council rejected alternatives with no area rotation and rotational management alternatives that incorporated the 3.5-inch (8.9-cm) ring size in favor of the measures implemented in this final rule.

The rotational management alternatives without access to the groundfish closed areas are estimated to result in an increase in average annual landings during the 10-year period from 32 million lb (14,515 mt) (with a value of approximately $142 million) for status quo, to 39–55 million lb (17,690–24,948 mt) (an increase of $201 million to $599 million over 10 years compared to status quo) with access to some groundfish closed areas. If the scallop fishery has access to all groundfish closed areas, the average annual landings for the period could increase to 68 million lb (30,844 mt) (an increase of $867 million over 10 years compared to status quo). Rotational management alternatives were also considered that would have utilized the groundfish closed areas as a ''stabilizing reservoir.'' These alternatives increase average landings to 40–46 million lb (18,144–20,865 mt) per year ($149 million to $172 million), while at the same time reducing the variability. While the measures included in Amendment 10 to allow access to the groundfish closed areas were not able to be implemented through Amendment 10, the Council has approved and submitted for NMFS review, Joint Frameworks 16/39 that would allow such access, if approved.

The Council considered a large number of alternatives to minimize and mitigate adverse effects of the fishery on EFH, to the extent practicable. The alternatives are briefly defined below, including the four alternatives adopted by the Council.

Alternative 1, status quo measures with no scallop access to Groundfish closed areas;

Alternative 2 (adopted by the Council), habitat benefits of other selected measures in Amendment 10 (including area rotation, effort allocation, gear restrictions, and other measures to facilitate area rotation and management of the FMP);

Alternative 3 (a and b), area closures to protect hard-bottom habitat;

Alternative 4, area closures to protect hard-bottom habitats that overlap proposed modified groundfish closed areas in Amendment 13;

Alternative 5 (a–d), area closures designed to protect EFH and balance fishery productivity;

Alternative 6 (adopted by Council), area closures within the Groundfish closed areas that maintain closure to the scallop fishery of areas that were closed to scallop fishing under Framework 13;

Alternative 7, area closures designed to protect areas of high EFH value and low scallop productivity;

Alternative 8 (a and b), area closures on the eastern portion of GB;

Alternative 9, area closures that include all of the existing year-round groundfish closed areas in southern New England, GB and the Gulf of Maine;

Alternative 10, restrictions on use of rock chains;

Alternative 11 (adopted by the Council), increase in the minimum ring size to 4 inches (10.2 cm);

Alternative 12 (adopted by the Council), habitat research funded through scallop TAC set-aside; and

Alternative 13, area based management and rotation based on habitat protection.

Many of these alternatives (1, 3a, 3b, 4, 5a–d, 6, 7, 8a, 8b, 9) proposed to close various areas and the impacts on revenues and economic benefits from various habitat closures were examined. Compared to the no action alternative of closing no areas, the impacts of the EFH closed area alternatives ranged from an average loss of total cumulative benefits of $5 million to $245 million dollars per year from 2004 through 2007. The analysis shows that Alternative 6 was ranked in the middle of the range of impacts with an average loss of total cumulative economic benefits of $32 million. Habitat alternatives, including Alternatives 5a, 5c, 5d, 8a, and 8b, would have lower negative economic impacts, with total economic benefit losses of between $5 million and $9 million. These alternatives were not chosen, however, because they either had impracticable impacts on some fishing communities that would be heavily impacted by the location of the closures and the alternatives would not satisfy the requirement to minimize adverse impacts of fishing on EFH, to the extent practicable. Due to the extent of the closures and the location relative to the scallop resource, the remainder of the EFH closed area alternatives rejected by the Council had much higher negative economic impacts, with total economic benefit losses of between $142 million and $245 million.

The alternatives considered by the Council also included measures other than closures. An alternative to restrict the use of rock chains (Alternative 10), was determined to have a neutral impact on habitat because it was not anticipated to reduce the footprint of the scallop fishery.

Finally, NMFS disapproved two provisions proposed by the Council. The disapproval of the cooperative industry resource survey provision would not have any economic impacts. The disapproval of the proposed restriction on limited access scallop vessels will allow some limited access scallop vessels to maintain revenues from the scallop catch that they have traditionally landed between scallop DAS trips. NMFS disapproved the measure because it was not based on the best available scientific information and was not necessary and appropriate. If implemented, this restriction for limited access scallop vessels may have caused undue adverse economic and social impacts to some vessels.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as ''small entity compliance guides.'' The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a small entity compliance guide was prepared. The guide will be sent to all holders of permits issued for the Atlantic Scallop fishery. In addition, copies of this final rule and guide (*i.e.*, permit holder letter) are available from the Regional Administrator and are also available at NMFS, Northeast Region (*see* **ADDRESSES**).

This rule contains three new collection-of-information requirements subject to the Paperwork Reduction Act (PRA). One measure that would have required a new collection-of-information requirement, the cooperative industry resource survey provision, has been disapproved and, therefore, no new collection-of-information requirement is included in this rule for that measure. The collection of this information has been approved by OMB.

The new reporting requirements and the estimated time for a response are as follows:

1. Broken trip adjustment, OMB #0648–0491 (0.533 hr per response);
2. One-to-one trip exchange, OMB #0648–0491 (0.083 hr per response);
3. Open area trip declaration for observer deployment, OMB #0648–0491 (0.033 hr per response); and

These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection information.

Public comment is sought regarding: Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to NMFS and to OMB (*see* **ADDRESSES**).

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

List of Subjects

15 CFR Part 902

Reporting and recordkeeping requirements.

50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: June 16, 2004.

Rebecca Lent,

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

■ For the reasons stated in the preamble, 15 CFR chapter IX, part 902, and 50 CFR chapter VI, part 648 are amended as follows: 15 CFR Chapter IX

PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS

■ 1. The authority citation for part 902 continues to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

■ 2. In § 902.1, the table in paragraph (b) under 50 CFR is amended by revising the entry for § 648.53 and adding in numerical order an entry for § 648.60 with a new OMB control number to read as follows:

§ 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) Display.

CFR part or section where the information collection requirement is located	Current OMB control number (all numbers begin with 0648–)
* * *	* *
50 CFR:	
* * *	* *
648.53	–0202 and –0491.
* * *	* *
648.60	–0491.
* * *	* *

50 CFR Chapter VI

■ For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

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

■ 2. In § 648.2, definitions for ''Open areas,'' ''Rotational Closed Areas,'' and ''Sea scallop Access Areas'' are added as follows:

§ 648.2 Definitions.

* * * * *

Open areas, with respect to the Atlantic sea scallop fishery, means any area that is not subject to restrictions of the Sea Scallop Access Areas specified in §§ 648.59 and 648.60, Rotational Closed Areas specified in § 648.58, or EFH Closed Areas specified in § 648.61.

* * * * *

Rotational Closed Area, with respect to the Atlantic sea scallop fishery, means an area that is closed only to scallop fishing for a period defined in § 648.58.

* * * * *

Sea Scallop Access Area, with respect to the Atlantic sea scallop fishery, means an area that has been designated under the Atlantic Sea Scallop Fishery Management Plan as an area with area-specific management measures that are designed to control fishing effort and mortality on only the portion of the scallop resource within the specified Sea Scallop Access Area. Such measures are not applicable in Open Areas defined above.

* * * * *

■ 3. In § 648.10, paragraphs (b)(1)(ii) and (b)(2)(ii) through (iv) are revised, and paragraph (b)(4) is added to read as follows:

§ 648.10 DAS notification requirements.

* * * * *

(b) * * *

(1) * * *

(ii) A scallop vessel issued an Occasional limited access permit when fishing under the Sea Scallop Area Access Program specified under § 648.60;

* * * * *

(2) * * *

(ii) Notification that the vessel is not under the DAS program must be received prior to the vessel leaving port. A vessel may not change its status after the vessel leaves port or before it returns to port on any fishing trip.

(iii) DAS for a vessel that is under the VMS notification requirements of this paragraph (b), with the exception of vessels that have elected to fish in the Eastern U.S./Canada Area, pursuant to § 648.85(a), begin with the first location signal received showing that the vessel crossed the VMS Demarcation Line after leaving port. DAS end with the first location signal received showing that the vessel crossed the VMS Demarcation Line upon its return to port. For those vessels that have elected to fish in the Eastern U.S./Canada Area pursuant to § 648.85(a)(2)(i), the requirements of this paragraph (b) begin with the first 30-minute location signal received showing that the vessel crossed into the Eastern U.S./Canada Area and end with the first location signal received showing that the vessel crossed out of the Eastern U.S./Canada Area upon beginning its return trip to port.

(iv) If the VMS is not available or not functional, and if authorized by the Regional Administrator, a vessel owner must provide the notifications required by paragraphs (b)(2)(i), (ii), and (iii) of this section by using the call-in notification system described under paragraph (c) of this section, instead of using the VMS specified in this paragraph (b).

* * * * *

(4) Atlantic Sea Scallop Vessel VMS Notification Requirements. To facilitate the deployment of at-sea observers, all sea scallop vessels issued limited access permits are required to comply with the additional VMS notification requirements specified in § 648.60(c)(2)(ii), except that scallop vessels issued Occasional scallop permits and not participating in the Area Access Program specified in § 648.60 may provide the specified information to the Regional Administrator by calling the Regional Administrator.

■ 4. In § 648.14, paragraph (a)(57)(iii) is added, and paragraphs (a)(97), (a)(110), (a)(111), (h)(5), (h)(9), and (h)(12)–(h)(24) and (i) are revised to read as follows:

§ 648.14 Prohibitions.

(a) * * *

* * * * *

(57) * * *

* * * * *

(iii) The scallops were harvested by a vessel that has been issued and carries on board a limited access or General Category scallop permit and the vessel is fishing under the provisions of the state waters exemption program specified in § 648.54.

(110) Fish for sea scallops in, or possess or land sea scallops from, the areas specified in §§ 648.58 and 648.61.

(111) Transit or be in the areas described in §§ 648.58 and 648.61 in possession of scallops, except when all fishing gear is unavailable for immediate use as defined in § 648.23(b), unless there is a compelling safety reason to be in such areas.

* * * * *

(h) * * *

* * * * *

(5) Combine, transfer, or consolidate DAS allocations, except as allowed for one-for-one area access trip exchanges as specified in § 648.60(a)(3)(iv).

* * * * *

(9) Possess more than 40 lb (18.14 kg) of shucked, or 5 bu (176.2 l) of in-shell scallops, or participate in the DAS allocation program, while in the possession of trawl nets that have a maximum sweep exceeding 144 ft (43.9 m), as measured by the total length of the footrope that is directly attached to the webbing of the net, except as specified in § 648.51(a)(1).

* * * * *

(12) Possess or use dredge gear that does not comply with any of the provisions and specifications in § 648.51(a) or (b).

(13) Participate in the DAS allocation program with more persons on board the vessel than the number specified in § 648.51(c), including the operator, when the vessel is not docked or moored in port, unless otherwise authorized by the Regional Administrator.

(14) Fish under the small dredge program specified in § 648.51(e), with,

or while in possession of, a dredge that exceeds 10.5 ft (3.2 m) in overall width, as measured at the widest point in the bail of the dredge.

(15) Fish under the small dredge program specified in § 648.51(e) with more than five persons on board the vessel, including the operator, unless otherwise authorized by the Regional Administrator.

(16) Have a shucking or sorting machine on board a vessel that shucks scallops at sea while fishing under the DAS allocation program, unless otherwise authorized by the Regional Administrator.

(17) Refuse or fail to carry an observer after being requested to carry an observer by the Regional Administrator.

(18) Fail to provide an observer with required food, accommodations, access, and assistance, as specified in § 648.11.

(19) Fail to comply with any requirement for declaring in and out of the DAS allocation program specified in § 648.10.

(20) Fail to comply with any requirement for participating in the DAS Exemption Program specified in § 648.54.

(21) Fish with, possess on board, or land scallops while in possession of trawl nets, when fishing for scallops under the DAS allocation program, unless exempted as provided for in § 648.51(f).

(22) Fail to comply with the restriction on twine top described in § 648.51(b)(4)(iv).

(23) Fail to comply with any of the provisions and specifications of § 648.60.

(24) Possess or land more than 50 bu (17.62 hl) of in-shell scallops, as specified in § 648.52(d), once inside the VMS Demarcation Line by a vessel that, at any time during the trip, fished in or transited any area south of 42°20′ N. lat., except as provided in § 648.54.

(i) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraphs (a), (f), and (g) of this section, it is unlawful for any person owning or operating a vessel issued a general scallop permit to do any of the following:

(1) Fish for, possess, or land per trip, more than 400 lb (181.44 kg) of shucked or 50 bu (17.62 hl) of in-shell scallops.

(2) Fish for, possess, or land scallops on more than one trip per calendar day.

(3) Possess or use dredge gear that does not comply with any of the provisions or specification in § 648.51(a) or (b).

* * * * *

■ 5. Subpart D is revised to read as follows:

Subpart D—Management Measures for the Atlantic Sea Scallop Fishery

Sec.
648.50 Shell-height standard.
648.51 Gear and crew restrictions.
648.52 Possession and landing limits.
648.53 DAS allocations.
648.54 State waters exemption.
648.55 Framework adjustments to management measures.
648.56 Scallop research.
648.57 Sea Scallop area rotation program.
648.58 Rotational closed areas.
648.59 Sea Scallop access areas.
648.60 Sea Scallop area access program requirements.
648.61 EFH closed areas.

§ 648.50 Shell-height standard.

(a) *Minimum shell height.* The minimum shell height for in-shell scallops that may be landed, or possessed at or after landing, is 3.5 inches (8.9 cm). Shell height is a straight line measurement from the hinge to the part of the shell that is farthest away from the hinge.

(b) *Compliance and sampling.* Any time at landing or after, including when the scallops are received or possessed by a dealer or person acting in the capacity of a dealer, compliance with the minimum shell-height standard shall be determined as follows: Samples of 40 scallops each shall be taken at random from the total amount of scallops in possession. The person in possession of the scallops may request that as many as 10 sample groups (400 scallops) be examined. A sample group fails to comply with the standard if more than 10 percent of all scallops sampled are shorter than the shell height specified. The total amount of scallops in possession shall be deemed in violation of this subpart and subject to forfeiture, if the sample group fails to comply with the minimum standard.

§ 648.51 Gear and crew restrictions.

(a) *Trawl vessel gear restrictions.* Trawl vessels issued a limited access scallop permit under § 648.4(a)(2) while fishing under or subject to the DAS allocation program for scallops and authorized to fish with or possess on board trawl nets pursuant to § 648.51(f), any trawl vessels in possession of more than 40 lb (18.14 kg) of shucked, or 5 bu (176.2 L) of in-shell scallops in or from the EEZ, and any trawl vessels fishing for scallops in the EEZ, must comply with the following:

(1) *Maximum sweep.* The trawl sweep of nets shall not exceed 144 ft (43.9 m), as measured by the total length of the footrope that is directly attached to the webbing, unless the net is stowed and not available for immediate use, as specified in § 648.23.

(2) *Net requirements*—(i) *Minimum mesh size.* The mesh size for any scallop trawl net in all areas shall not be smaller than 5.5 inches (13.97 cm).

(ii) *Measurement of mesh size.* Mesh size is measured by using a wedge-shaped gauge having a taper of 2 cm (0.79 inches) in 8 cm (3.15 inches) and a thickness of 2.3 mm (0.09 inches), inserted into the meshes under a pressure or pull of 5 kg (11.02 lb). The mesh size is the average of the measurements of any series of 20 consecutive meshes for nets having 75 or more meshes, and 10 consecutive meshes for nets having fewer than 75 meshes. The mesh in the regulated portion of the net shall be measured at least five meshes away from the lacings running parallel to the long axis of the net.

(3) *Chafing gear and other gear obstructions*—(i) *Net obstruction or constriction.* A fishing vessel may not use any device or material, including, but not limited to, nets, net strengtheners, ropes, lines, or chafing gear, on the top of a trawl net, except that one splitting strap and one bull rope (if present), consisting of line and rope no more than 3 inches (7.62 cm) in diameter, may be used if such splitting strap and/or bull rope does not constrict in any manner the top of the trawl net. ''The top of the trawl net'' means the 50 percent of the net that (in a hypothetical situation) would not be in contact with the ocean bottom during a tow if the net were laid flat on the ocean floor. For the purpose of this paragraph (a)(3), head ropes shall not be considered part of the top of the trawl net.

(ii) *Mesh obstruction or constriction.* A fishing vessel may not use any mesh configuration, mesh construction, or other means on or in the top of the net, as defined in paragraph (a)(3)(i) of this section, if it obstructs the meshes of the net in any manner.

(iii) A fishing vessel may not use or possess a net capable of catching scallops in which the bars entering or exiting the knots twist around each other.

(b) *Dredge vessel gear restrictions.* All vessels issued limited access and General Category scallop permits and fishing with scallop dredges, with the exception of hydraulic clam dredges and mahogany quahog dredges in possession of 400 lb (181.44 kg), or less, of scallops, must comply with the following restrictions, unless otherwise specified:

(1) *Maximum dredge width.* The combined dredge width in use by or in possession on board such vessels shall not exceed 31 ft (9.4 m) measured at the widest point in the bail of the dredge,

except as provided under paragraph (e) of this section. However, component parts may be on board the vessel such that they do not conform with the definition of ''dredge or dredge gear'' in § 648.2, *i.e.*, the metal ring bag and the mouth frame, or bail, of the dredge are not attached, and such that no more than one complete spare dredge could be made from these component's parts.

(2) *Minimum mesh size.* The mesh size of a net, net material, or any other material on the top of a scallop dredge (twine top) possessed or used by vessels fishing with scallop dredge gear shall not be smaller than 10-inch (25.4-cm) square or diamond mesh.

(3) *Minimum ring size.* (i) Prior to December 23, 2004, the ring size used in a scallop dredge possessed or used by scallop vessels shall not be smaller than 3.5 inches (8.9 cm), unless otherwise required under the Sea Scallop Area Access Program specified in § 648.60(a)(6).

(ii) Beginning December 23, 2004, unless otherwise required under the Sea Scallop Area Access Program specified in § 648.60(a)(6), the ring size used in a scallop dredge possessed or used by scallop vessels shall not be smaller than 4 inches (10.2 cm).

(iii) Ring size is determined by measuring the shortest straight line passing through the center of the ring from one inside edge to the opposite inside edge of the ring. The measurement shall not include normal welds from ring manufacturing or links. The rings to be measured will be at least five rings away from the mouth, and at least two rings away from other rigid portions of the dredge.

(4) *Chafing gear and other gear obstructions*—(i) *Chafing gear restrictions.* No chafing gear or cookies shall be used on the top of a scallop dredge.

(ii) *Link restrictions.* No more than double links between rings shall be used in or on all parts of the dredge bag, except the dredge bottom. No more than triple linking shall be used in or on the dredge bottom portion and the diamonds. Damaged links that are connected to only one ring, *i.e.*, ''hangers,'' are allowed, unless they occur between two links that both couple the same two rings. Dredge rings may not be attached via links to more than four adjacent rings. Thus, dredge rings must be rigged in a configuration such that, when a series of adjacent rings are held horizontally, the neighboring rings form a pattern of horizontal rows and vertical columns. A copy of a diagram showing a schematic of a legal dredge ring pattern is available from the Regional Administrator upon request.

(iii) *Dredge or net obstructions.* No material, device, net, dredge, ring, or link configuration or design shall be used if it results in obstructing the release of scallops that would have passed through a legal sized and configured net and dredge, as described in this part, that did not have in use any such material, device, net, dredge, ring link configuration or design.

(iv) *Twine top restrictions.* In addition to the minimum twine top mesh size specified in paragraph (b)(2) of this section, vessels issued limited access scallop permits that are fishing for scallops under the DAS Program are also subject to the following restrictions:

(A) If a vessel is rigged with more than one dredge, or if a vessel is rigged with only one dredge and such dredge is greater than 8 ft (2.4 m) in width, there must be at least seven rows of non-overlapping steel rings unobstructed by netting or any other material between the terminus of the dredge (club stick) and the net material on the top of the dredge (twine top).

(B) If a vessel is rigged with only one dredge, and such dredge is less than 8 ft (2.4 m) in width, there must be at least four rows of non-overlapping steel rings unobstructed by netting or any other material between the club stick and the twine top of the dredge. (A copy of a diagram showing a schematic of a legal dredge with twine top is available from the Regional Administrator upon request).

(c) *Crew restrictions.* Limited access vessels participating in or subject to the scallop DAS allocation program may have no more than seven people aboard, including the operator, when not docked or moored in port, unless participating in the small dredge program as specified in paragraph (e) of this section, or otherwise authorized by the Regional Administrator.

(d) *Sorting and shucking machines.* (1) Shucking machines are prohibited on all limited access vessels fishing under the scallop DAS program, or any vessel in possession of more than 400 lb (181.44 kg) of scallops, unless the vessel has not been issued a limited access scallop permit and fishes exclusively in state waters.

(2) Sorting machines are prohibited on limited access vessels fishing under the scallop DAS program.

(e) *Small dredge program restrictions.* Any vessel owner whose vessel is assigned to either the part-time or Occasional category may request, in the application for the vessel's annual permit, to be placed in one category higher. Vessel owners making such request may be placed in the appropriate higher category for the entire year, if they agree to comply with the following restrictions, in addition to and notwithstanding other restrictions of this part, when fishing under the DAS program described in § 648.53, or in possession of more than 400 lb (181.44 kg) of shucked, or 50 bu (17.62 hl) of in-shell scallops:

(1) The vessel must fish exclusively with one dredge no more than 10.5 ft (3.2 m) in width.

(2) The vessel may not use or have more than one dredge on board.

(3) The vessel may have no more than five people, including the operator, on board.

(f) *Restrictions on use of trawl nets.* (1) A vessel issued a limited access scallop permit fishing for scallops under the scallop DAS allocation program may not fish with, possess on board, or land scallops while in possession of, trawl nets unless such vessel has on board a valid letter of authorization or permit that endorses the vessel to fish for scallops with trawl nets.

(2) *Replacement vessels.* A vessel that is replacing a vessel authorized to use trawl nets to fish for scallops under scallop DAS may also be authorized to use trawl nets to fish for scallops under scallop DAS if it meets the following criteria:

(i) Has not fished for scallops with a scallop dredge after December 31, 1987; or

(ii) Has fished for scallops with a scallop dredge on no more than 10 trips from January 1, 1988, through December 31, 1994, has an engine horsepower no greater than 450.

§ 648.52 Possession and landing limits.

(a) Except as provided in paragraph (e) of this section, owners or operators of vessels with a limited access scallop permit that have declared out of the DAS program as specified in § 648.10 or that have used up their DAS allocations, and vessels possessing a general scallop permit, unless exempted under the state waters exemption program described under § 648.54, are prohibited from possessing or landing per trip more than 400 lb (181.44 kg) of shucked, or 50 bu (17.62 hl) of in-shell scallops with no more than one scallop trip of 400 lb (181.44 kg) of shucked, or 50 bu (17.62 hl) of in-shell scallops, allowable in any calendar day.

(b) Owners or operators of vessels without a scallop permit, except vessels fishing for scallops exclusively in state waters, are prohibited from possessing or landing per trip, more than 40 lb (18.14 kg) of shucked, or 5 bu (176.2 L) of in-shell scallops. Owners or operators

of vessels without a scallop permit are prohibited from selling, bartering, or trading scallops harvested from Federal waters.

(c) Owners or operators of vessels with a limited access scallop permit that have declared into the Sea Scallop Area Access Program as described in § 648.60 are prohibited from fishing for, possessing or landing per trip more than the sea scallop possession and landing limit specified in § 648.60(a)(4).

(d) Owners or operators of vessels issued limited access or general category scallop permits fishing in or transiting the area south of 42°20′N. Latitude at any time during a trip are prohibited from fishing for, possessing, or landing per trip more than 50 bu (17.62 hl) of in-shell scallops shoreward of the VMS Demarcation Line, unless when fishing under the state waters exemption specified under § 648.54.

§ 648.53 DAS allocations.

(a) *Assignment to DAS categories.* Subject to the vessel permit application requirements specified in § 648.4, for each fishing year, each vessel issued a limited access scallop permit shall be assigned to the DAS category (full-time, part-time, or Occasional) it was assigned to in the preceding year, except as provided under the small dredge program specified in § 648.51(e).

(b) *Open area DAS allocations.* (1) Total DAS to be used in all areas other than those specified in §§ 648.58 and 648.59 will be specified through the framework process as specified in § 648.55.

(2) Each vessel qualifying for one of the three DAS categories specified in the table in this paragraph (b)(2) (Full-time, Part-time, or Occasional) shall be allocated, for each fishing year, the maximum number of DAS it may participate in the limited access scallop fishery, according to its category, after deducting research and observer DAS set-asides from the total DAS allocation. A vessel whose owner/operator has declared it out of the scallop fishery, pursuant to the provisions of § 648.10, or that has used up its allocated DAS, may leave port without being assessed a DAS, as long as it does not possess or land more than 40 lb (18.14 kg) of shucked or 5 bu (176.2 L) of in-shell scallops and complies with all other requirements of this part. The annual DAS allocations for each category of vessel for the fishing years indicated, after deducting DAS for observer and research DAS set-asides, are as follows:

DAS category	2004[1]	2005	2006
Full-time	42	117	152
Part-time	17	47	61
Occasional	4	10	13

[1] Unless additional DAS are allocated as specified in paragraph (b)(4) of this section.

(3) Prior to setting the DAS allocations specified in paragraph (b)(2) of this section, one percent of total available DAS will be set aside to help defray the cost of observers, as specified in paragraph (h)(i) of this section. Two percent of total available DAS will be set aside to pay for scallop related research, as outlined in paragraph (h)(ii) of this section.

(4) *Additional 2004 DAS.* Unless a final rule is published in the **Federal Register** by September 15, 2004, that implements a framework action allowing access by scallop vessels to portions of the Northeast multispecies closed areas specified in § 648.81(a), (b), and (c), the DAS allocations for the 2004 fishing year, beginning on September 15, 2004, shall increase by the following amounts:

DAS category	2004 DAS increase
Full-time	20
Part-time	8
Occasional	1

(c) *Sea Scallop Access Area DAS allocations.* Limited access scallop vessels fishing in a Sea Scallop Access Area specified in § 648.59, under the Sea Scallop Area Access Program specified in § 648.60, are allocated a total of four trips, at a DAS charge of 12 DAS per trip regardless of actual trip length, to fish only within the Sea Scallop Access Areas. Limited access scallop vessels may fish a maximum number of trips and associated DAS in each Sea Scallop Access Area, as specified in § 648.60(a)(3). Trips taken in each Sea Scallop Access Area are deducted from the total trip and DAS allocation for Sea Scallop Access Areas. As an example, if the total number of trips that a scallop vessel may take is 2 trips, and there are 2 Sea Scallop Access Areas opened to controlled fishing, with Area A having a maximum of one trip and Area B having a maximum of 2 trips, the vessel may take one trip in Area A and one trip in Area B, or both of its total allocated trips in Area B.

(d) *Adjustments in annual DAS allocations.* Annual DAS allocations shall be established for 2 fishing years through biennial framework adjustments as specified in § 648.55. Except for DAS for the 2006 fishing year, if a biennial framework action is not undertaken by the Council and enacted by NMFS, the allocations from the most recent fishing year will continue. The Council must determine whether or not the 2006 DAS allocations specified in the table in paragraph (b)(4) of this section are sufficient to achieve OY. The 2006 DAS must be adjusted in the first biennial framework, initiated in 2005, if it is determined that the 2006 DAS allocations are unable to achieve OY in the 2006 fishing year. The Council may also adjust DAS allocations through a framework action at any time, if deemed necessary.

(e) *End-of-year carry-over for open area DAS.* With the exception of vessels that held a Confirmation of Permit History as described in § 648.4(a)(1)(i)(J) for the entire fishing year preceding the carry-over year, limited access vessels that have unused Open Area DAS on the last day of February of any year may carry over a maximum of 10 DAS, not to exceed the total Open Area DAS allocation by permit category, into the next year. DAS carried over into the next fishing year may only be used in Open Areas. DAS sanctioned vessels will be credited with unused DAS based on their unused DAS allocation, minus total DAS sanctioned.

(f) *Accrual of DAS.* Unless the vessel is carrying an observer and is authorized to be charged fewer DAS in Open Areas based on the total available DAS set aside under paragraph (h)(1) of this section, and unless participating in the Area Access Program described in § 648.60, DAS shall accrue to the nearest minute.

(g) *Good Samaritan credit.* Limited access vessels fishing under the DAS program and that spend time at sea assisting in a USCG search and rescue operation or assisting the USCG in towing a disabled vessel, and that can document the occurrence through the USCG, will not accrue DAS for the time documented.

(h) *DAS set-asides*—(1) *DAS set-aside for observer coverage.* As specified in paragraph (b)(3) of this section, to help defray the cost of carrying an observer, 1 percent of the total DAS will be set aside from the total DAS available for allocation, to be used by vessels that are assigned to take an at-sea observer on a trip other than an Area Access Program trip. The DAS set-aside for observer coverage for the 2004 and 2005 fishing years are 117 DAS and 304 DAS, respectively. On September 15, 2004, the 2004 DAS set-aside will increase by 54 DAS if a final rule is not published that allows access to the Georges Bank groundfish closed areas. Vessels carrying an observer will be compensated with reduced DAS accrual rates for each trip on which the vessel carries an observer. For each DAS that a vessel fishes for scallops with an observer on board, the DAS will accrue at a reduced rate based on an adjustment factor determined by the Regional Administrator on an annual basis, dependent on the cost of observers, catch rates, and amount of available DAS set-aside. The Regional Administrator shall notify vessel owners of the cost of observers and the DAS adjustment factor through a permit holder letter issued prior to the start of each fishing year. The number of DAS that are deducted from each trip based on the adjustment factor will be deducted from the observer DAS set-aside amount in the applicable fishing year. Utilization of the DAS set-aside will be on a first-come, first-served basis. When the DAS set-aside for observer coverage has been utilized, vessel owners will be notified that no additional DAS remain available to offset the cost of carrying observers. The obligation to carry an observer will not be waived due to the absence of additional DAS allocation.

(2) *DAS set-aside for research.* As specified in paragraph (b)(3) of this section, to help support the activities of vessels participating in certain research, as specified in § 648.56; the DAS set-aside for research for the 2004 and 2005 fishing years are 233 DAS and 607 DAS, respectively. Vessels participating in approved research will be authorized to use additional DAS in the applicable fishing year. Notification of allocated additional DAS will be provided through a letter of authorization, or Exempted Fishing Permit issued by NMFS, as appropriate.

§ 648.54 State waters exemption.

(a) *Limited access scallop vessel exemption.* (1) *DAS requirements.* Any vessel issued a limited access scallop permit is exempt from the DAS requirements specified in § 648.53(b) while fishing exclusively landward of the outer boundary of a state's waters, provided the vessel complies with paragraphs (d) through (g) of this section.

(2) *Gear and possession limit restrictions.* Any vessel issued a limited access scallop permit that is exempt from the DAS requirements of § 648.53(b) under paragraph (a) of this section is also exempt from the gear restrictions specified in § 648.51(a), (b), (e)(1) and (e)(2), and the possession restrictions specified in § 648.52(a), while fishing exclusively landward of the outer boundary of the waters of a state that has been deemed by the Regional Administrator under paragraph (c) of this section to have a scallop fishery and a scallop conservation program that does not jeopardize the biomass and fishing mortality/effort limit objectives of the Scallop FMP, provided the vessel complies with paragraphs (d) through (g) of this section.

(b) *General Category scallop vessel gear and possession limit restrictions.* Any vessel issued a general scallop permit is exempt from the gear restrictions specified in § 648.51(a), (b), (e)(1) and (e)(2) while fishing exclusively landward of the outer boundary of the waters of a state that has been determined by the Regional Administrator under paragraph (b)(3) of this section to have a scallop fishery and a scallop conservation program that does not jeopardize the biomass and fishing mortality/effort limit objectives of the Scallop FMP, provided the vessel complies with paragraphs (d) through (g) of this section.

(c) *State eligibility for exemption.* (1) A state may be eligible for the state waters exemption if it has a scallop fishery and a scallop conservation program that does not jeopardize the biomass and fishing mortality/effort limit objectives of the Scallop FMP.

(2) The Regional Administrator shall determine which states have a scallop fishery and which of those states have a scallop conservation program that does not jeopardize the biomass and fishing mortality/effort limit objectives of the Scallop FMP.

(3) Maine, New Hampshire, and Massachusetts have been determined by the Regional Administrator to have scallop fisheries and scallop conservation programs that do not jeopardize the biomass and fishing mortality/effort limit objectives of the Scallop FMP. These states must immediately notify the Regional Administrator of any changes in their respective scallop conservation program. The Regional Administrator shall review these changes and, if a determination is made that the state's conservation program jeopardizes the biomass and fishing mortality/effort limit objectives of the Scallop FMP, or that the state no longer has a scallop fishery, the Regional Administrator shall publish a rule in the **Federal Register**, in accordance with the Administrative Procedure Act, amending this paragraph (c)(3) to eliminate the exemption for that state. The Regional Administrator may determine that other states have scallop fisheries and scallop conservation programs that do not jeopardize the biomass and fishing mortality/effort limit objectives of the Scallop FMP. In such case, the Regional Administrator shall publish a rule in the **Federal Register**, in accordance with the Administrative Procedure Act, amending this paragraph (c)(3) to provide the exemption for such states.

(d) *Notification requirements.* Vessels fishing under the exemptions provided by paragraph(s) (a)(1) and/or (a)(2) of this section must notify the Regional Administrator in accordance with the provisions of § 648.10(e).

(e) *Restriction on fishing in the EEZ.* A vessel fishing under a state waters exemption may not fish in the EEZ during the time in which it is fishing under the state waters exemption, as declared under the notification requirements of this section.

(f) *Duration of exemption.* An exemption expires upon a change in the vessel's name or ownership, or upon notification by the participating vessel's owner.

(g) *Applicability of other provisions of this part.* A vessel fishing under the exemptions provided by paragraphs (a) and/or (b) of this section remains subject to all other requirements of this part.

§ 648.55 Framework adjustments to management measures

(a) Biennially, or upon a request from the Council, the Regional Administrator shall provide the Council with information on the status of the scallop resource. Within 60 days of receipt of that information, the Council PDT shall assess the condition of the scallop resource to determine the adequacy of the management measures to achieve the stock-rebuilding objectives. Based on this information, the PDT shall prepare a Stock Assessment and Fishery Evaluation (SAFE) Report that provides the information and analysis needed to evaluate potential management adjustments. Based on this information and analysis, the Council shall initiate

a framework adjustment to establish or revise DAS allocations, rotational area management programs, TACs, scallop possession limits, or other measures to achieve FMP objectives and limit fishing mortality. The Council's development of an area rotation program shall take into account at least the following factors: General rotation policy; boundaries and distribution of rotational closures; number of closures; minimum closure size; maximum closure extent; enforceability of rotational closed and re-opened areas; monitoring through resource surveys; and re-opening criteria. Rotational Closures should be considered where projected annual change in scallop biomass is greater than 30 percent. Areas should be considered for Sea Scallop Access Areas where the projected annual change in scallop biomass is less than 15 percent.

(b) The preparation of the SAFE Report shall begin on or about June 1, 2005, for fishing year 2006, and on or about June 1 of the year preceding the fishing year in which measures will be adjusted. If the biennial framework action is not undertaken by the Council, or if a final rule resulting from a biennial framework is not published in the **Federal Register** with an effective date of March 1, in accordance with the Administrative Procedure Act, the measures from the most recent fishing year shall continue, beginning March 1 of each fishing year.

(c) In the SAFE Report, the Scallop PDT shall review and evaluate the existing management measures to determine if the measures are achieving the FMP objectives and OY from the scallop resource as a whole. In doing so, the PDT shall consider the effects of any closed areas, either temporary, indefinite, or permanent, on the ability of the FMP to achieve OY and prevent overfishing on a continuing basis, as required by National Standard 1 of the Magnuson-Stevens Act. If the existing management measures are deemed insufficient to achieve FMP objectives and/or are not expected to achieve OY and prevent overfishing on a continuing basis, the PDT shall recommend to the Council appropriate measures and alternatives that will meet FMP objectives, achieve OY, and prevent overfishing on a continuing basis. When making the status determination in the SAFE Report, the PDT shall calculate the stock biomass and fishing mortality for the entire unit stock and consider all sources of scallop mortality to compare with the minimum biomass and maximum fishing mortality thresholds.

(d) In order to assure that OY is achieved and overfishing is prevented, on a continuing basis, the PDT shall recommend management measures necessary to achieve optimum yield-per-recruit from the exploitable components of the resource (*e.g.*, those components available for harvest in the upcoming fishing years), taking into account at least the following factors:

(1) Differential fishing mortality rates for the various spatial components of the resource;

(2) Overall yields from the portions of the scallop resource available to the fishery;

(3) Outlook for phasing in and out closed or controlled access areas under the Area Rotation Program; and

(4) Potential adverse impacts on EFH.

(e) After considering the PDT's findings and recommendations, or at any other time, if the Council determines that adjustments to, or additional management measures are necessary, it shall develop and analyze appropriate management actions over the span of at least two Council meetings. To address interactions between the scallop fishery and sea turtles and other protected species, such adjustments may include proactive measures including, but not limited to, the timing of Sea Scallop Access Area openings, seasonal closures, gear modifications, increased observer coverage, and additional research. The Council shall provide the public with advance notice of the availability of both the proposals and the analyses, and opportunity to comment on them prior to and at the second Council meeting. The Council's recommendation on adjustments or additions to management measures must include measures to prevent overfishing of the available biomass of scallops and ensure that OY is achieved on a continuing basis, and must come from one or more of the following categories:

(1) DAS changes.

(2) Shell height.

(3) Offloading window reinstatement.

(4) Effort monitoring.

(5) Data reporting.

(6) Trip limits.

(7) Gear restrictions.

(8) Permitting restrictions.

(9) Crew limits.

(10) Small mesh line.

(11) Onboard observers.

(12) Modifications to the overfishing definition.

(13) VMS Demarcation Line for DAS monitoring.

(14) DAS allocations by gear type.

(15) Temporary leasing of scallop DAS requiring full public hearings.

(16) Scallop size restrictions, except a minimum size or weight of individual scallop meats in the catch.

(17) Aquaculture enhancement measures and closures.

(18) Closed areas to increase the size of scallops caught.

(19) Modifications to the opening dates of closed areas.

(20) Size and configuration of rotation management areas.

(21) Controlled access seasons to minimize bycatch and maximize yield.

(22) Area-specific DAS or trip allocations.

(23) TAC specifications and seasons following re-opening.

(24) Limits on number of area closures.

(25) TAC or DAS set-asides for funding research.

(26) Priorities for scallop-related research that is funded by a TAC or DAS set-aside.

(27) Finfish TACs for controlled access areas.

(28) Finfish possession limits.

(29) Sea sampling frequency.

(30) Area-specific gear limits and specifications.

(31) Any other management measures currently included in the FMP.

(f) The Council must select an alternative that will achieve OY and prevent overfishing on a continuing basis, and which is consistent with other applicable law. If the Council fails to act or does not recommend an approvable alternative, the Regional Administrator may select one of the alternatives developed and recommended by the PDT, which would achieve OY and prevent overfishing on a continuing basis and is consistent with applicable law, and shall implement such alternative pursuant to the Administrative Procedure Act.

(g) The Council may make recommendations to the Regional Administrator to implement measures in accordance with the procedures described in this subpart to address gear conflict as defined under § 600.10 of this chapter. In developing such recommendation, the Council shall define gear management areas, each not to exceed 2,700 mi^2 (6,993 km^2), and seek industry comments by referring the matter to its standing industry advisory committee for gear conflict, or to any ad hoc industry advisory committee that may be formed. The standing industry advisory committee or ad hoc committee on gear conflict shall hold public meetings seeking comments from affected fishers and develop findings and recommendations on addressing the gear conflict. After receiving the industry advisory committee findings and recommendations, or at any other time, the Council shall determine whether it is necessary to adjust or add

management measures to address gear conflicts and which FMPs must be modified to address such conflicts. If the Council determines that adjustments or additional measures are necessary, it shall develop and analyze appropriate management actions for the relevant FMPs over the span of at least two Council meetings. The Council shall provide the public with advance notice of the availability of the recommendation, the appropriate justification and economic and biological analyses, and opportunity to comment on them prior to and at the second or final Council meeting before submission to the Regional Administrator. The Council's recommendation on adjustments or additions to management measures for gear conflicts must come from one or more of the following categories:

(1) Monitoring of a radio channel by fishing vessels.

(2) Fixed gear location reporting and plotting requirements.

(3) Standards of operation when gear conflict occurs.

(4) Fixed gear marking and setting practices.

(5) Gear restrictions for specific areas (including time and area closures).

(6) VMS.

(7) Restrictions on the maximum number of fishing vessels or amount of gear.

(8) Special permitting conditions.

(h) The measures shall be evaluated and approved by the relevant committees with oversight authority for the affected FMPs. If there is disagreement between committees, the Council may return the proposed framework adjustment to the standing or ad hoc gear conflict committee for further review and discussion.

(i) Unless otherwise specified, after developing a framework adjustment and receiving public testimony, the Council shall make a recommendation to the Regional Administrator. The Council's recommendation must include supporting rationale and, if management measures are recommended, an analysis of impacts and a recommendation to the Regional Administrator on whether to publish the framework adjustment as a final rule. If the Council recommends that the framework adjustment should be published as a final rule, the Council must consider at least the following factors and provide support and analysis for each factor considered:

(1) Whether the availability of data on which the recommended management measures are based allows for adequate time to publish a proposed rule, and whether regulations have to be in place for an entire harvest/fishing season.

(2) Whether there has been adequate notice and opportunity for participation by the public and members of the affected industry, consistent with the Administrative Procedure Act, in the development of the Council's recommended management measures.

(3) Whether there is an immediate need to protect the resource or to impose management measures to resolve gear conflicts.

(4) Whether there will be a continuing evaluation of management measures adopted following their promulgation as a final rule.

(j) If the Council's recommendation includes adjustments or additions to management measures, and if, after reviewing the Council's recommendation and supporting information:

(1) The Regional Administrator approves the Council's recommended management measures, the Secretary may, for good cause found pursuant to the Administrative Procedure Act, waive the requirement for a proposed rule and opportunity for public comment in the **Federal Register**. The Secretary, in doing so, shall publish only the final rule. Submission of a recommendation by the Council for a final rule does not effect the Secretary's responsibility to comply with the Administrative Procedure Act; or

(2) The Regional Administrator approves the Council's recommendation and determines that the recommended management measures should be published first as a proposed rule, the action shall be published as a proposed rule in the **Federal Register**. After additional public comment, if the Regional Administrator concurs with the Council recommendation, the action shall be published as a final rule in the **Federal Register**; or

(3) The Regional Administrator does not concur, the Council shall be notified, in writing, of the reasons for the non-concurrence.

(k) Nothing in this section is meant to derogate from the authority of the Secretary to take emergency action under § 305(c) of the Magnuson-Stevens Act.

§ 648.56 Scallop research.

(a) Annually, the Council and NMFS shall prepare and issue a Request for Proposals (RFP) that identifies research priorities for projects to be conducted by vessels using research set-aside as specified in §§ 648.53(b)(3) and 648.60(e).

(b) Proposals submitted in response to the RFP must include the following information, as well as any other specific information required within the RFP: A project summary that includes the project goals and objectives; the relationship of the proposed research to scallop research priorities and/or management needs; project design; participants other than the applicant, funding needs, breakdown of costs, and the vessel(s) for which authorization is requested to conduct research activities.

(c) NMFS shall make the final determination as to what proposals are approved and which vessels are authorized to take scallops in excess of possession limits, utilize DAS set-aside for research, or take additional trips into Access Areas. NMFS shall provide authorization of such activities to specific vessels by letter of acknowledgement, letter of authorization, or Exempted Fishing Permit issued by the Regional Administrator, which must be kept on board the vessel.

(d) Upon completion of scallop research projects approved under this part, researchers must provide the Council and NMFS with a report of research findings, which must include: A detailed description of methods of data collection and analysis; a discussion of results and any relevant conclusions presented in a format that is understandable to a non-technical audience; and a detailed final accounting of all funds used to conduct the sea scallop research.

§ 648.57 Sea scallop area rotation program.

(a) An area rotation program is established for the scallop fishery, which may include areas closed to scallop fishing defined in § 648.58, and/or Sea Scallop Access Areas defined in § 648.59, subject to the Sea Scallop Area Access program requirements specified in § 648.60. Areas not defined as Rotational Closed Areas, Sea Scallop Access Areas, EFH Closed Areas, or areas closed to scallop fishing under other FMPs, are open to scallop fishing as governed by the other management measures and restrictions in this part. The Council's development of area rotation programs is subject to the framework adjustment process specified in § 648.55, including the Area Rotation Program factors included in § 648.55(a).

§ 648.58 Rotational Closed Areas.

(a) *Mid-Atlantic (Elephant Trunk) Closed Area.* Through February 28, 2007, no vessel may fish for scallops in, or possess or land scallops from, the area known as the Elephant Trunk Closed Area. No vessel may possess scallops in the Elephant Trunk Closed Area, unless such vessel is only transiting the area as provided in

paragraph (b) of this section. The Elephant Trunk Closed Area is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

Point	Latitude	Longitude
ET1	38°50′ N.	74°20′ W.
ET2	38°10′ N.	74°20′ W.
ET3	38°10′ N.	73°30′ W.
ET4	38°50′ N.	73°30′ W.
ET1	38°50′ N.	74°20′ W.

(b) *Transiting.* No vessel possessing scallops may enter or be in the area(s) specified in paragraph (a) of this section unless the vessel is transiting the area and the vessel's fishing gear is unavailable for immediate use as defined in § 648.23(b), or there is a compelling safety reason to be in such areas without all such gear being unavailable for immediate use.

§ 648.59 Sea Scallop Access Areas.

(a) *Hudson Canyon Sea Scallop Access Area.* (1) Through February 28, 2006, vessels issued limited access scallop permits may not fish for scallops in, or possess or land scallops from, the area known as the Hudson Canyon Sea Scallop Access Area, described in paragraph (a)(2) of this section, unless the vessel is participating in, and complies with the requirements of, the area access program described in § 648.60. Limited access scallop vessels may not possess scallops in the Hudson Canyon Sea Scallop Access Area, unless such vessel is participating in, and complies with the requirement of, the area access program described in § 648.60, or is transiting the area as provided in paragraph (b) of this section.

(2) The Hudson Canyon Sea Scallop Access Area is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

Point	Latitude	Longitude
H1	39°30′ N.	73°10′ W.
H2	39°30′ N.	72°30′ W.
H3	38°30′ N.	73°30′ W.
H4/ET4	38°50′ N.	73°30′ W.
H5	38°50′ N.	73°42′ W.
H1	39°30′ N.	73°10′ W.

(b) *Transiting.* Limited access sea scallop vessels fishing under a scallop DAS that have not declared a trip into the Sea Scallop Area Access Program may not fish for or possess scallops in the Sea Scallop Access Areas described in this section, and may not enter or be in such areas unless the vessel is transiting the area and the vessel's fishing gear is unavailable for immediate use as defined in § 648.23(b), or there is a compelling safety reason to be in such areas without all such gear being unavailable for immediate use.

(c) *Number of trips.* Subject to the total number of Sea Scallop Access Area trips allowed for each limited access scallop permit category specified in § 648.60(b)(3), vessels issued limited access scallop permits may fish no more than four trips during 2004 and three trips during 2005 in the Hudson Canyon Access Area, unless the vessel has exchanged a trip with another vessel for another Sea Scallop Access Area trip, as specified in § 648.60(a)(3)(iv), or unless the vessel is taking a compensation trip for a prior Sea Scallop Access Area trip that was terminated early, as specified in § 648.60(c).

§ 648.60 Sea scallop area access program requirements.

(a) Vessels issued a limited access scallop permit may fish in the Sea Scallop Access Areas specified in § 648.59 and during seasons specified in § 648.59, when fishing under a scallop DAS, provided the vessel complies with the requirements specified in paragraphs (a)(1) through (a)(8) and (b) through (e) of this section. Unless otherwise restricted under this part, vessels issued General Category scallop permits may fish in the Sea Scallop Access Areas and during seasons specified in § 648.59, subject to the possession limit specified in § 648.52(b). If no season is specified in § 648.59, the Access Area is open from March 1 through February 28 of each fishing year.

(1) *VMS.* The vessel must have installed on board an operational VMS unit that meets the minimum performance criteria specified in §§ 648.9 and 648.10, and paragraph (e) of this section.

(2) *Declaration.* (i) Prior to the 25th day of the month preceding the month in which fishing is to take place, the vessel must submit a monthly report through the VMS e-mail messaging system of its intention to fish in any Sea Scallop Access Area, along with the following information: Vessel name and permit number, owner and operator's name, owner and operator's phone numbers, and number of trips anticipated for each Sea Scallop Access Area in which it intends to fish. The Regional Administrator may waive a portion of this notification period for trips into the Sea Scallop Access Areas if it is determined that there is insufficient time to provide such notification prior to an access opening. Notification of this waiver of a portion of the notification period shall be provided to the vessel through a permit holder letter issued by the Regional Administrator.

(ii) In addition to the information described in paragraph (c)(2)(i) of this section, and for the purpose of selecting vessels for observer deployment, a vessel shall provide notice to NMFS of the time, port of departure, and specific Sea Scallop Access Area to be fished, at least 72 hours, unless otherwise notified by the Regional Administrator, prior to the beginning of any trip into the Sea Scallop Access Area.

(iii) To fish in a Sea Scallop Access Area, the vessel owner or operator shall declare a Sea Scallop Access Area trip through the VMS less than 1 hour prior to the vessel leaving port, in accordance with instructions to be provided by the Regional Administrator.

(3) *Sea Scallop Access Area trips.* (i) Except as provided in paragraph (c) of this section, the table below specifies the total number of trips a limited access scallop vessel may take into all Sea Scallop Access Areas during applicable seasons specified in § 648.59:

Limited access scallop permit	2004		2005	
	Trips	DAS per trip	Trips	DAS per trip
Full-time	4	12	3	12
Part-time	1	12	1	12
Occasional	1	12	1	12

A limited access scallop vessel fishing in Sea Scallop Access Areas may fish the total number of trips specified above according to the vessel's category in any Sea Scallop Access Area, provided the number of trips in any one Sea Scallop Access Area does not exceed the maximum number of trips allocated for such Sea Scallop Access Area as specified in § 648.59. Twelve (12) DAS shall be automatically deducted for each Sea Scallop Access Area trip.

(ii) *One-for-one area access trip exchanges.* If the total number of trips into all Sea Scallop Access Areas combined is greater than one trip, the owner of a vessel issued a limited access scallop permit may exchange, on a one-for-one basis, unutilized trips into one access area for unutilized trips into another Sea Scallop Access Area. A vessel owner must request the exchange of trips by submitting a completed Trip Exchange Form at least 15 days before the date on which the applicant desires the exchange to be effective, but no later than June 1 of each year. Each vessel involved in an exchange is required to submit a completed Trip Exchange Form. Trip Exchange Forms will be provided by the Regional Administrator upon request. The Regional Administrator shall review the records for each vessel to confirm the ability for the exchange to occur (*i.e.*, to determine if each vessel has trips remaining to transfer). The transfer is not effective until the vessel owner(s) receive a confirmation in writing from the Regional Administrator that the trip exchange has been made effective. A vessel owner may exchange trips between two or more vessels under his/her ownership. A vessel owner holding a Confirmation of Permit History is not eligible to exchange trips.

(4) *Area fished.* While on a Sea Scallop Access Area trip, a vessel may not fish for, possess, or land scallops from outside the specific Sea Scallop Access Area fished during that trip and must not enter or exit the specific Sea Scallop Access Area fished more than once per trip. A vessel on a Sea Scallop Access Area trip may not exit that Sea Scallop Access Area and transit to, or enter, another Sea Scallop Access Area on the same trip.

(5) *Possession and landing limits.* Unless authorized by the Regional Administrator as specified in paragraph (c) and (d) of this section, after declaring a trip into a Sea Scallop Access Area in fishing year 2004 and 2005, a vessel owner or operator may fish for, possess, and land up to 18,000 lb (9,525 kg) of scallop meats per trip. No vessel fishing in the Sea Scallop Access Area may possess shoreward of the VMS demarcation line or land, more than 50 bu (17.62 hl) of in-shell scallops.

(6) *Gear restrictions.* The minimum ring size for dredge gear used by a vessel fishing on a Sea Scallop Access Area trip is 4 inches (10.2 cm). Dredge or trawl gear used by a vessel fishing on a Sea Scallop Access Area trip must be in accordance with the restrictions specified in § 648.51(a) and (b).

(7) *Transiting.* While outside a Sea Scallop Access Area on a Sea Scallop Access Area trip, the vessel must have all fishing gear stowed and unavailable for immediate use as specified in § 648.23(b), unless there is a compelling safety reason.

(8) *Off-loading restrictions.* The vessel may not off-load its catch from a Sea Scallop Access Area trip at more than one location per trip.

(b) *Accrual of DAS.* For each Sea Scallop Access Area trip, except as provided in paragraph (c) of this section, a vessel on a Sea Scallop Access Area trip shall have 12 DAS deducted from its access area DAS allocation specified in paragraph (a)(3) of this section, regardless of the actual number of DAS used during the trip.

(c) *Compensation for Sea Scallop Access Area trips terminated early.* If a Sea Scallop Access Area trip is terminated before catching the allowed possession limit the vessel may be authorized to fish an additional trip in the same Sea Scallop Access Area based on the conditions and requirements of paragraphs (c)(1) through (5) of this section.

(1) The vessel owner/operator has determined that the Sea Scallop Access Area trip should be terminated early for reasons deemed appropriate by the operator of the vessel;

(2) The amount of scallops landed by the vessel for the trip must be less than the maximum possession limit specified in paragraph (a)(5) of this section.

(3) The vessel owner/operator must report the early termination of the trip prior to leaving the Sea Scallop Access Area by VMS email messaging, with the following information: Vessel name; vessel owner; vessel operator; time of trip termination; reason for terminating the trip (for NMFS recordkeeping purposes); expected date and time of return to port; and amount of scallops on board in pounds.

(4) The vessel owners/operator must request that the Regional Administrator authorize an additional trip as compensation for the terminated trip by submitting a written request to the Regional Administrator within 30 days of the vessel's return to port from the early terminated trip.

(5) The Regional Administrator must authorize the vessel to take an additional trip and must specify the amount of scallops that the vessel may land on such trip and the number of DAS charged for such trip, pursuant to the calculation specified in paragraphs (c)(5)(i) through (iii) of this section.

(i) The number of DAS a vessel will be charged for an additional trip in the Sea Scallop Access Area shall be calculated as the difference between the number of DAS automatically deducted for the trip as specified in paragraph (b) of this section, and the sum of the following calculation: 2 DAS, plus one DAS for each 10 percent (1,800 lb (816 kg)) increment of the overall possession limit on board. For example, a vessel that terminates a Sea Scallop Access Area trip on the 5th day of the trip with no scallops on board would be charged 2 DAS for the trip and could make an additional trip at a DAS charge of 10 DAS. Likewise, a vessel returning to port prior to the 12th DAS with 5,000 lb (2,268 kg) of scallops on board would be charged 5 DAS (2 DAS plus 3 DAS for the 3, 10 percent (1,800 lb (816 kg) increments) and could make a resumed trip with 7 DAS charged. Pounds of scallops landed shall be rounded up to the nearest 1,800 lb (816 kg).

(ii) The amount of scallops that can be landed on an authorized additional Sea Scallop Access Area trip shall equal 1,500 lb (680 kg) multiplied by the number of DAS to be charged for the resumed trip. In the second example provided in paragraph (c)(5)(i) of this section, the vessel could land up to 10,500 lb (4,763 kg) of scallops.

(iii) The vessel that terminates a Sea Scallop Access Area trip and has been authorized to take an additional trip shall have the DAS charged for that trip, as determined under paragraph (c)(5)(i) of this section, and deducted from its Sea Scallop Access Area DAS allocation specified in paragraph (a)(3) of this section, regardless of the actual number of DAS fished during the additional trip. Vessels that are authorized more than one additional trip for compensation for more than one terminated trip may combine the authorized trips into one, if all terminated trips occurred in the same Sea Scallop Access Area and provided the total possession limits do not exceed those specified in paragraph (a)(5) of this section.

(d) *Increase of possession limit to defray costs of observers*—(1) *Observer set-aside limits by area.* For the 2004 and 2005 fishing years, the observer set-aside for the Hudson Canyon Access Area is 187,900 lb (85.2 mt) and 149,562 lb (67.8 mt), respectively.

(2) *Defraying the costs of observers.* The Regional Administrator may increase the sea scallop possession limit specified in paragraph (a)(5) of this section to defray costs of at-sea observers deployed on area access trips subject to the limits specified in paragraph (d)(1) of this section. Owners of limited access scallop vessels shall be notified of the increase in the possession limit through a permit holder letter issued by the Regional Administrator. If the observer set-aside is fully utilized prior to the end of the fishing year, the Regional Administrator shall notify owners of limited access vessels that, effective on a specified date, the possession limit will be decreased to the level specified in paragraph (a)(5) of this section. Vessel owners shall be responsible for paying the cost of the observer, regardless of whether the vessel lands or sells sea scallops on that trip, and regardless of the availability of set-aside for an increased possession limit.

(e) *Adjustments to possession limits and/or number of trips to defray the costs of sea scallop research*—(1) *Research set-aside limits and number of trips by area.* For the 2004 and 2005 fishing years, the research set-aside for the Hudson Canyon Access Area is 375,800 lb (170.5 mt) and 299,123 lb (135.7 mt), respectively.

(2) *Defraying the costs of sea scallop research.* The Regional Administrator may increase the sea scallop possession limit specified in paragraph (a)(5) of this section or allow additional trips into a Sea Scallop Access Area to defray costs for approved sea scallop research up to the amount specified in paragraph (e)(1) of this section.

(f) *VMS polling.* For the duration of the Sea Scallop Area Access Program, as described under this section, all sea scallop limited access vessels equipped with a VMS unit shall be polled at least twice per hour, regardless of whether the vessel is enrolled in the Sea Scallop Area Access Program. Vessel owners shall be responsible for paying the costs for the polling.

§ 648.61 EFH closed areas.

Notwithstanding any other provision of this part, the following areas are closed to scallop fishing to protect EFH from adverse effects of scallop fishing:

(a) *Closed Area I EFH Closure.* No vessel may fish for scallops in, or possess or land scallops from, the area known as the Closed Area I EFH Closure. No vessel may possess scallops in the Closed Area I EFH Closure, unless such vessel is only transiting the area as provided in paragraph (e) of this section. The Closed Area I EFH Closure consists of two sections, defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

Point	Latitude	Longitude
Section 1		
CAIE1	41°30′ N.	69°23′ W.
CAIE2	41°30′ N.	68°35′ W.
CAIE3	41°08′ N.	69°4.2′ W.
CAIE4	41°30′ N.	69°23′ W.
Section 2		
CAIE5	41°04.5′ N.	69°1.2′ W.
CAIE6	41°09′ N.	68°30′ W.
CAIE7	40°45′ N.	68°30′ W.
CAIE8	40°45′ N.	68°45′ W.
CAIE5	41°04.5′ N.	69°1.2′ W.

(b) *Closed Area II EFH Closure.* No vessel may fish for scallops in, or possess or land scallops from, the area known as the Closed Area II EFH Closure. No vessel may possess scallops in the Closed Area II EFH Closure, unless such vessel is only transiting the area as provided in paragraph (e) of this section. The Closed Area II EFH Closure is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

Point	Latitude	Longitude
CAIIE1	42°22′ N.	67°20′ W.[1]
CAIIE2	41°30′ N.	66°34.8′ W.[2]
CAIIE3	41°30′ N.	67°20′ W.
CAIIE1	42°22′ N.	67°20′ W.[1]

[1] The U.S.-Canada Maritime Boundary.
[2] On the U.S./Canada Maritime Boundary.

(c) *Nantucket Lightship Closed Area EFH Closure.* No vessel may fish for scallops in, or possess or land scallops from, the area known as the Nantucket Lightship Closed Area EFH Closure. No vessel may possess scallops in the Nantucket Lightship Closed Area EFH Closure, unless such vessel is only transiting the area as provided in paragraph (e) of this section. The Nantucket Lightship Closed Area EFH Closure is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

Point	Latitude	Longitude
NLSE1	40°50′ N.	70°20′ W.
NLSE2	40°50′ N.	69°29.5′ W.
NLSE3	40°30′ N.	69°14.5′ W.
NLSE4	40°30′ N.	69°00′ W.
NLSE5	40°20′ N.	69°00′ W.
NLSE6	40°20′ N.	70°20′ W.
NLSE1	40°50′ N.	70°20′ W.

(d) *Western Gulf of Maine EFH Closure.* No vessel may fish for scallops in, or possess or land scallops from, the area known as the Western Gulf of Maine EFH Closure. No vessel may possess scallops in the Western Gulf of Maine EFH Closure, unless such vessel is only transiting the area as provided in paragraph (e) of this section. The Western Gulf of Maine EFH Closure is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

Point	Latitude	Longitude
WGOM1	43°15′ N.	70°15′ W.
WGOM2	43°15′ N.	69°55′ W.
WGOM3	42°15′ N.	69°55′ W.
WGOM4	42°15′ N.	70°15′ W.
WGOM1	43°15′ N.	70°15′ W.

(e) *Transiting.* No vessel possessing scallops may enter or be in the area(s) specified in paragraphs (a) through (c) of this section, unless the vessel is transiting the area(s) as allowed in §§ 648.81(b)(2)(iv) and 648.81(i).

■ 6. In § 648.80, paragraph (b)(11)(ii)(C) is revised to read as follows:

§ 648.80 NE Multispecies regulated mesh areas and restriction on gear and methods of fishing.

* * * * *

(b) * * *

(11) * * *

(ii) * * *

(C) The minimum mesh size used in the twine top of scallop dredges must be 10 in (25.4 cm).

* * * * *

■ 7. In § 648.81, paragraph (g)(2)(iii) is revised to read as follows:

§ 648.81 NE Multispecies closed areas and measures to protect EFH.

* * * * *

(g) * * *

(2) * * *

(iii) That are fishing with or using scallop dredge gear when fishing under a scallop DAS or when lawfully fishing in the Scallop Dredge Fishery Exemption Area, as described in § 648.80(a)(11), provided the minimum mesh size of the twine top used in the dredge by the vessel is 10 inches (25.4 cm), and provided that the vessel complies with the NE multispecies

possession restrictions for scallop vessels specified at § 648.80(h).

* * * * *

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Federal Register

Wednesday,
June 23, 2004

Part IV

The President

Proclamation 7797—Father's Day, 2004

Federal Register
Vol. 69, No. 120
Wednesday, June 23, 2004

Presidential Documents

Title 3—

The President

Proclamation 7797 of June 19, 2004

Father's Day, 2004

By the President of the United States of America

A Proclamation

A special bond exists between a father and his children. On Father's Day, we recognize the important role fathers play in the American family, and we honor them for their strength, love, and commitment.

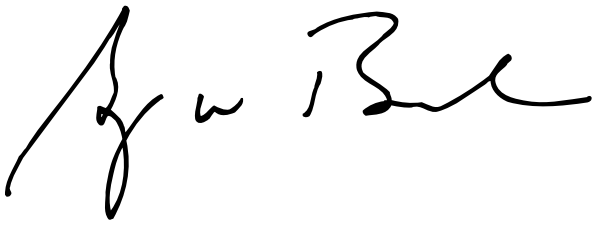
After listening to a church service on Mother's Day 1909, Sonora Dodd proposed a day to honor fathers. She was inspired by the courage and sacrifice of her own father, a Civil War veteran, who reared six children by himself after his wife's death. As others began to celebrate it, the idea for Father's Day spread across America. In 1966, President Lyndon Johnson officially proclaimed Father's Day as a national observance.

Fathers have a duty to love their children with all their hearts and prepare them to be independent, compassionate, and responsible citizens. A father's words and actions are critical in shaping the character of his children. A father's love helps teach them right from wrong, explains to them the consequences of bad decisions, and strengthens them with encouragement.

As we honor our fathers on this day, we express our heartfelt appreciation for their leadership, support, and protection for their children and families. We particularly recognize the many fathers who are far from home, serving our Nation and defending the cause of freedom around the world. They have answered a great call and live by a code of honor and duty that serves as an example for their sons and daughters and for all Americans.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, in accordance with a joint resolution of the Congress approved April 24, 1972, as amended (36 U.S.C. 109), do hereby proclaim June 20, 2004, as Father's Day. I encourage all Americans to express love, admiration, and thanks to their fathers for their contributions to our lives and to society. I direct the appropriate officials of the Government to display the flag of the United States on all Government buildings on this day. I also call upon State and local governments and citizens to observe this day with appropriate programs, ceremonies, and activities.

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



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  - Bock Water Heaters, Inc.; waiver from water heater test procedure; comments due by 6-28-04; published 5-27-04 [FR 04-12034]
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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal_register/public_laws/public_laws.html*.

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S.J. Res. 28/P.L. 108–236

Recognizing the 60th anniversary of the Allied landing at Normandy during World War II. (June 15, 2004; 118 Stat. 659)

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