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DEPARTMENT OF HOMELAND SECURITY

8 CFR Parts 212 and 214

[CIS No. 2320–04]

RIN 1615–AB28

Extension of the Deadline for Certain Health Care Workers Required To Obtain Certificates

AGENCY: Bureau of Citizenship and Immigration Services, DHS.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule amends the Department of Homeland Security (DHS), Bureau of Citizenship and Immigration Services (BCIS) regulations to extend the deadline by which certain health care workers from Canada and Mexico must obtain health care worker certifications. This rule applies only to affected health care workers who, before September 23, 2003, were employed as ''trade NAFTA'' (TN) or ''trade Canada'' (TC) nonimmigrant health care workers and held valid licenses from a United States jurisdiction. A ''trade NAFTA'' nonimmigrant alien is a citizen of Canada or Mexico who is admitted to the United States to engage in business activities at a professional level as agreed to under the North American Free Trade Agreement. A ''trade Canada'' nonimmigrant alien is a Canadian citizen who was admitted to the United States temporarily to engage in business activities at a professional level as agreed to under the United States-Canada Free Trade Agreement. This interim rule does not change the licensing requirements for employment purposes. Publication of this rule ensures that the United States health care system is not adversely affected by the expiration of the transition period for certain health care workers to present the required certification.

DATES: *Effective date:* This interim rule is effective on July 26, 2004.

Comment date: Written comments must be submitted on or before September 20, 2004.

ADDRESSES: Please submit written comments to the Director, Regulations and Forms Services Division (HQRFS), Department of Homeland Security, Bureau of Citizenship and Immigration Services, 111 Massachusetts Avenue, NW., 3rd Floor, Washington, DC 20528. To ensure proper handling please reference BCIS No. 2320–04 on your correspondence. You may also submit comments electronically to DHS at *rfs.regs@dhs.gov.* When submitting comments electronically you must include BCIS No. 2320–04 in the subject box so that the comments can be electronically routed to the appropriate office in BCIS. Comments are available for public inspection at the above address by calling (202) 514–3048 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: Paola Rodriguez Hale, Office of Program and Regulations Development, Bureau of Citizenship and Immigration Services, Department of Homeland Security, 111 Massachusetts Avenue, NW., 3rd Floor, Washington, DC 20528, telephone (202) 353–8177.

SUPPLEMENTARY INFORMATION: Section 343 of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Public Law 104–208, 110 Stat. 3009, 636–37 (1996), now codified at section 212(a)(5)(C) of the Immigration and Nationality Act (Act) (8 U.S.C. 1182(a)(5)(C)), and section 4(a) of the Nursing Relief for Disadvantaged Areas Act of 1999 (NRDAA), Public Law 106–95, codified at section 212(r) of the Act (8 U.S.C. 1182(r)), provide that an alien who seeks to enter the United States for the purpose of performing labor as a health care worker, other than a physician, is inadmissible unless the alien presents a certificate from the Commission on Graduates of Foreign Nursing Schools (CGFNS), or an equivalent independent credentialing organization, verifying that the alien meets certain education, training, licensure and competency requirements. The certification requirement became effective for nonimmigrant aliens employed in the United States on September 23, 2003, by a final rule published in the **Federal Register** on July 25, 2003 at 68 FR 43901 (the Final Rule). The Final Rule provided that, as of September 23, 2003, all nonimmigrant aliens affected by the certification requirements of section 212(a)(5)(C) of the Act must obtain the required certificate.

Because the process of obtaining the certificate is not an immediate one, the final rule provided for a one-year transition period. Under the transition period, affected nonimmigrant aliens would receive a waiver so that the failure to obtain a certificate would not be a ground of inadmissibility under the Act, upon the condition that the certificate be obtained within a year of the granting of the waiver. The transition period expires on July 26, 2004.

DHS, however, has determined that an extension of the transition period is required for certain Canadian and Mexican nonimmigrant health care workers. Many Canadian and Mexican citizens travel regularly across their respective borders as well as to other regions outside the United States. After July 26, 2004, the expiration of the one-year period, those aliens who have not yet received their certificates will be inadmissible and thus unable to cross borders into the United States.

These health care workers will be immediately inadmissible and ineligible to work in the United States under their current nonimmigrant classification. The inability of these aliens to return to the United States upon expiration of the one-year transition period would cause disruption to their employers, who would have been relying on these employees for at least the last year. Regional health care systems would be disrupted by preventing these regular employees from returning to work for a period of time.

After consideration of these factors and in consultation with other Federal agencies, DHS decided to extend the transition period for an additional year for certain health care workers in order to ensure that the United States public and health care system is not adversely affected by the lack of available health care workers who would otherwise be unable to reenter the United States as TN nonimmigrant health care workers. (When the North American Free Trade Agreement (NAFTA) came into effect on January 1, 1994, the United States-Canada Free Trade Agreement was suspended for such time as the United

States and Canada are parties of NAFTA. At that time, NAFTA TN classification replaced the TC classification. Thus, for purposes of this interim rule any reference to TN includes those aliens previously classified as TC nonimmigrants.)

This interim rule extends the transition period provided for at 8 CFR 212.15(n) for Canadian and Mexican TN nonimmigrant health care workers subject to the certification requirement who, before September 23, 2003 (the effective date of the Final Rule), were employed as TN nonimmigrants and held licenses from a U.S. jurisdiction. DHS understands that many of these TN nonimmigrants actually live in Canada or Mexico, and regularly travel to their jobs in the United States or to other regions outside the United States. Because many of the aliens to be protected by this interim rule are regular travelers, it is not necessary for them actually to have been physically present in the United States on September 23, 2003 in order to benefit from this extended transition period. This interim rule also amends 8 CFR 214.1(i) to explain how an alien may establish that he or she is eligible for the waiver of the certification requirement, as the burden remains on the alien to establish eligibility for a waiver of the certification requirement.

This interim rule also makes a technical correction to the introductory text of 8 CFR 214.1(j). For employment-based nonimmigrant classifications, Form I–129 is used both to classify the alien for the nonimmigrant status and also actually to change the alien to that classification (if the alien entered in a different classification) or to extend the period of the alien's authorized stay. The introductory text of 8 CFR 214.1(j) currently suggests that the Form I–129 would be denied entirely if the necessary certification is lacking. But this suggestion is not technically correct. That an alien may ultimately be inadmissible does not necessarily warrant denial of the employer's request to classify the alien for a relevant nonimmigrant classification. Inadmissibility requires only that BCIS may not grant the actual extension or stay or change of status. Approval of the classification itself is still useful to the employer, as it will facilitate the alien's admission, should the alien later acquire the certification, without the employer's having to file a new petition. This interim rule revises 8 CFR 214.1(j) to clarify this distinction.

Who Is Not Covered by the Extension of the Transition Period?

This extension does not apply to any alien whose initial admission as a TN nonimmigrant health care worker occurred on or after September 23, 2003, the effective date of the final rule. Any alien admitted after the effective date of the final rule was admitted on notice of the certification requirement. Given such notice, it is appropriate to impose the certification requirement on these health care workers without offering them an additional extension to comply with the regulation.

Will Other Aliens Subject to the Certification Requirement Receive Waivers?

For all aliens not described in this interim rule, the transition period will still expire on July 26, 2004, or one year from the date the alien received the waiver, whichever is later, as provided for by 8 CFR 212.15(n). Thus, any alien not described in this interim rule who seeks admission after July 26, 2004 to work in a covered health care field will be inadmissible if the alien has not obtained the required certificate. As provided in section 212(d)(3) of the Act and 8 CFR 212.15(n), the Secretary may continue to waive this ground of admissibility on a case-by-case basis.

Good Cause Exception

Implementation of this rule as an interim rule with a request for public comment after the effective date is based upon the ''good cause'' exception found at 5 U.S.C. 553(b)(3)(B) and (d)(3). This interim rule accommodates the needs of the health care industry and the Canadian and Mexican TN nonimmigrants affected by the rule by providing these aliens an additional year to come into compliance with the requirements of sections 212(a)(5)(C) and (r) of the Act. Failure to provide this accommodation would likely cause significant disruption in the provision of health care in border regions. Therefore, delay of the publication of this interim rule to allow for prior notice and comment would be impracticable and contrary to the public interest under 5 U.S.C. 553(b)(3)(B).

Further, because this interim rule grants an exemption, on a temporary basis, from the certificate requirement, DHS finds that the 30-day effective date requirement under the Administrative Procedure Act is waived under 5 U.S.C. 553(d)(1) and this interim rule will be effective on July 26, 2004. DHS nevertheless invites written comments on this interim rule, and will consider any timely comments in preparing a final rule.

Regulatory Flexibility Act

DHS has reviewed this regulation, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), and, by approving it, DHS certifies that this interim rule will not have a significant economic impact on a substantial number of small entities. The basis for this certification is the same as that provided in the Final Rule published in the **Federal Register** on July 25, 2003 at 68 FR 43901. It is still projected that there will be, at most, 21 small businesses that apply to the DHS to issue certificates for health care workers. Although these small entities are required to pay a fee when submitting their applications, these small entities may recoup this expense if they charge aliens who must obtain a foreign health care worker certificate. There is no change in the number of entities projected to apply for authorization or to the fee required for submission of the application since the Final Rule published in the **Federal Register** on July 25, 2003 at 68 FR 43901.

Unfunded Mandates Reform Act of 1995

This interim rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This interim rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

This interim rule is considered by DHS to be a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, this regulation has been submitted to the Office of Management and Budget (OMB) for

review. DHS has assessed both the costs and the benefits of this interim rule as required by Executive Order 12866, section 1(b)(6), and has made a reasoned determination that the benefits of this rule justify its costs.

Briefly, that assessment is as follows:

The costs described in the Final Rule published in the **Federal Register** on July 25, 2003 at 68 FR 43901 are still applicable. In the Final Rule, DHS determined that any entity seeking authorization to issue health care worker certifications must apply for authorization on Form I–905. DHS determined that $230 was the appropriate fee for Form I–905 after comparing the processing of the form to the process involved with Form I–17, Petition for Approval of School for Attendance by Nonimmigrant Student, which has a processing fee of $230. The application requirement and processing fees are still applicable and remain unchanged by the extension of the transition period. DHS has estimated that there will be approximately 10 applicants who will each have a time burden of approximately 4 hours, and who will be required to pay a total of $2,300. The number of projected applicants and the time burden also remains unchanged by the extension of the transition period. Once the Form I–905 is approved by BCIS, an authorized entity will be authorized to issue health care worker certification for a period of 5 years, and will be able to recoup the costs of the Form I–905 by charging a fee for each certificate that it issues. This process and procedure remains unchanged by the extension of the transition period for TN nonimmigrant health care workers for one year.

Each credentialing organization may still set its own fee to recover the costs of issuing of a health care worker certificate, although the price may vary between organizations. The CGFNS is the organization that is currently authorized to issue certifications to the largest number of applicants. DHS has estimated that the total time burden associated with each certification is still approximately 220 minutes and remains unchanged by the extension of the transition period. The current price for a CGFNS certificate or certified statement is approximately $325, which is charged to an individual alien. In some cases, a petitioning employer may choose to pay on behalf of the alien.

Finally, DHS has determined that the benefit to the United States public will be that health care facilities remain adequately staffed to support their medical needs. Upon expiration of the transition period, many Canadian and Mexican health care workers, who regularly travel to their respective countries and to other regions outside the United States, will not be able to get back into the United States to resume work without the required certification. Many health care facilities along the border regions rely on the commuter health care workers. The transition period will allow the health care workers additional time to obtain the certification, thus allowing them to return to work. Without the extended transition period, the health care facilities in these areas will be immediately faced with a staff shortage, causing an adverse affect on their ability to render critical health care services. A shortage of health care workers will cause a significant strain on the quality of care offered to the United States public. Additionally, the consequences of understaffing could be dire. It is in the public interest to extend the transition period to ensure that health care facilities remain fully staffed and are able to provide the same level and quality of service to the public.

Executive Order 13132

The interim rule will not have substantial direct effects on the states, on the relationship between the National Government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Executive Order 12988 Civil Justice Reform

This interim rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

Paperwork Reduction Act of 1995

This interim rule does not impose any new reporting or record keeping requirements. The information collection requirement contained in this interim rule was previously approved for use by the Office of Management and Budget (OMB). The OMB control number for this information collection is 1615–0062 and is contained in 8 CFR 299.5, Display of Control Numbers.

List of Subjects

8 CFR Part 212

Administrative practice and procedures, Aliens, Immigration, Passports and visas, Reporting and record keeping requirements.

8 CFR Part 214

Administrative practice and procedures, Aliens, Employment, Foreign officials, Health professions, Reporting and record keeping requirements, Students.

■ Accordingly, chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 212—DOCUMENTARY REQUIREMENTS: NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

■ 1. The authority citation for part 212 continues to read as follows:

Authority: 8 U.S.C. 1101 and note, 1102, 1103, 1182 and note, 1184, 1187, 1225, 1226, 1227.

■ 2. Section 212.15 is amended by revising paragraphs (n)(1) and the introductory text of paragraph (n)(2) introductory text to read as follows:

§ 212.15 Certificates for foreign health care workers.

* * * * *

(n) *Transition.*

(1) *One year waiver.* (i) Pursuant to section 212(d)(3) of the Act (and, for cases described in paragraph (d)(1) of this section, upon the recommendation of the Secretary of State), the Secretary has determined that until July 26, 2004 (or until July 26, 2005, in the case of a citizen of Canada or Mexico who, before September 23, 2003, was employed as a TN or TC nonimmigrant health care worker and held a valid license from a U.S. jurisdiction), DHS, subject to the conditions in paragraph (n)(2) of this section, may in its discretion admit, extend the period of authorized stay, or change the nonimmigrant status of an alien described in paragraph (d)(1) or paragraph (d)(2) of this section, despite the alien's inadmissibility under section 212(a)(5)(C) of the Act, provided the alien is not otherwise inadmissible.

(ii) After July 26, 2004 (or, after July 26, 2005, in the case of a citizen of Canada or Mexico, who, before September 23, 2003, was employed as a TN or TC nonimmigrant health care worker and held a valid license from a U.S. jurisdiction), such discretion shall be applied on a case-by-case basis.

(2) *Conditions.* Until July 26, 2004 (or until July 26, 2005, in the case of a citizen of Canada or Mexico, who, before September 23, 2003, was employed as a TN or TC nonimmigrant health care worker and held a valid license from a U.S. jurisdiction), the temporary admission, extension of stay, or change of status of an alien described in 8 CFR part 212(d)(1) or (d)(2) of this

section that is provided for under this paragraph (n) is subject to the following conditions:

* * * * *

PART 214—NONIMMIGRANT CLASSES

■ 3. The authority citation for part 214 continues to read as follows:

Authority: 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1185 (pursuant to Executive order 13323, published January 2, 2004), 1186a, 1187, 1221, 1281, 1282, 1301–05; 1372; 1379; 1731–32; sec. 643, Pub. L. 104–208, 110 Stat. 3009–708; section 141 of the Compacts of Free Association with the Federated States of Micronesia and the Republic of the Marshall Islands, and with the Government of Palau, 48 U.S.C. 1901, note, and 1931, note, respectively.

■ 4. Section 214.1 is amended by:
■ a. Revising paragraph (i); and by
■ b. Revising the introductory text of paragraph (j); and by
■ c. Revising paragraph (j)(2), to read as follows:

§ 214.1 Requirements for admission, extension, and maintenance of status.

* * * * *

(i) *Employment in a health care occupation.* (1) Except as provided in 8 CFR 212.15(n), any alien described in 8 CFR 212.15(a) who is coming to the United States to perform labor in a health care occupation described in 8 CFR 212.15(c) must obtain a certificate from a credentialing organization described in 8 CFR 212.15(e). The certificate or certified statement must be presented to the Department of Homeland Security in accordance with 8 CFR 212.15(d). In the alternative, an eligible alien seeking admission as a nurse may obtain a certified statement as provided in 8 CFR 212.15(h).

(2) A TN nonimmigrant may establish that he or she is eligible for a waiver described at 8 CFR 212.15(n) by providing evidence that his or her initial admission as a TN (or TC) nonimmigrant health care worker occurred before September 23, 2003, and he or she was licensed and employed in the United States as a health care worker before September 23, 2003. Evidence may include, but is not limited to, copies of TN or TC approval notices, copies of Form I–94 Arrival/Departure Records, employment verification letters and/or pay-stubs or other employment records, and state health care worker licenses.

(j) *Extension of stay or change of status for health care worker.* In the case of any alien admitted temporarily as a nonimmigrant under section 212(d)(3) of the Act and 8 CFR 212.15(n) for the primary purpose of the providing labor in a health care occupation described in 8 CFR 212.15(c), the petitioning employer may file a Form I–129 to extend the approval period for the alien's classification for the nonimmigrant status. If the alien is in the United States and is eligible for an extension of stay or change of status, the Form I–129 also serves as an application to extend the period of the alien's authorized stay or to change the alien's status. Although the Form I–129 petition may be approved, as it relates to the employer's request to classify the alien, the application for an extension of stay or change of status shall be denied if:

* * * * *

(2) The petition or application to extend the alien's stay or change the alien's status does include the certification required by 8 CFR 212.15(a), but the alien obtained the certification more than 1 year after the date of the alien's admission under section 212(d)(3) of the Act and 8 CFR 212.15(n). While DHS may admit, extend the period of authorized stay, or change the status of a nonimmigrant health care worker for a period of 1 year if the alien does not have certification on or before July 26, 2004 (or on or before July 26, 2005, in the case of a citizen of Canada or Mexico, who, before September 23, 2003, was employed as a TN or TC nonimmigrant health care worker and held a valid license from a U.S. jurisdiction), the alien will not be eligible for a subsequent admission, change of status, or extension of stay as a health care worker if the alien has not obtained the requisite certification 1 year after the initial date of admission, change of status, or extension of stay as a health care worker.

Dated: July 19, 2004.

Tom Ridge,

Secretary, Department of Homeland Security.

[FR Doc. 04–16709 Filed 7–21–04; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–18580; Directorate Identifier 2004–CE–12–AD; Amendment 39–13735; AD 2004–15–01]

RIN 2120–AA64

Airworthiness Directives; Raytheon Aircraft Company Model 390 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Raytheon Aircraft Company (Raytheon) Model 390 airplanes. This AD requires you to inspect the hydraulic tube/hose assemblies, the engine fuel feed tube assemblies, and the engine wire harnesses for proper clearance and damage (as applicable). If improper clearance or damage is found on any assembly, you must replace and/or modify the affected assembly. This AD is the result of reports of loss of the hydraulic system functions during different operations caused by improper clearance between certain components. This resulted in damage to the tubing in the hydraulic system assemblies. Analysis shows a similar condition on the engine fuel feed assemblies. We are issuing this AD to detect, correct, and prevent such damage or improper clearance in the affected areas, which could result in failure of one or more of these systems. These failures could lead to loss of hydraulic system operations, engine shutdown, and false readings for fuel pressure, oil pressure, and other oil indications. These conditions could consequently result in reduced or loss of control of the airplane.

DATES: This AD becomes effective on August 23, 2004.

As of August 23, 2004, the Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulation.

We must receive any comments on this AD by October 4, 2004.

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

- *DOT Docket Web site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- *Fax:* 1–202–493–2251.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

You may get the service information identified in this AD from Raytheon Aircraft Company, 9709 E. Central, Wichita, Kansas 67201–0085; telephone: (800) 429–5372 or (316) 676–3140.

You may view the comments to this AD in the AD docket on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT:

James P. Galstad, Aerospace Engineer, Wichita Aircraft Certification Office (ACO), FAA, 1801 Airport Road, Wichita, Kansas 67209; telephone: (316) 946–4135; facsimile: (316) 946–4107.

SUPPLEMENTARY INFORMATION:

What events have caused this AD? Raytheon received reports of loss of hydraulic pressure on two Model 390 airplanes. One of the affected airplanes experienced a complete loss of normal hydraulic system pressure during flight. The other affected airplane experienced a loss of hydraulic pressure during ground operations.

Inspections of these airplanes revealed improper clearance between the hydraulic tube/hose assemblies and the engine inlet heat exhaust duct. Improper clearance between these two components resulted in chafing of the hydraulic tube assemblies. The chafing created a hole in the engine hydraulic tube and allowed hydraulic fluid to leak out. Loss of hydraulic fluid pressure resulted in the consequent loss of normal brake function, spoiler system, and normal landing gear operation.

Further inspections also revealed the following:

—Improper clearance between the left-hand (LH) and the right-hand (RH) engine fuel feed tube assemblies and the Hydro Mechanical Unit/Electronic Control Unit (HMU/ECU) interface electrical connectors; and

—Improper clearance between the engine wire harness and the engine lube oil cooler.

The analysis shows that the bend dimension of the LH engine fuel feed tube assembly was improperly defined during the production of some airplanes. This improperly-defined bend dimension allows for interference with the HMU/ECU interface electrical connectors. In addition, torquing the RH engine fuel feed tube assembly could cause interference with the HMU/ECU interface electrical connectors. Redesigned LH and RH tube assemblies are available for those airplanes found to have the improper clearance between the two components.

What is the potential impact if FAA took no action? These conditions, if not detected, corrected, and prevented, could cause the hydraulic tube/hose assemblies, the engine fuel feed tube assemblies, and the engine wire harnesses assembly to fail. These failures could eventually lead to reduced or loss of control of the airplane.

Is there service information that applies to this subject? Raytheon has issued the following:

—*Mandatory Service Bulletin Premier SB 71–3648, Issued: November, 2003,* which includes procedures for inspecting the hydraulic tube/hose assemblies and all adjacent components for proper clearance and damage and replacing any damaged parts and doing modifications if improper clearance is found; and

—*Mandatory Service Bulletin Beechcraft SB 71–3659, Rev. 1, Revised: May, 2004,* which includes procedures for inspecting the engine fuel feed tube assemblies for proper clearance and damage and replacing any damaged parts and doing modifications if improper clearance is found.

FAA's Determination and Requirements of the AD

What has FAA decided? We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other products of this same type design.

Since the unsafe condition described previously is likely to exist or develop on other Raytheon Model 390 airplanes of the same type design, we are issuing this AD to detect, correct, and prevent damage to the tubing in the hydraulic system assembly, the engine fuel feed tube assemblies, and the engine wire harness, caused by improper clearance and chafing, which could result in failure of these systems. These failures could lead to loss of hydraulic system operations, engine shutdown, nacelle fire, and false readings for fuel pressure, oil pressure, and other oil indications. These conditions could consequently lead to reduced or loss of control of the airplane.

What does this AD require? This AD requires you to incorporate the actions in the previously-referenced service bulletins.

In preparing this rule, we contacted type clubs and aircraft operators to get technical information and information on operational and economic impacts. We did not receive any information through these contacts. If received, we would have included a discussion of any information that may have influenced this action in the rulemaking docket.

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

Comments Invited

Will I have the opportunity to comment before you issue the rule? This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any written relevant data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2004–18580; Directorate Identifier 2004–CE–12–AD'' in the subject line of your comments. If you want us to acknowledge receipt of your mailed comments, send us a self-addressed, stamped postcard with the docket number written on it; we will date-stamp your postcard and mail it back to you. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify it. If a person contacts us through a nonwritten communication, and that contact relates to a substantive part of this AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend the AD in light of those comments.

Regulatory Findings

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

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

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

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

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

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**.

Include ''Docket FAA–2004–18580; Directorate Identifier 2004–CE–12–AD'' in your request.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2004–15–01 Raytheon Aircraft Company: Amendment 39–13735; Docket No. FAA–2004–18580; Directorate Identifier 2004–CE–12–AD.

When Does This AD Become Effective?

(a) This AD becomes effective on August 23, 2004.

Are Any Other ADs Affected by This Action?

(b) None.

What Airplanes Are Affected by This AD?

(c) This AD affects Model 390 airplanes, serial numbers RB–1, RB–4 through RB–84, RB–87, RB–89, RB–90, RB–93 through RB–96, RB–99 through RB–101, and RB–103; that are certificated in any category:

What Is the Unsafe Condition Presented in This AD?

(d) This AD is the result of reports of loss of the hydraulic system functions during different operations caused by improper clearance between certain components. This resulted in damage to the tubing in the hydraulic system assemblies. Analysis shows a similar condition on the engine fuel feed assemblies. We are issuing this AD to detect, correct, and prevent improper clearance in and damage to the components in the hydraulic system assembly, the engine fuel feed tube assemblies, and the engine wire harness. Improper clearance of damaged components could result in failure of one or more of these systems. These failures could lead to loss of hydraulic system operations, engine shutdown, nacelle fire, and false readings for fuel pressure, oil pressure, and other oil indications. These conditions could consequently result in reduced or loss of control of the airplane.

What Must I Do To Address This Problem?

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

Actions	Compliance	Procedures
(1) *For serial numbers RB–1, RB–4 through RB–15, RB–17 through RB–80, RB–82, and RB–84, do the following:* (i) Inspect the hydraulic tube/hose assemblies and all adjacent components for proper clearance and damage; (ii) Inspect the engine fuel feed tube assemblies and all adjacent components for proper clearance and damage; and (iii) If improper clearance or damage is found during either of the inspections listed in paragraphs (e)(1)(i) and (e)(1)(ii) of this AD, replace the affected hydraulic tube/hose assembly or fuel feed tube assembly.	Inspect within the next 25 hours time-in-service (TIS) after August 23, 2004 (the effective date of this AD), unless already done. Replace prior to further flight after the inspection where improper clearance or damage is found.	Follow the procedures in Raytheon Aircraft Company Mandatory Service Bulletin Premier SB 71–3648, dated November, 2003; and Raytheon Aircraft Company Mandatory Service Bulletin Beechcraft SB 71–3659, Rev. 1, dated May, 2004.
(2) *For serial numbers RB–16, RB–81, RB–83, RB–87, RB–89, RB–90, RB–93 through RB–96, RB–99 through RB–101, and RB–103,* do the following: (i) Inspect the engine fuel feed tube assemblies and all adjacent components for proper clearance and damage; and (ii) If improper clearance or damage is found during the inspection listed in paragraph (e)(2)(i) of this AD, replace the affected fuel feed tube assembly.	Inspect within the next 25 hours time-in-service (TIS) after August 23, 2004 (the effective date of this AD), unless already done. Replace prior to further flight after the inspection where improper clearance or damage is found.	Follow the procedures in Raytheon Aircraft Company Mandatory Service Bulletin Beechcraft SB 71–3659, Rev. 1, dated May, 2004.

May I Request an Alternative Method of Compliance?

(f) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.19. Unless FAA authorizes otherwise, send your request to your principal inspector. The principal inspector may add comments and will send your request to the Manager, Wichita Aircraft Certification Office (ACO), FAA. For information on any already approved alternative methods of compliance, contact James P. Galstad, Aerospace Engineer, Wichita ACO, FAA, 1801 Airport Road, Wichita, Kansas 67209; telephone: (316) 946–4135; facsimile: (316) 946–4107.

Does This AD Incorporate Any Material by Reference?

(g) You must do the actions required by this AD following the instructions in Raytheon Aircraft Company Mandatory Service Bulletin Premier SB 71–3648, dated November, 2003; and Raytheon Aircraft Company Mandatory Service Bulletin Beechcraft SB 71–3659, Rev. 1, dated May, 2004. The Director of the Federal Register approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may get a copy from Raytheon Aircraft Company, 9709 E. Central, Wichita, Kansas 67201–0085; telephone: (800) 429–5372 or (316) 676–3140. You may review copies at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

You may view the AD docket at the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.

Issued in Kansas City, Missouri, on July 13, 2004.

Scott L. Sedgwick,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–16416 Filed 7–21–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs; Ivermectin Tablets and Chewables

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Phoenix Scientific, Inc. The ANADA provides for veterinary prescription use of chewable ivermectin tablets in dogs to prevent canine heartworm disease by eliminating the tissue stage of heartworm larvae (*Dirofilaria immitis*) for 1 month (30 days) after infection.

DATES: This rule is effective July 22, 2004.

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

SUPPLEMENTARY INFORMATION: Phoenix Scientific, Inc., 3915 South 48th St. Terrace, St. Joseph, MO 64503, filed ANADA 200–297 that provides for veterinary prescription use of Ivermectin Chewable Tablets for Dogs to prevent canine heartworm disease by eliminating the tissue stage of heartworm larvae (*Dirofilaria immitis*) for 1 month (30 days) after infection. Phoenix Scientific, Inc.'s Ivermectin Chewable Tablets for Dogs are approved as a generic copy of Merial Ltd.'s HEARTGARD Chewables, approved under NADA 140–886. The ANADA is approved as of June 18, 2004, and the regulations are amended in 21 CFR 520.1193 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

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

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

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

List of Subjects in 21 CFR Part 520

Animal drugs.

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

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

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

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

§ 520.1193 [Amended]

■ 2. Section 520.1193 is amended in paragraph (b)(2) by removing ''No. 051311'' and by adding in its place ''Nos. 051311 and 059130''.

Dated: July 13, 2004.

Stephen Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 04–16627 Filed 7–21–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 9142]

RIN 1545–BB58

Deemed IRAs in Qualified Retirement Plans

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final regulations providing guidance under section 408(q) regarding accounts or annuities that are part of qualified employer plans but are to be treated as individual retirement plans. These regulations reflect changes made to the law by the Economic Growth and Tax Relief Reconciliation Act of 2001 and by the Job Creation and Worker Assistance Act of 2002. This document also contains temporary regulations under section 408(a) providing a special rule for governmental units seeking approval to serve as nonbank trustees of individual retirement accounts for purposes of section 408(q). These regulations affect administrators of, participants in, and beneficiaries of qualified employer plans.

DATES: *Effective Date:* These regulations are effective July 22, 2004.

Applicability Dates: For dates of applicability, see §§ 1.408(q)–1(i) and 1.408–2T(e)(8)(iv).

FOR FURTHER INFORMATION CONTACT: Linda Conway at (202) 622–6090 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) under control number 1545–1841. Responses to this collection of information are required for taxpayers who want to include individual retirement plans as part of a qualified employer plan.

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

The estimated annual burden per respondent/recordkeeper is 50 hours.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

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.

Background

This document contains amendments to the Income Tax Regulations (26 CFR Part 1) under section 408(q) of the Internal Revenue Code (Code). On May 20, 2003, a notice of proposed rulemaking (REG–157302–02) was published in the **Federal Register** (68

FR 27493) under section 408(q). No public hearing was requested or held. Written comments responding to the notice of proposed rulemaking were received. After consideration of all the comments, the proposed regulations are adopted as amended by this Treasury decision.

This document also contains an amendment to the regulations under section 408(a) regarding the approval of nonbank trustees of individual retirement accounts. Section 1.408–2(e)(5)(v)(A) of the regulations currently provides that a person seeking approval to serve as a nonbank trustee must demonstrate that, except for investments pooled in a common investment fund, the investments of each account will not be commingled with any other property. Because section 408(q)(1) expressly provides that deemed IRAs need not satisfy the requirements of section 408(a)(5) regarding the commingling of IRA and plan assets, § 1.408–2(e)(5)(v)(A) is modified to reflect the statutory rule.

In addition, this document contains a temporary amendment to the regulations under section 408(a) regarding the approval of nonbank trustees. This temporary amendment modifies the requirements for approval as a nonbank trustee for certain governmental units that intend to serve as the trustees of individual retirement accounts subject to section 408(q).

Explanation of Provisions and Summary of Comments

A. Overview

Section 408(q) provides that, if a qualified employer plan allows employees to make voluntary employee contributions to a separate account or annuity established under the plan and under the terms of the qualified employer plan the account or annuity meets the applicable requirements of section 408 or section 408A for an individual retirement account or annuity, then the account or annuity is treated for purposes of the Code in the same manner as an individual retirement plan rather than as a qualified employer plan. It further provides that contributions to such a ''deemed IRA'' are treated as contributions to the deemed IRA rather than to the qualified employer plan. Section 408(q) also expressly provides that the requirements of section 408(a)(5) regarding the commingling of IRA assets with other property shall not apply to deemed IRAs.

In general, the proposed regulations provided that a qualified employer plan and a deemed IRA would be treated as separate entities under the Code and that each entity would be subject to the rules generally applicable to that entity for purposes of the Code. Thus, a qualified employer plan (excluding the deemed IRA portion of the plan), whether it is a plan under section 401(a), 403(a), or 403(b), or a governmental plan under section 457(b), would be subject to the rules applicable to that type of plan rather than to the rules applicable to IRAs under section 408 or 408A. Similarly, the deemed IRA portion of the qualified employer plan would generally be subject to the rules applicable to traditional and Roth IRAs under sections 408 and 408A, respectively, and not to the rules applicable to plans under section 401(a), 403(a), 403(b), or 457.

B. Separate Trusts

Section 1.408(q)–1(f)(2) of the proposed regulations provided that any trust holding deemed individual retirement account assets must be separate from the trust holding the other assets of the qualified employer plan. The separate trust rule was intended to ensure better compliance with the IRA requirements and limit confusion of IRA and plan assets. The proposed regulations also provided a comparable rule for deemed IRAs that are individual retirement annuities.

Several commentators argued that a separate trust for deemed individual retirement accounts should not be required where the assets of the qualified employer plan are already held in a trust. They argued the plan's trust could satisfy the requirement of section 408 that the individual retirement account be held in a trust and that separate accounting would ensure compliance with the IRA requirements and avoid any confusion of IRA and plan assets. They also argued the requirement of a separate trust would unduly complicate the administration of the plan and lead to potentially higher costs for the plan sponsor. In response to these comments, the final regulations provide that a separate trust is not required in those cases in which the qualified employer plan maintains a trust but only if separate accounting is maintained for each deemed IRA. Revenue Procedure 2003–13 (2003–4 I.R.B. 317), which includes sample amendments providing for separate trusts for deemed IRAs, does not apply to the extent it provides to the contrary.

The regulations specify that if deemed IRAs are held in a single trust that includes the qualified employer plan, the trustee must maintain a separate account for each deemed IRA and the qualified employer plan.

Permitting deemed IRAs that are individual retirement accounts to be held in a single trust that includes the qualified employer plan raises the issue of whether, if the qualified employer plan portion of the trust invests in life insurance contracts, the deemed IRA would be considered to have violated section 408(a)(3), which provides that ''no part of the trust funds will be invested in life insurance contracts.'' The regulations clarify that, in that case, section 408(a)(3) is treated as satisfied if no part of the separate account of any of the deemed IRAs is invested in life insurance contracts,

Section 408A(b) and the regulations thereunder set forth rules under which a Roth IRA must be clearly designated as a Roth IRA. Pursuant to the regulations under § 1.408A–2, Roth IRAs that are individual retirement accounts must be trusts separate from traditional IRAs. These final regulations permit a departure from these rules for deemed Roth IRAs, allowing them to be held in a single trust with deemed traditional IRAs, provided that the trustee maintains separate accounts for the deemed Roth IRAs and deemed traditional IRAs of each participant, and each of those accounts is clearly designated as such. Thus, the rules under §§ 1.408A–2 and 1.408A–4 of the regulations, regarding designation and redesignation of IRAs as Roth IRAs, apply to deemed IRAs as if the separate accounts maintained for the deemed Roth IRAs and deemed traditional IRAs were separate trusts.

The requirements for separate accounts within a trust as described above are not meant to imply that a trust that includes deemed IRAs and a qualified employer plan (or Roth and traditional IRAs) can be segmented for other purposes. For example, where a qualified employer plan and deemed IRAs are included in the same trust, there cannot be separate trustees for each account, and the trustee for the trust must be either a bank or a nonbank trustee that satisfies the requirements of section 408(a)(2) and the regulations thereunder.

The proposed regulations included a rule for individual retirement annuities similar to that for individual retirement accounts. Under the proposed regulations, separate annuity contracts were to be maintained for individual retirement annuities when the qualified employer plan also maintains annuity contracts. However, unlike the rules applicable to deemed individual retirement accounts which provide for separate accounts and not separate

trusts, section 408(q)(1)(A) expressly provides that a separate annuity is to be established for a deemed individual retirement annuity. Accordingly, these final regulations retain the rule in the proposed regulations that a separate annuity is to be established under the plan with respect to deemed individual retirement annuities.

C. Disqualification

Section 1.408(q)–1(g) of the proposed regulations provided that the failure of any of the deemed IRAs maintained by the plan to satisfy the applicable requirements of section 408 or 408A caused the plan as a whole to fail to satisfy the plan's qualification requirements. The proposed regulations further provided that, if the qualified employer plan failed to satisfy its qualification requirements, the deemed IRA portion would no longer be a deemed IRA because section 408(q) does not apply if the plan is not a qualified employer plan. The proposed regulations provided, however, that although the account or annuity that was intended to be a deemed IRA was no longer a deemed IRA, it could still be treated as a traditional or a Roth IRA if it satisfied the applicable requirements of section 408 or 408A (including the requirements regarding the commingling of assets under section 408(a)(5)).

Several commentators objected to this rule as inconsistent with the general rule that the qualified employer plan and the deemed IRA portion of the plan are separate entities and with the requirement that the deemed IRA assets and the other assets of the qualified employer plan must be maintained in separate trusts. Some commentators objected in particular to the rule that the failure of the qualification of a deemed IRA could result in the failure of the qualification of the plan as a whole. They stated that various aspects of the operation of deemed IRAs are not within the control of the employer.

The final regulations provide that the failure of either the qualified employer plan portion or the deemed IRA portion of the plan to satisfy the applicable qualification rules of each will not cause the other portion to be automatically disqualified. This rule applies, however, only if the deemed IRA portion and the qualified employer plan portion are maintained as separate trusts (or separate annuity contracts, as required in the case of individual retirement annuities). If both the deemed IRA portion and the qualified plan portion are included in separate trusts and the qualified employer plan is disqualified, the IRA portion cannot be a deemed IRA under section 408(q) but it will not fail to satisfy the applicable requirements of section 408 or 408A if it satisfies the applicable requirements of those sections, including, with respect to individual retirement accounts, the requirements of section 408(a)(5). However, if the IRA assets and the non-IRA assets have been commingled (except in a common trust fund or common investment fund as permitted by section 408(a)(5)), the IRA portion will fail to satisfy the requirements of section 408(a).[1] Likewise, if the IRA assets and the non-IRA assets are commingled (except as permitted by section 408(a)(5), and the IRA is disqualified, the plan will also be disqualified.

D. Governmental Units as Nonbank Trustees

As noted above, the proposed regulations provided that a qualified employer plan and a related deemed IRA are generally treated as separate entities under the Code and each is subject to the rules applicable to that entity. Thus, under the proposed regulations, an individual retirement account that is a deemed IRA would be required to satisfy the requirements of section 408(a) except for the commingling limitations of section 408(a)(5). Consistent with this general rule, § 1.408(q)–1(f)(1) of the proposed regulations provided that the trustee or custodian of an individual retirement account must be a bank or other person that receives approval from the Commissioner to serve as a nonbank trustee pursuant to § 1.408–2(e) of the regulations.

Several commentators noted that because the nonbank trustee criteria were designed to test private entities, it is difficult, if not impossible, for most state and local governments to satisfy them. They also argued that, although it may be possible for a state or local government to appoint a bank or an approved nonbank trustee for the deemed IRA portion of the plan, this would impose unnecessary costs and administrative hardships on these governments that would outweigh any corresponding benefit and that such an appointment may contravene state law.

Several commentators argued that governments should be exempt from the nonbank trustee requirements, but the IRS and Treasury continue to believe that governments, like private entities, must demonstrate to the satisfaction of the Commissioner that the manner in which the government will administer the deemed IRA will be consistent with the requirements of section 408(a). Accordingly, the final regulations adopt the rule of the proposed regulations that the trustee of the deemed IRA must be a bank or a nonbank trustee approved by the Commissioner. The IRS and Treasury acknowledge, however, that § 1.408–2(e) of the regulations sets forth several criteria that governments may have difficulty satisfying. Accordingly, this document temporarily amends § 1.408–2(e) to provide that a governmental unit may serve as the trustee of any deemed IRA established by that governmental unit as part of its qualified employer plan if that governmental unit establishes to the satisfaction of the Commissioner that the manner in which it will administer the deemed IRA will be consistent with the requirements of section 408. The temporary amendment also provides special rules regarding the application of § 1.408–2(e) to governmental units.

E. Other Comments

Other comments included one noting that the proposed regulations require that the plan document of the qualified employer plan must contain the deemed IRA provisions and that Revenue Procedure 2003–13 provides that the deemed IRA provisions must address every applicable point in the IRA Listing of Required Modifications. The commentator suggested that plan sponsors be permitted to incorporate by reference the terms of separate IRA agreements or annuities. Although incorporation by reference may be possible in some circumstances, it is not possible where the IRA document is inconsistent with the provisions of the plan. For example, assuming the deemed IRA is to provide for commingling as allowed under section 408(q), it is not possible to incorporate an IRA document that prohibits such commingling.

Various comments were received relating to administrative issues such as

[1] The Department of Labor has advised the IRS and Treasury that consistent with section 4(c) of the Employee Retirement Income Security Act (ERISA), accounts and annuities (and contributions thereto) established in accordance with section 408(q) of the Code are not to be treated as part of the pension plan under which such accounts and annuities are allowed (or as a separate pension plan) ''for purposes of any provision of [title I of ERISA] other than § 403(c), 404, or 405 (relating to exclusive benefit, and fiduciary and co-fiduciary responsibilities) and part 5 (relating to administration and enforcement).'' Accordingly, fiduciaries need to take appropriate steps to ensure that they satisfy any fiduciary duties associated with implementation and operation of a deemed IRA feature that is related to a plan covered under title I of ERISA. These duties may include, but are not limited to, a duty to monitor the activities of holders of deemed IRAs in order to prevent disqualification of the deemed IRA feature and/or the qualified employer plan where the plan is intended to be maintained as a tax-qualified plan.

reporting and withholding rules and whether the separate rules applicable to qualified employer plans and IRAs were to be applied. As indicated in § 1.408(q)–1(c) of the proposed regulations, except as otherwise provided in the regulations, the qualified employer plan and the deemed IRA are treated as separate entities under the Code and they are subject to the separate rules applicable to qualified employer plans and IRAs, respectively. Accordingly, the reporting and withholding rules on plan and IRA distributions apply separately depending on whether the distributions are made from the deemed IRA or the qualified employer plan. Thus, for example, the reporting rules for required minimum distributions apply separately for the two portions of the plan. Similarly, a total distribution of amounts held in the qualified employer plan portion and the deemed IRA portion is reported on two Forms 1099–R, ''Distributions from Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.'', one for the distribution from the deemed IRA portion and one for the rest of the distribution. Also, the 20% withholding rules of section 3405(c) do not apply to a distribution from the deemed IRA portion but would apply to a distribution from the qualified employer plan portion, and section 72(t) applies separately to the two portions.

Questions were also raised regarding who may participate in a deemed IRA. For example, one commentator, noting that the term *employee* is not defined by section 408(q) or by the proposed regulations, asked whether that term includes self-employed individuals. Although *employee* is not defined by section 408(q), section 408(q)(3)(B) defines a voluntary employee contribution, in part, as a contribution by an individual ''as an employee under a qualified employer plan which allows employees'' to elect to make contributions to a separate account under the plan. Thus, these regulations provide that to the extent a self-employed individual is an *employee* for purposes of the qualified employer plan, that individual will be treated as an employee for purposes of section 408(q). In the case of a qualified plan under section 401(a) and a qualified annuity plan under section 403(a), *employee* includes self-employed individuals as defined in section 401(c). The only circumstance under which a self-employed individual may participate in a section 403(b) plan is when a self-employed minister described in section 414(e)(5) participates in a retirement income account as described in section 403(b)(9). In contrast, section 457(e)(2) permits independent contractors as well as employees to participate in a section 457 plan. However, since section 408(q) permits only employees to make contributions to a deemed IRA, only employees (including self-employed individuals) may be permitted to participate in a deemed IRA maintained by a governmental section 457 plan.

Another commentator asked whether an employee can participate in a deemed IRA if he or she does not participate in the qualified employer plan, or even if the employee is not eligible to participate in the qualified employer plan. Again, as noted above, the deemed IRA and the qualified employer plan are generally treated as separate entities under the Code. Section 408(q) does not impose a requirement that an employee must participate in both portions of the plan or that an employee must be eligible to participate in both portions of the plan. Accordingly, the two portions of the plan may have different eligibility requirements.

One commentator asked whether the automatic enrollment principles applicable to section 401(k), 403(b), and 457 plans under Revenue Rulings 2000–8 (2000–1 C.B. 617); 2000–35 (2000–2 C.B. 138); and 2000–33 (2000–2 C.B. 142), apply to deemed IRAs. These revenue rulings specify the criteria to be met in order for an employee's compensation to be automatically reduced by a certain amount where that amount is contributed as an elective deferral to these three types of plans. The IRS and Treasury agree that the automatic enrollment principles applicable to section 401(k), 403(b), and 457 plans in the cited revenue rulings may also be applied to deemed IRAs.

With respect to the requirements for approval as a nonbank trustee, one commentator noted that § 1.408–2(e)(5)(v) requires that an applicant must demonstrate that, except for investments pooled in a common investment fund, the investments of each account will not be commingled with any other property. The commentator noted that this requirement is inconsistent with the provisions of section 408(q)(1), which provide that the requirements of section 408(a)(5) regarding commingling do not apply to deemed IRAs. Accordingly, this document amends § 1.408–2(e)(5)(v) to provide that an applicant that intends to serve as a nonbank trustee need not satisfy this requirement with respect to any assets held in a deemed IRA.

Finally, these regulations provide that neither the assets held in the deemed IRA portion of the qualified employer plan, nor any benefits attributable thereto, shall be taken into account for purposes of determining the benefits of employees and their beneficiaries under the plan (within the meaning of section 401(a)(2)) or determining the plan's assets or liabilities for purposes of section 404 or 412. The Pension Benefit Guaranty Corporation (PBGC) has advised the IRS and Treasury that a deemed IRA feature that is related to a qualified employer plan is not covered by Title IV of ERISA. The PBGC has further advised that the deemed IRA feature is treated as a separate entity from the qualified employer plan for purposes of Title IV. For example, neither the assets in, nor the benefits attributable to, the deemed IRA are taken into account in determining the amount of the PBGC's variable-rate premium, and an individual who is a participant in the deemed IRA but who is not a participant in the qualified employer plan is not included in the PBGC's flat-rate participant count. In addition, for purposes of Title IV, the deemed IRA will be treated as separate from the qualified employer plan in the event of termination of the qualified employer plan, and the fiduciary of the deemed IRA would continue to be responsible for the continued operation, transfer, or termination of the deemed IRA. The PBGC would allocate the assets of the qualified employer plan to the priority categories under section 4044 of ERISA without regard to any assets in, or benefits attributable to, the deemed IRA, and the PBGC would not serve as trustee of the deemed IRA. Termination of a deemed IRA would not be subject to the rules governing plan termination under Title IV of ERISA.

Effective Date

The regulations apply to accounts or annuities established under section 408(q) on or after August 1, 2003.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required.

It is hereby certified that the collection of information in these final regulations will not have a significant economic impact on a substantial number of small entities. The collection of information in the regulations is in § 1.408(q)–1(f)(2) and consists of the optional requirement that deemed IRAs may be held in trusts or annuity contracts separate from the trust or annuity contract of the qualified employer plan. This certification is

based on the fact that the burden of reporting these separate trusts and annuity contracts is small, particularly for small entities. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. For the applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6) to the temporary regulations, refer to the Special Analyses section of the preamble to the cross-referencing notice of proposed rulemaking published in this issue of the **Federal Register**. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding the final regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business. The temporary regulations will also be submitted to the Chief Counsel for Advocacy for such comment.

Drafting Information

The principal authors of these regulations are Robert Walsh of the Tax Exempt and Government Entities Division and Linda Conway, Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and Treasury participated in the development of these regulations

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements

26 CFR Part 602

Reporting and recordkeeping requirements.

Amendments to the Regulations

■ Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by adding entries in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

§ 1.408–2 also issued under 26 U.S.C. 408(a) and 26 U.S.C. 408(q). * * *

§ 1.408(q)–1 also issued under 26 U.S.C. 408(q). * * *

■ **Par. 2.** In § 1.408–2, paragraph (e)(5)(v)(A) is revised and (e)(8) is added to read as follows:

§ 1.408–2 Individual retirement accounts

* * * * *

(e) * * *

(5) * * *

(v) *Custody of investments.* (A) Except for investments pooled in a common investment fund in accordance with the provisions of paragraph (e)(5)(vi) of this section and for investments of accounts established under section 408(q) on or after August 1, 2003, the investments of each account will not be commingled with any other property.

* * * * *

(8) [Reserved]. For further guidance, see § 1.408–2T(e)(8).

■ **Par. 3.** Section 1.408–2T is added to read as follows:

§ 1.408–2T Individual retirement accounts (temporary).

(a) through (e)(7) [Reserved]. For further guidance, see § 1.408–2(a) through (e)(7).

(8) *Special rules for governmental units.* (i) A governmental unit that seeks to qualify as a nonbank trustee of a deemed IRA that is part of its qualified employer plan must demonstrate to the satisfaction of the Commissioner that it is able to administer the trust in a manner that is consistent with the requirements of section 408. The demonstration must be made by written application to the Commissioner. Notwithstanding the requirement of § 1.408–2(e)(1) that a person must demonstrate by written application that the requirements of paragraphs (e)(2) to (e)(6) of that section will be met in order to qualify as a nonbank trustee, a governmental unit that maintains a plan qualified under section 401(a), 403(a), 403(b) or 457 need not demonstrate that all of these requirements will be met with respect to any individual retirement accounts maintained by that governmental unit pursuant to section 408(q). For example, a governmental unit need not demonstrate that it satisfies the net worth requirements of § 1.408–2(e)(3)(ii) if it demonstrates instead that it possesses taxing authority under applicable law. The Commissioner, in his discretion, may exempt a governmental unit from certain other requirements upon a showing that the governmental unit is able to administer the deemed IRAs in the best interest of the participants. Moreover, in determining whether a governmental unit satisfies the other requirements of §1.408–2 (e)(2) to (e)(6), the Commissioner may apply the requirements in a manner that is consistent with the applicant's status as a governmental unit.

(ii) *Governmental unit.* For purposes of this special rule, the term *governmental unit* means a State, political subdivision of a State, and any agency or instrumentality of a State or political subdivision of a State.

(iii) *Additional rules.* The Commissioner may in revenue rulings, notices, or other guidance of general applicability provide additional rules for governmental units seeking approval as nonbank trustees.

(iv) *Effective date.* This special rule is applicable for written applications made on or after August 1, 2003, or such earlier application as the Commissioner deems appropriate.

■ **Par. 4.** Section 1.408(q)–1 is added to read as follows:

§ 1.408(q)–1 Deemed IRAs in qualified employer plans.

(a) *In general.* Under section 408(q), a qualified employer plan may permit employees to make voluntary employee contributions to a separate account or annuity established under the plan. If the requirements of section 408(q) and this section are met, such account or annuity is treated in the same manner as an individual retirement plan under section 408 or 408A (and contributions to such an account or annuity are treated as contributions to an individual retirement plan and not to the qualified employer plan). The account or annuity is referred to as a deemed IRA.

(b) *Types of IRAs.* If the account or annuity meets the requirements applicable to traditional IRAs under section 408, the account or annuity is deemed to be a traditional IRA, and if the account or annuity meets the requirements applicable to Roth IRAs under section 408A, the account or annuity is deemed to be a Roth IRA. Simplified employee pensions (SEPs) under section 408(k) and SIMPLE IRAs under section 408(p) may not be used as deemed IRAs.

(c) *Separate entities.* Except as provided in paragraphs (d) and (g) of this section, the qualified employer plan and the deemed IRA are treated as separate entities under the Internal Revenue Code and are subject to the separate rules applicable to qualified employer plans and IRAs, respectively. Issues regarding eligibility, participation, disclosure, nondiscrimination, contributions, distributions, investments, and plan administration are generally to be resolved under the separate rules (if

any) applicable to each entity under the Internal Revenue Code.

(d) *Exceptions.* The following exceptions to treatment of a deemed IRA and the qualified employer plan as separate entities apply:

(1) The plan document of the qualified employer plan must contain the deemed IRA provisions and a deemed IRA must be in effect at the time the deemed IRA contributions are accepted. Notwithstanding the preceding sentence, employers that provided deemed IRAs for plan years beginning before January 1, 2004, (but after December 31, 2002) are not required to have such provisions in their plan documents before the end of such plan years.

(2) The requirements of section 408(a)(5) regarding commingling of assets do not apply to deemed IRAs. Accordingly, the assets of a deemed IRA may be commingled for investment purposes with those of the qualified employer plan. However, the restrictions on the commingling of plan and IRA assets with other assets apply to the assets of the qualified employer plan and the deemed IRA.

(e) *Application of distribution rules.* (1) Rules applicable to distributions from qualified employer plans under the Internal Revenue Code and regulations do not apply to distributions from deemed IRAs. Instead, the rules applicable to distributions from IRAs apply to distributions from deemed IRAs. Also, any restrictions that a trustee, custodian, or insurance company is permitted to impose on distributions from traditional and Roth IRAs may be imposed on distributions from deemed IRAs (for example, early withdrawal penalties on annuities).

(2) The required minimum distribution rules of section 401(a)(9) must be met separately with respect to the qualified employer plan and the deemed IRA. The determination of whether a qualified employer plan satisfies the required minimum distribution rules of section 401(a)(9) is made without regard to whether a participant satisfies the required minimum distribution requirements with respect to the deemed IRA that is established under such plan.

(f) *Additional rules*—(1) *Trustee.* The trustee or custodian of an individual retirement account must be a bank, as required by section 408(a)(2), or, if the trustee is not a bank, as defined in section 408(n), the trustee must have received approval from the Commissioner to serve as a nonbank trustee or nonbank custodian pursuant to § 1.408–2(e). For further guidance regarding governmental units serving as nonbank trustees of deemed IRAs established under section 408(q), see § 1.408–2T(e)(8).

(2) *Trusts.* (i) General rule. Deemed IRAs that are individual retirement accounts may be held in separate individual trusts, a single trust separate from a trust maintained by the qualified employer plan, or in a single trust that includes the qualified employer plan. A deemed IRA trust must be created or organized in the United States for the exclusive benefit of the participants. If deemed IRAs are held in a single trust that includes the qualified employer plan, the trustee must maintain a separate account for each deemed IRA. In addition, the written governing instrument creating the trust must satisfy the requirements of section 408(a) (1), (2), (3), (4), and (6).

(ii) *Application of section 408(a)(3).* If deemed IRAs are held in a single trust that includes the qualified employer plan, section 408(a)(3) is treated as satisfied if no part of the separate accounts of any of the deemed IRAs is invested in life insurance contracts, regardless of whether the separate account for the qualified employer plan invests in life insurance contracts.

(iii) *Separate accounts for traditional and Roth deemed IRAs.* The rules of section 408A(b) and the regulations thereunder, requiring each Roth IRA to be clearly designated as a Roth IRA, will not fail to be satisfied solely because Roth deemed IRAs and traditional deemed IRAs are held in a single trust, provided that the trustee maintains separate accounts for the Roth deemed IRAs and traditional deemed IRAs of each participant, and each of those accounts is clearly designated as such.

(3) *Annuity contracts.* Deemed IRAs that are individual retirement annuities may be held under a single annuity contract or under separate annuity contracts. However, the contract must be separate from any annuity contract or annuity contracts of the qualified employer plan. In addition, the contract must satisfy the requirements of section 408(b) and there must be separate accounting for the interest of each participant in those cases where the individual retirement annuities are held under a single annuity contract.

(4) *Deductibility.* The deductibility of voluntary employee contributions to a traditional deemed IRA is determined in the same manner as if they were made to any other traditional IRA. Thus, for example, taxpayers with compensation that exceeds the limits imposed by section 219(g) may not be able to make contributions to deemed IRAs, or the deductibility of such contributions may be limited in accordance with sections 408 and 219(g). However, section 219(f)(5), regarding the taxable year in which amounts paid by an employer to an individual retirement plan are includible in the employee's income, is not applicable to deemed IRAs.

(5) *Rollovers and transfers.* The same rules apply to rollovers and transfers to and from deemed IRAs as apply to rollovers and transfers to and from other IRAs. Thus, for example, the plan may provide that an employee may request and receive a distribution of his or her deemed IRA account balance and may roll it over to an eligible retirement plan in accordance with section 408(d)(3), regardless of whether that employee may receive a distribution of any other plan benefits.

(6) *Nondiscrimination.* The availability of a deemed IRA is not a benefit, right or feature of the qualified employer plan under § 1.401(a)(4)–4.

(7) *IRA assets and benefits not taken into account in determining benefits under or funding of qualified employer plan.* Neither the assets held in the deemed IRA portion of the qualified employer plan, nor any benefits attributable thereto, shall be taken into account for purposes of:

(i) Determining the benefits of employees and their beneficiaries under the plan (within the meaning of section 401(a)(2)); or

(ii) Determining the plan's assets or liabilities for purposes of section 404 or 412.

(g) *Disqualifying defects*—(1) *Single trust.* If the qualified employer plan fails to satisfy the qualification requirements applicable to it, either in form or operation, any deemed IRA that is an individual retirement account and that is included as part of the trust of that qualified employer plan does not satisfy section 408(q). Accordingly, any account maintained under such a plan as a deemed IRA ceases to be a deemed IRA at the time of the disqualifying event. In addition, the deemed IRA also ceases to satisfy the requirements of sections 408(a) and 408A. Also, if any one of the deemed IRAs fails to satisfy the applicable requirements of sections 408 or 408A, and the assets of that deemed IRA are included as part of the trust of the qualified employer plan, section 408(q) does not apply and the plan will fail to satisfy the plan's qualification requirements.

(2) *Separate trusts and annuities.* If the qualified employer plan fails to satisfy its qualification requirements, either in form or operation, but the assets of a deemed IRA are held in a separate trust (or where a deemed IRA is an individual retirement annuity), then the deemed IRA does not

automatically fail to satisfy the applicable requirements of section 408 or 408A. Instead, its status as an IRA will be determined by considering whether the account or the annuity satisfies the applicable requirements of sections 408 and 408A (including, in the case of individual retirement accounts, the prohibition against the commingling of assets under section 408(a)(5)). Also, if a deemed IRA fails to satisfy the requirements of a qualified IRA and the assets of the deemed IRA are held in a separate trust (or where the deemed IRA is an individual retirement annuity), the qualified employer plan will not fail the qualification requirements applicable to it under the Code solely because of the failure of the deemed IRA.

(h) *Definitions.* The following definitions apply for purposes of this section:

(1) *Qualified employer plan.* A *qualified employer plan* is a plan described in section 401(a), an annuity plan described in section 403(a), a section 403(b) plan, or a governmental plan under section 457(b).

(2) *Voluntary employee contribution.* A *voluntary employee contribution* is any contribution (other than a mandatory contribution within the meaning of section 411(c)(2)(C)) which is made by an individual as an employee under a qualified employer plan that allows employees to elect to make contributions to deemed IRAs and with respect to which the individual has designated the contribution as a contribution to which section 408(q) applies.

(3) *Employee.* An *employee* includes any individual who is an employee under the rules applicable to the qualified employer plan under which the deemed IRA is established.

(i) *Effective date.* This section applies to accounts or annuities established under section 408(q) on or after August 1, 2003.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

■ **Par. 5.** The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805. * * *

■ **Par. 6.** In § 602.101, paragraph (b) is amended by adding the following entry in numerical order to the table to read as follows:

CFR Part or section where identified and described	Current OMB control no.
* * * * * * *	
1.408(q)–1	1545–1841
* * * * * * *	

Approved: July 14, 2004.

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

Gregory F. Jenner,

Acting Assistant Secretary of the Treasury.

[FR Doc. 04–16594 Filed 7–21–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD05–04–013]

RIN 1625–AA08

Special Local Regulations for Marine Events; Maryland Swim for Life, Chester River, Chestertown, MD

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing permanent special local regulations for the ''Maryland Swim for Life'', an annual marine event held on the waters of the Chester River near Chestertown, Maryland. This action is necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in portions of the Chester River during the event.

DATES: This rule is effective August 23, 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 CGD05–04–013 and are available for inspection or copying at Commander (oax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004 between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

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

SUPPLEMENTARY INFORMATION:

Regulatory Information

On April 6, 2004, we published a notice of proposed rulemaking (NPRM) entitled ''Special Local Regulations for Marine Events; Maryland Swim for Life, Chester River, Chestertown, MD'' in the **Federal Register** (69 FR 18002). We received no letters commenting on the rule. No public hearing was requested, and none was held.

Background and Purpose

The Maryland Swim for Life Association annually sponsors the ''Maryland Swim for Life'', an open water swimming competition held on the waters of the Chester River, near Chestertown, Maryland. The event is held each year on the second Saturday in July. Approximately 120 swimmers start from Rolph's Wharf and swim upriver 3 miles then swim down river returning back to Rolph's Wharf. A fleet of approximately 25 support vessels accompanies the swimmers. To provide for the safety of participants and support vessels, the Coast Guard will restrict vessel traffic in the event area during the swim.

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. Although this regulation will prevent traffic from transiting a portion of the Chester River during the event, the effect will not be significant due to the limited duration that the regulated area will be in effect and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners, marine information broadcasts, and area newspapers, so mariners can adjust their plans accordingly. The Coast Guard will also publish an annual notice of implementation in the **Federal Register** setting out the exact date of the event.

Small Entities

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

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

This rule will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule will be enforced for only one day each year. Before the enforcement period, we will issue maritime advisories so mariners can adjust their plans accordingly.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. We received no requests for assistance, and none was provided.

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

This rule will not 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 will not create an environmental risk to health or risk to safety that might 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 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.

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 M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that will 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)(h), of the Instruction, from further environmental documentation. Special local regulations issued in conjunction with a regatta or marine parade permit are specifically excluded from further

analysis and documentation under those sections. Under figure 2–1, paragraph (34)(h), of the Instruction, an ''Environmental Analysis Check List'' and a ''Categorical Exclusion Determination'' are not required for this rule.

List of Subjects in 33 CFR Part 100

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

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

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

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

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

■ 2. Add § 100.533 to read as follows:

§ 100.533 Maryland Swim for Life, Chester River, Chestertown, MD.

(a) *Regulated Area.* The regulated area is established for waters of the Chester River from shoreline to shoreline, bounded on the south by a line drawn at latitude 39°–10′–16″ N, near the Chester River Channel Buoy 35 (LLN–26795) and bounded on the north at latitude 39°–12′–30″ N by the Maryland S.R. 213 Highway Bridge. All coordinates reference Datum NAD 1983.

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

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

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

(c) *Special local regulations*:

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

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

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

(ii) Proceed as directed by any Official Patrol.

(d) *Enforcement period.* This section will be enforced annually on the second Saturday in July. A notice of implementation of this section will be published annually in the **Federal Register** and disseminated through the Fifth District Local Notice to Mariners and marine Safety Radio Broadcast on VHF–FM marine band radio channel 22 (157.1 MHz).

Dated: July 2, 2004.

Sally Brice-O'Hara,

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

[FR Doc. 04–16647 Filed 7–21–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD05–04–024]

RIN 1625–AA08

Special Local Regulations for Marine Events; Norfolk Harbor, Elizabeth River, Norfolk and Portsmouth, VA

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending the special local regulations at 33 CFR 100.501, established for marine events held annually in the Norfolk Harbor, Elizabeth River, between Norfolk and Portsmouth, Virginia by changing the date on which the regulations are in effect for the marine event ''Cock Island Race''. This action is intended to restrict vessel traffic in portions of the Elizabeth River during the start of the Cock Island Race. This action is necessary to provide for the safety of life on navigable waters during the event.

DATES: This rule is effective August 23, 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 CGD05–04–024 and are available for inspection or copying at Commander (oax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004 between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

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

SUPPLEMENTARY INFORMATION:

Regulatory Information

On March 3, 2004, we published a notice of proposed rulemaking (NPRM) entitled ''Special Local Regulations for Marine Events; Norfolk Harbor, Elizabeth River, Norfolk and Portsmouth, VA'' in the **Federal Register** (69 FR 9984). We received no letters commenting on the proposed rule. No public hearing was requested, and none was held.

Background and Purpose

The regulations at 33 CFR 100.501 are effective annually for the duration of each marine event listed in Table 1 of section 100.501. Table 1 lists the effective date for the Cock Island Race as the third Saturday in July. For the past several years the event has been held on the third Saturday in June. The sponsor intends to hold this event annually on the third Saturday in June.

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. The effect of this action merely changes the date on which the existing regulations will be in effect and will not impose any new restrictions on vessel traffic.

Small Entities

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

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

This rule will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule will merely change the date on which the existing regulations will be in effect and will not

impose any new restrictions on vessel traffic.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. We received no requests for assistance, and none was provided.

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

This rule will not 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 will not create an environmental risk to health or risk to safety that might 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 will 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)(h), of the Instruction, from further environmental documentation. Special local regulations issued in conjunction with a regatta or marine parade permit are specifically excluded from further analysis and documentation under that section.

List of Subjects in 33 CFR Part 100

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

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100–SAFETY OF LIFE ON NAVIGABLE WATERS

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

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

■ 2. Amend § 100.501 by revising Table 1 to read as follows:

§ 100.501 Norfolk Harbor, Elizabeth River, Norfolk and Portsmouth, VA.

* * * * *

Table 1 of Sec. 100.501

Harborfest
Sponsor: Norfolk Harborfest, Inc.
Date: First Friday, Saturday, and Sunday in June

Great American Picnic
Sponsor: Festevents, Inc.
Date: July 4

Cock Island Race
Sponsor: Ports Events, Inc.
Date: Third Saturday in June

Rendezvous at Zero Mile Marker
Sponsor: Ports Events, Inc.
Date: Third Saturday in August

U.S. Navy Fleet Week Celebration
Sponsor: U.S. Navy
Date: Second Friday in October

Holidays in the City
Sponsor: Festevents, Inc.
Date: Fourth Saturday in November

New Years Eve Fireworks Display
Sponsor: Festevents, Inc.
Date: December 31

Dated: July 2, 2004.

Sally Brice-O'Hara,

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

[FR Doc. 04–16648 Filed 7–21–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP Pittsburgh–03–030]

RIN 1625–AA00

Security Zone; Ohio River Mile 119.0 to 119.8, Natrium, WV

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is removing an established security zone that encompasses all waters extending 200 feet from the water's edge of the left descending bank of the Ohio River, beginning from mile marker 119.0 and ending at mile marker 119.8. This security zone protects Pittsburgh Plate Glass Industries (PPG), persons and vessels from subversive or terrorist acts. Under the Maritime Transportation Security Act of 2002, owners or operators of this facility are required to take specific action to improve facility security. As such, a security zone around this facility is no longer necessary under normal conditions. This rule removes the established security zone.

DATES: This final rule is effective on July 1, 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 (COTP Pittsburgh–03–030) and are available for inspection or copying at Marine Safety Office Pittsburgh, Suite 1150 Kossman Bldg., 100 Forbes Ave. Pittsburgh, PA 15222–1371, between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant (LT) Luis Parrales, Marine Safety Office Pittsburgh at (412) 644–5808, ext. 2114.

SUPPLEMENTARY INFORMATION:

Regulatory History

On January 9, 2004, we published a notice of proposed rulemaking (NPRM) entitled ''Security Zone; Ohio River Mile 119.0 to 119.8, Natrium, WV'' in the **Federal Register** (69 FR 1556). We received no comments on the proposed rule. No public hearing was requested, and none was held.

Background and Purpose

On March 24, 2003, the Coast Guard published a final rule entitled ''Security Zone; Ohio River Mile 119.0 to 119.8, Natrium, West Virginia'', in the **Federal Register** (68 FR 14150). That final rule established a security zone that encompasses all waters extending 200 feet from the water's edge of the left descending bank of the Ohio River, beginning from mile marker 119.0 and ending at mile marker 119.8. This security protects Pittsburgh Plate Glass Industries (PPG), persons and vessels from subversive or terrorist acts.

Under the authority of the Maritime Transportation Security Act of 2002, the Coast Guard published a final rule on October 22, 2003, entitled ''Facility Security'' in the **Federal Register** (68 FR 60515) that established 33 CFR 105. That final rule became effective November 21, 2003, and provides security measures for certain facilities, including PPG. Section 105.200 of 33 CFR requires owners or operators of the PPG facility to designate security officers for facilities, develop security plans based on security assessments and surveys, implements security measures specific to the facility's operations, and comply with Maritime Security Levels. Under 33 CFR 105.115, the owner or operator of this facility must, by December 31, 2003, submit to the Captain of the Port, a Facility Security Plan as described in subpart D of 33 CFR part 105, or if intending to operate under an approved Alternative Security Program as described in 33 CFR 101.130, a letter signed by the facility owner or operator stating which approved Alternative Security Program the owner or operator intends to use. Section 105.115 of 33 CFR also requires the facility owner or operator to be in compliance with 33 CFR part 105 on or before July 1, 2004. As a result of these enhanced security measures, the security zone around PPG is no longer necessary under normal conditions. The removal of this security zone will become effective on July 1, 2004.

Discussion of Comments and Changes

We received no comments on our proposal to remove the security zone in § 165.822. Therefore, we are proceeding to remove § 165.822 as we proposed.

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).

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 removes a regulation that is no longer necessary.

Small Entities

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

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

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

A rule has implications for federalism under Executive Order 13132,

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

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 expenditure, we 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.

Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of 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 because this rule is not expected to result in any significant environmental impact as described in NEPA.

Under figure 2–1, paragraph (34)(g), of the Instruction, an ''Environmental Analysis Check List'' and a ''Categorical Exclusion Determination'' are not required for this rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping 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, 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

§ 165.822 [Removed]

■ 2. Remove § 165.822.

Dated: June 30, 2004.

W.W. Briggs,

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

[FR Doc. 04–16649 Filed 7–21–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP Memphis 04–001]

RIN 1625–AA00

Safety Zone; Lower Mississippi River Mile Marker 778.0 to 781.0, Osceola, AR

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for all the waters of the Lower Mississippi River from mile 778.0 and to mile 781.0, extending the entire width of the channel. This safety zone is needed to protect construction personnel, equipment, and vessels involved in the construction of ten bendway weir sites. Entry into this zone is be prohibited unless specifically authorized by the Captain of the Port Memphis or a designated representative.

DATES: This rule is effective from 6 a.m. on August 1, 2004, until 6 p.m. on September 30, 2004.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket (COTP Memphis-04–001) and are available for inspection or copying at Marine Safety Office Memphis, 200 Jefferson Avenue, Suite 1301, Memphis, Tennessee, 38103–2300 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Chief Petty Officer (CPO) James Dixon, Marine Safety Office Memphis at (901) 544–3941, extension 2116.

SUPPLEMENTARY INFORMATION:

Request for Comments

On April 23, 2004, we published a notice of proposed rulemaking (NPRM) entitled ''Safety Zone; Lower Mississippi River Mile Marker 778.0 to 781.0, Osceola, AR'' in the **Federal Register** (69 FR 21981). We received no comments on the proposed rule. No public hearing was requested, and none was held.

Background and Purpose

On February 26, 2004, the Army Corps of Engineers requested a channel closure for the Lower Mississippi River from mile 778.0 to 781.0, to occur daily from 6 a.m. until 6 p.m. beginning on August 1, 2004, and ending on September 30, 2004. The effective dates for this rule are based upon the best

available information and may change. This closure is needed to protect construction personnel, equipment, and vessels from potential safety hazards associated with vessels transiting in the vicinity of ten, bendway weir construction sites. These ten bendway weir sites are located on the left descending bank, in the vicinity of Driver Bar between mile 778.0 and 781.0, Lower Mississippi River. Construction of the bendway weirs is needed to maintain the integrity of the left descending bank of the Mississippi River at the project site and can only be performed under optimal conditions. During working hours, construction equipment will be located in the navigable channel creating a hazard to navigation. A safety zone is needed to protect construction personnel, equipment, and vessels involved in the construction of ten bendway weir sites. During non-working hours, the construction equipment will be moved out of the channel, allowing vessels unrestricted passage through the safety zone.

Discussion of Rule

The Captain of the Port Memphis is establishing a temporary safety zone for all the waters of the Lower Mississippi River from mile 778.0 and to mile 781.0. Entry into this zone by vessels other than those contracted by the U.S. Army Corps of Engineers and operating in support of the bendway weir construction project, is prohibited unless specifically authorized by the Captain of the Port Memphis or a designated representative. This regulation is effective from 6 a.m. on August 1, 2004, until 6 p.m. on September 30, 2004. This rule will only be enforced from 6 a.m. until 6 p.m. on each day that it is effective. During non-enforcement hours all vessels will be allowed to transit through the safety zone without permission from the Captain of the Port Memphis or a designated representative. The Captain of the Port Memphis or a designated representative will inform the public through broadcast notice to mariners of the enforcement periods for the safety zone. The Captain of the Port Memphis may permit vessels to navigate through the safety zone during work hours if conditions allow for safe transit. A broadcast notice to mariners will be issued announcing those times when it is safe to transit.

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.

This rule will only be enforced for 12 hours each day that it is effective. During non-enforcement hours all vessels will be allowed to transit through the safety zone without permission from the Captain of the Port Memphis or a designated representative. The Captain of the Port Memphis or a designated representative will inform the public through broadcast notice to mariners of the enforcement periods for the safety zone. The Captain of the Port Memphis may permit vessels to transit through the safety zone during work hours if conditions allow for safe transit. A broadcast notice to mariners will be issued announcing those times when it is safe to transit. The impacts on routine navigation are expected to be minimal.

Small Entities

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

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

This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit the waters of the Lower Mississippi River, Mile Marker 778.0 to 781.0 daily from 6 a.m. on August 1, 2004, until 6 p.m. on September 30, 2004.

This rule will not have a significant economic impact on a substantial number of small entities for the following reasons: (1) This rule will only be enforced from 6 a.m. until 6 p.m. on each day that it is effective; (2) during non-enforcement hours all vessels will be allowed to transit through the safety zone without permission from the Captain of the Port Memphis or a designated representative; and (3) the Captain of the Port Memphis may permit vessels to transit through the safety zone during work hours if conditions allow for safe transit.

If you are a small business entity and are significantly affected by this regulation please contact CPO James Dixon, Marine Safety Office Memphis, TN at (901) 544–3941, extension 2116.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding the rule so they could better evaluate its effects on them and participate in the rulemaking process. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

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

Federalism

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

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 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

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 would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

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

Energy Effects

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

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation because this rule is not expected to result in any significant adverse environmental impact as described in the National Environmental Policy Act of 1969 (NEPA).

A final ''Environmental Analysis Check List'' and a final ''Categorical Exclusion Determination'' are available in the docket where indicated under **ADDRESSES.**

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.T08–033 is added to read as follows:

§ 165.T08–033 Safety Zone; Lower Mississippi River Mile Marker 778.0 to 781.0, Osceola, AR.

(a) *Location.* The following area is a safety zone: all waters of Lower Mississippi River from mile 778.0 and to mile 781.0, extending the entire width of the channel.

(b) *Effective date.* This section is effective from 6 a.m. on August 1, 2004 until 6 p.m. on September 30, 2004.

(c) *Periods of enforcement.* This rule will be enforced from 6 a.m. until 6 p.m. on each day that it is effective. The Captain of the Port Memphis or a designated representative will inform the public through broadcast notice to mariners of the enforcement periods for the safety zone.

(d) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into this zone by vessels other than those contracted by the U.S. Army Corps of Engineers and operating in support of the bendway weir construction project is prohibited unless authorized by the Captain of the Port Memphis.

(2) During non-enforcement hours all vessels will be allowed to transit through the safety zone without permission from the Captain of the Port Memphis or a designated representative. The Captain of the Port Memphis or a designated representative would inform the public through broadcast notice to mariners of the enforcement periods for the safety zone.

(3) The Captain of the Port Memphis may permit vessels to navigate during work hours if conditions allow for safe transit. A broadcast notice to mariners would be issued announcing those times when it is safe to transit.

(4) Persons or vessels requiring entry into or passage through the zone at times other than those specified in section (d)(2) and (d)(3) of this rule must request permission from the Captain of the Port Memphis or a designated representative. The Captain of the Port Memphis may be contacted by telephone at (901) 544–3912, extension 2124. Coast Guard Group Lower Mississippi River may be contacted on VHF–FM Channel 13 or 16.

(5) All persons and vessels shall comply with the instructions of the Captain of the Port Memphis and designated representatives. Designated representatives include Coast Guard Group Lower Mississippi River.

Dated: July 8, 2004.

D.C. Stalfort,

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

[FR Doc. 04–16650 Filed 7–21–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD09–03–202]

RIN 1625–AA00

Safety Zones; Northeast Ohio

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing safety zones for annual fireworks displays located in Northeast Ohio. These regulations are needed to manage vessel traffic in Northeast Ohio during each event to protect life and property.

DATES: This rule is effective from July 1, 2004.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and available for inspection or copying at Coast Guard MSO Cleveland between 8 a.m. (local) and 3:30 p.m. (local), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Allen Turner, U.S. Coast Guard Marine Safety Office Cleveland, at (216) 937–0128.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On April 1, 2003, we published a notice of public rulemaking entitled Safety Zones: Northeast Ohio in the **Federal Register** (68 FR 62). No comments on the proposed rule were received. No public hearing was requested, and none was held. 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** since we received no public comment, and the zones are needed immediately to protect life and property.

Background and Purpose

A total of eight permanent safety zones are being established in Northeast Ohio for annual firework displays. The safety zones will be enforced only during a firework display at their respective location. There are a total of ten separate annual firework events in Northeast Ohio.

Discussion of Rule

The safety zones will be enforced around the launch site in the following areas:

(1) Cleveland Harbor and Lake Erie, north of Voinovich Park;

(2) Rocky River and Lake Erie, west of the river entrance;

(3) Lake Erie, North of Lakewood Park;

(4) Black River (2 locations);

(5) Mentor Harbor Beach, west bank of harbor entrance;

(6) Ashtabula, north of Walnut Beach Park; and

(7) Fairport Harbor, east of harbor entrance.

The size of each safety zone was determined using National Fire Protection Association and local fire department standards.

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 this rule 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.

This determination is based on the short amount of time that vessels will be restricted from the zones, and the actual location of the safety zones within the waterways.

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

These safety zones will not have a significant economic impact on a substantial number of small entities for the following reasons: The zones will only be enforced for a few hours on the day of the event. Vessel traffic can safely pass outside the safety zones during the events. In cases where recreational boat traffic congestion is greater than expected and consequently obstructs shipping channels, the Captain of the Port or the Patrol Commander may permit commercial traffic to pass through the safety zone. Before the enforcement period, the Coast Guard will issue maritime advisories available to users who may be impacted through notification in the **Federal Register**, the Ninth Coast Guard District Local Notice to Mariners, Marine Information Broadcasts and posted signs on barges or at launch sites labeled ''FIREWORKS–STAY AWAY''. Additionally, the Coast Guard has not received any reports from small entities negatively affected during previous events.

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 (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 Cleveland (*see* **ADDRESSES**).

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 does 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.

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

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

Environment

We have 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.**

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. Add § 165.202 to read as follows:

§ 165.202 Safety Zones: Annual fireworks Events in the Captain of the Port Cleveland Zone.

(a) *Safety zones.* The following areas are designated safety zones:

(1) *City of Cleveland 4th of July Fireworks Display, Cleveland, OH:* All navigable waters of Cleveland Harbor and Lake Erie beginning at 41°30.823′ N, 081°41.620′ W (the northwest corner of Burke Lakefront Airport); continuing northwest to 41°31.176 N, 081°41.884′ W; then southwest to 41°30.810′ N, 081°42.515′ W; then southeast to 41°30.450′ N, 081°42.222′ W (the northwest corner of dock 28 at the Cleveland Port Authority) then northeast back to the starting point at 41°30.443′ N, 081°41.620′ W. All geographic coordinates are based upon North American Datum 1983 (NAD 1983).

(2) *Dollar Bank Jamboree Fireworks Display, Cleveland, OH:* All navigable waters of Cleveland Harbor and Lake Erie beginning at 41°30.823′ N, 081°41.620′ W (the northwest corner of Burke Lakefront Airport); continuing northwest to 41°31.176 N, 081°41.884′ W; then southwest to 41°30.810′ N, 081°42.515′ W; then southeast to 41°30.450′ N, 081°42.222′ W (the northwest corner of dock 28 at the Cleveland Port Authority) then northeast back to the starting point at 41°30.443′ N, 081°41.620′ W (NAD 1983).

(3) *Browns Football Halftime Fireworks Display, Cleveland, OH:* All navigable waters of Cleveland Harbor and Lake Erie beginning at 41°30.823′ N, 081°41.620′ W (the northwest corner of Burke Lakefront Airport); continuing northwest to 41°31.176 N, 081°41.884′ W; then southwest to 41°30.810′ N, 081°42.515′ W; then southeast to 41°30.450′ N, 081°42.222′ W (the northwest corner of dock 28 at the Cleveland Port Authority) then northeast back to the starting point at 41°30.443′ N, 081°41.620′ W (NAD 1983).

(4) *Lakewood City Fireworks Display, Lakewood, OH:* All waters and adjacent shoreline of Lake Erie bounded by the arc of a circle with a 500-yard radius with its center approximate position 41°29.755′ N, 081°47.780′ W (off of Lakewood Park) (NAD 1983).

(5) *Cleveland Yachting Club Fireworks Display, Rocky River, OH:* All waters and adjacent shoreline of the Rocky River and Lake Erie bounded by the arc of a circle with a 200-yard radius with its center at Sunset Point on the western side of the mouth of the Rocky River in approximate position 41°29.428′ N, 081°50.309′ W (NAD 1983).

(6) *Lorain 4th of July Celebration Fireworks Display, Lorain, OH:* The waters of Lorain Harbor bounded by the arc of a circle with a 300-yard radius with its center east of the harbor entrance on the end of the break wall near Spitzer's Marina in approximate position 41°28.591′ N, 082°10.855′ W (NAD 1983).

(7) *Lorain Port Fest Fireworks Display, Lorain, OH:* All waters and adjacent shoreline of Lorain Harbor bounded by the arc of a circle with a 250-yard radius with its center at approximate position 41°28.040′ N, 082°10.365′ W (NAD 1983).

(8) *Mentor Harbor Yacht Club Fireworks Display, Mentor, OH:* All waters and adjacent shoreline of Lake Erie and Mentor Harbor bounded by the arc of a circle with a 200-yard radius with its center in approximate position 41°43.200′ N, 081°21.400′ W (west of the harbor entrance) (NAD 1983).

(9) *Fairport Mardi Gras Fireworks Display, Fairport Harbor, OH:* All waters and adjacent shoreline of Fairport Harbor and Lake Erie bounded by the arc of a circle with a 300-yard radius with its center east of the harbor entrance at Fairport Harbor Beach in approximate position 41°45.500′ N, 081°16.300′ W (NAD 1983).

(10) *Ashtabula Area Fireworks Display, Ashtabula, OH:* All waters and adjacent shoreline of Lake Erie and Ashtabula Harbor bounded by the arc of a circle with a 300-yard radius with its center west of the harbor in approximate position 41°54.167′ N, 080°48.416′ W (NAD 1983).

(b) *Notification.* Captain of the Port Cleveland will cause notice of the enforcement of these safety zones to be made by all appropriate means to effect the widest publicity among the affected segments of the public, including publication on the local notice to mariners, marine information broadcasts, and facsimile. Fireworks barges used in these locations will also have a sign on their port and starboard side labeled ''FIREWORKS–STAY AWAY''. This sign will consist of 10″ high by 1.5″ wide red lettering on a white background. Shore sites used in these locations will display a sign labeled ''FIREWORKS–STAY AWAY'' with the same dimensions.

(c) *Enforcement period.* This section will be enforced from 6 p.m. (local) to 1 a.m. (local) each day a barge with ''FIREWORKS–STAY AWAY'' sign on the port and starboard side is on-scene or a ''FIREWORKS–STAY AWAY'' sign is posted in a location listed in paragraph (a) of this section. Vessels may enter, remain in, or transit through these safety zones during this time frame if authorized by the Captain of the Port Cleveland or the designated Coast Guard Patrol Commander on scene.

(d) *Regulations.* (1) The general regulations contained in 33 CFR 165.23 apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the

designated on scene Patrol Commander. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard. Upon being hailed by a U.S. Coast Guard vessel via siren, radio, flashing light, or other means, the operator shall proceed as directed.

(3) Several of the safety zones in this regulation encompass portions commercial navigation channels but are not expected to adversely affect shipping. In cases where shipping is affected, commercial vessels may request permission from the Patrol Commander or Captain of the Port to transit the safety zone. Approval will be made on a case-by-case basis. Requests must be made in advance and approved by the Captain of the Port before transits will be authorized. The Captain of the Port may be contacted via the U.S. Coast Guard Patrol Commander (PAT COM) on Channel 16, VHF–FM.

Dated: June 21, 2004.

Lorne W. Thomas,

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

[FR Doc. 04–16651 Filed 7–21–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Parts 1 and 2

[Docket No. 2004–C–032]

RIN 0651–AB74

Elimination of Credit Cards as Payment for Replenishing Deposit Accounts

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Final rule.

SUMMARY: The United States Patent and Trademark Office (Office) is amending its rules of practice to eliminate acceptance of credit cards as payment for replenishing deposit accounts. Deposit account customers may still submit payments to replenish their deposit accounts by electronic funds transfer (EFT) through the Federal Reserve Fedwire System or over the Office's Internet Web site (*http://www.uspto.gov*), and by check or money order sent through the mail. The Office will continue to accept credit cards as payment for all other products and services for which fees are required.

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

FOR FURTHER INFORMATION CONTACT: Matthew Lee by e-mail at *matthew.lee@uspto.gov,* or by fax at (703) 308–5077 marked to the attention of Matthew Lee.

SUPPLEMENTARY INFORMATION: The Office is revising 37 CFR 1.23(b), 1.25(c)(2), 2.207(b), and 2.208(c)(2) to eliminate acceptance of credit cards as payment for replenishing deposit accounts.

The Office participates in the Plastic Card Network (PCN), which is a Government-wide network that allows Federal agencies to accept nationally branded credit and debit cards for collecting receipts due to the Government. This network promotes the efficient electronic collection of receipts from the public sector while providing a convenient and widely used payment option for remitters. The Department of the Treasury Financial Management Service (FMS) manages the PCN and pays the transaction fees incurred for processing credit and debit card payments.

The Office was notified by the FMS of excessive transaction fees resulting from high dollar credit card charges processed by the agency. Nearly all of the high dollar credit card charges were payments made by customers to replenish deposit accounts. Although credit cards are an efficient means for individuals to use in replenishing deposit accounts, they are an expensive option that is not cost-effective. It is much more cost-effective to process high dollar payments by EFT or by check for the Government. This is because the Government is charged a percent fee based on the total dollar amount of the charge. Under the PCN, the Office is not allowed to establish minimum or maximum single transaction amounts or to charge a transaction fee for a specific group of transactions as conditions for accepting credit cards.

Deposit account customers who replenished their deposit accounts with a credit card may be inconvenienced, but the vast majority of customers who pay for products and services with a credit card will continue to enjoy the convenience and will not be impacted by this final rule. Customers will continue to have a means of replenishing their deposit accounts electronically by EFT, and through the mail by check or money order.

This final rule supports the FMS in controlling the PCN costs, and ensures the Office can continue participating in the PCN and provide the credit card payment option to customers for all other products and services.

To ensure clarity in the implementation of this final rule, a discussion of specific sections is set forth below.

Discussion of Specific Rules

37 CFR 1.23 Method of Payment

Section 1.23, paragraph (b), is revised to exclude credit cards as payment for replenishing a deposit account.

37 CFR 1.25 Deposit Accounts

Section 1.25, paragraph (c)(2), is revised by removing the reference to credit cards for replenishing a deposit account over the Office's Internet Web site.

37 CFR 2.207 Method of Payment

Section 2.207, paragraph (b), is revised to exclude credit cards as payment for replenishing a deposit account.

37 CFR 2.208 Deposit Accounts

Section 2.208, paragraph (c)(2), is revised by removing the reference to credit cards for replenishing a deposit account over the Office's Internet Web site.

Other Considerations

This final rule contains no information collection requirements within the meaning of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* This final rule has been determined to be not significant for purposes of Executive Order 12866. This final rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (August 4, 1999).

Prior notice and an opportunity for public comment are not required by the Administrative Procedure Act, or any other statute or regulation, for this rule. This rule is exempted from the notice and comment because it involves a rule of agency practice or procedure. As prior notice and an opportunity for public comment are not required pursuant to 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 605(b), are inapplicable.

Lists of Subjects

37 CFR Part 1

Administrative practice and procedure, Patents.

37 CFR Part 2

Administrative practice and procedure, Trademarks.

■ For the reasons set forth in the preamble, title 37 of the Code of Federal Regulations, parts 1 and 2, are being amended as set forth below.

PART 1—RULES OF PRACTICE IN PATENT CASES

■ 1. The authority citation for 37 CFR part 1 continues to read as follows:

Authority: 35 U.S.C. 2, unless otherwise noted.

■ 2. Section 1.23 is amended by revising paragraph (b) to read as follows:

§ 1.23 Methods of payment.

* * * * *

(b) Payments of money required for United States Patent and Trademark Office fees may also be made by credit card, except for replenishing a deposit account. Payment of a fee by credit card must specify the amount to be charged to the credit card and such other information as is necessary to process the charge, and is subject to collection of the fee. The Office will not accept a general authorization to charge fees to a credit card. If credit card information is provided on a form or document other than a form provided by the Office for the payment of fees by credit card, the Office will not be liable if the credit card number becomes public knowledge.

■ 3. Section 1.25 is amended by revising paragraph (c)(2) to read as follows:

§ 1.25 Deposit accounts.

* * * * *

(c) ***

(2) A payment to replenish a deposit account may be submitted by electronic funds transfer over the Office's Internet Web site (*www.uspto.gov*).

* * * * *

PART 2—RULES OF PRACTICE IN TRADEMARK CASES

■ 1. The authority citation for 37 CFR part 2 continues to read as follows:

Authority: 35 U.S.C. 2, unless otherwise noted.

■ 2. Section 2.207 is amended by revising paragraph (b) to read as follows:

§ 2.207 Methods of payment.

* * * * *

(b) Payments of money required for trademark fees may also be made by credit card, except for replenishing a deposit account. Payment of a fee by credit card must specify the amount to be charged to the credit card and such other information as is necessary to process the charge, and is subject to collection of the fee. The Office will not accept a general authorization to charge fees to a credit card. If credit card information is provided on a form or document other than a form provided by the Office for the payment of fees by credit card, the Office will not be liable if the credit card number becomes public knowledge.

■ 3. Section 2.208 is amended by revising paragraph (c)(2) to read as follows:

§ 2.208 Deposit accounts.

* * * * *

(c) ***

(2) A payment to replenish a deposit account may be submitted by electronic funds transfer over the Office's Internet Web site (*www.uspto.gov*).

* * * * *

Dated: July 14, 2004.

Jon W. Dudas,

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

[FR Doc. 04–16753 Filed 7–21–04; 8:45 am]

BILLING CODE 3510–16–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX–165–1–7610; FRL–7788–2]

Approval and Promulgation of Implementation Plans; Texas; Revisions to Regulations for Control of Air Pollution by Permits for New Sources and Modifications Including Incorporation of Marine Vessel Emissions in Applicability Determinations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve revisions to the Texas State Implementation Plan (SIP). This includes revisions that the Texas Commission on Environmental Quality (TCEQ) submitted to EPA on September 16, 2002, to revise the definitions of ''building, structure, facility, or installation'' and ''secondary emissions.'' This also includes revisions to incorporate updated Federal regulation citations. This action is being taken under section 110 of the Federal Clean Air Act, as amended (the Act or CAA).

DATES: This rule is effective on September 20, 2004.

ADDRESSES: Copies of the documents relevant to this action are in the official file which is available at the Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below or Mr. Bill Deese at (214) 665–7253 to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a 15 cent per page fee for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

Copies of any State submittals and EPA's technical support document are also available for public inspection at the State Air Agency listed below during official business hours by appointment: Texas Commission on Environmental Quality, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Stephanie Kordzi, Air Permits Section (6PD–R), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone (214) 665–7520; fax number (214) 665–6762; e-mail address *kordzi.stephanie@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document ''we,'' ''us,'' or ''our'' means EPA.

Outline:

I. What State Rules Are Being Addressed in the Document?
II. What Is the Legal Basis for EPA's Proposed Approval of These State Rules?
III. Have the Requirements for Approval of a SIP Revision Been Met?
IV. Final Action
V. Statutory and Executive Order Reviews

I. What State Rules Are Being Addressed in This Document?

In today's action we are approving into the Texas SIP revisions to Title 30 of the Texas Administrative Code (30 TAC) sections 116.12, Nonattainment Review Definitions; 116.160, Prevention of Significant Deterioration Requirements; and 116.162, Evaluation of Air Quality Impacts. The TCEQ adopted these revisions on October 10, 2001, and submitted the revisions to us for approval as a revision to the SIP on September 16, 2002.

30 TAC Section 116.12—Nonattainment Review. The previous State version of this section, which is the existing SIP-approved version (*see* 65 FR 43994, July 17, 2000), excludes the ''activities of any vessel'' from the definition of ''building, structure, facility, or installation.'' The revised

version that the State adopted on October 10, 2001, and that the State has submitted for EPA's approval, deletes the ''except the activities of any vessel'' clause from section 116.12(4). Texas has explained that this change will allow the inclusion of marine vessel emissions in applicability determinations for nonattainment permits.

30 TAC Section 116.160—Prevention of Significant Deterioration Requirements. The previous State version of this section, which is the existing SIP-approved version (*see* 67 FR 58697, September 18, 2002), incorporates by reference the Federal Prevention of Significant Deterioration (PSD) regulations at 40 CFR 52.21, as amended June 3, 1993. Those regulations excluded the ''activities of any vessel'' from the definition of ''building, structure, facility, or installation.'' The revised version that the State adopted on October 10, 2001, and that the State has submitted for EPA's approval, excludes the CFR definition of ''building, structure, facility, or installation,'' because the CFR definition includes language vacated by the court in *Natural Resources Defense Council* v. *EPA,* 725 F.2d 761 (D.C. Cir. 1984) (*see* discussion below under ''Legal Background''). Instead, the revised version of section 116.160 defines ''building, structure, facility, or installation'' consistent with the definition in revised section 116.12, discussed above. Texas has explained that this change will allow the inclusion of marine vessel emissions in applicability determinations for PSD permits. In addition, the revised section 116.160 replaces the definition of ''secondary emissions'' at 40 CFR 52.21 with language consistent with the *NRDC* decision.

The revised section 116.160 otherwise incorporates the version of the Federal PSD air quality regulations promulgated at 40 CFR 52.21 in 1996, as well as the most recent version of 40 CFR 51.301 (amended 1999).

Finally, revised subsections 116.160(d) and (e) make minor changes such as clarifying references to the ''administrator'' and ''executive director.''

30 TAC Section 116.162, Evaluation of Air Quality Impacts. EPA approved the previous State version of this section into the SIP on August 19, 1997. 62 FR 44083. The new version submitted to EPA contains only minor typographical and citation changes.

II. What Is the Legal Basis for EPA's Proposed Approval of These State Rules?

Section 110 of the Act requires States to develop air pollution regulations and control strategies to ensure that State air quality meets the National Ambient Air Quality Standards. Each State must submit these regulations and control strategies to us for approval and incorporation into the federally-enforceable SIP. In order for State regulations to be incorporated into the federally-enforceable SIP, States must formally adopt these regulations and control strategies consistent with State and Federal requirements. Section 116 of the Act provides that the States retain the authority to adopt measures no less stringent than Federal requirements, unless otherwise preempted.

Once a State adopts a rule, regulation, or control strategy, the State may submit it to us for inclusion into the SIP in accordance with section 110 of the Act. We must then decide on an appropriate Federal action, provide public notice and seek additional comment regarding the proposed Federal action on the State submission. If we receive relevant adverse comments, we must address them before taking a final action. We did not receive any comments during the public comment period on the proposed rule.

Under section 110 of the Act, when we approve all State regulations and supporting information, those State regulations and supporting information become a part of the federally approved SIP.

Additional details on the legal basis for this final rule may be found in the Technical Support Document (TSD) for this action.

III. Have the Requirements for Approval of a SIP Revision Been Met?

Currently, the State of Texas issues and enforces PSD permits directly in all areas of the State without final approval by EPA, with the exception of Indian lands and situations where the applicability determinations would be affected by dockside emissions of vessels. As currently approved, Chapter 116 incorporates the PSD/Nonattainment (NA) review permitting requirements and definitions from the vacated 1982 regulations in section 116.12(4) for NA and section 116.160(a) for PSD.

Final approval of the changes to section 116.12 and section 116.160(c) will grant full approval of the State's preconstruction permitting SIP for all sources, except for those sources located on land under the control of Indian governing bodies. These changes to section 116.12 are not inconsistent with the requirements of the Clean Air Act.

IV. Final Action

We are approving as a revision to the Texas SIP revisions of 30 TAC sections 116.12, Nonattainment (NA) Review Definitions; 116.160, Prevention of Significant Deterioration Requirements; and section 116.162, Evaluation of Air Quality Impacts, which Texas submitted on September 16, 2002.

We are revising 40 CFR 52.2303, Significant deterioration of air quality, as follows. First, we are removing paragraph (d), which retained applicable requirements of 40 CFR 52.21 for new major sources or major modifications to existing stationary sources for which applicability determinations of PSD would be affected by dockside emissions of vessels. Because the regulations that we are approving today enable Texas to make PSD applicability determinations for such sources, paragraph (d) is no longer necessary. Second, we are revising and reorganizing paragraph (a) to reflect the current information concerning Texas' PSD program and to make paragraph (a) easier to understand.

V. Statutory and Executive Order Reviews

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

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and

Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a State rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the 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. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the 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 September 20, 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 in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon Monoxide, Hydrocarbons, Intergovernmental relations, Lead, Nitrogen oxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: July 7, 2004.

Lawrence E. Starfield,

Acting Regional Administrator, Region 6.

■ Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7402 *et seq.*

Subpart SS—Texas

■ 2. The table in § 52.2270(c) entitled ''EPA Approved Regulations in the Texas SIP'' is amended as follows:

■ a. Under chapter 116, subchapter A, by revising the existing entry for section 116.12;

■ b. Under chapter 116, subchapter B, division 6, by revising the existing entries for sections 116.160 and 116.162.

The revised entries read as follows:

§ 52.2270 Identification of plan.

* * * * *

(c) * * *

EPA APPROVED REGULATIONS IN THE TEXAS SIP

State citation	Title/subject	State approval/submittal date	EPA approval date	Explanation
*	*	*	*	*
Chapter 116 (Reg 6)—Control of Air Pollution by Permits for New Construction or Modification				
Subchapter A—Definitions				
*	*	*	*	*
Section 116.12	Nonattainment Review Definitions	10/10/01	[7/22/04 Insert Federal Register page number].	
*	*	*	*	*
Subchapter B—New Source Review Permits				

EPA APPROVED REGULATIONS IN THE TEXAS SIP—Continued

State citation	Title/subject	State approval/submittal date	EPA approval date	Explanation
* * *	*	*	*	*
Division 6—Prevention of Significant Deterioration Review				
Section 116.160	Prevention of Significant Deterioration Review Requirements.	10/10/01	[7/22/04 Insert Federal Register page number].	
* * *	*	*	*	*
Section 116.162	Evaluation of Air Quality Impacts	10/10/01	[7/22/04 Insert Federal Register page number].	
* * *	*	*	*	*

■ 3. Section 52.2303 is amended as follows:

■ a. Paragraph (d) is removed.

■ b. Paragraph (a) is revised to read as follows:

§ 52.2303 Significant deterioration of air quality.

(a) The plan submitted by Texas is approved as meeting the requirements of part C, Clean Air Act for preventing significant deterioration of air quality. The plan consists of the following:

(1) Prevention of significant deterioration plan requirements as follows:

(i) December 11, 1985 (as adopted by the Texas Air Control Board (TACB) on July 26, 1985).

(ii) October 26, 1987 (as revised by TACB on July 17, 1987).

(iii) September 29, 1988 (as revised by TACB on July 15, 1988).

(iv) February 18, 1991 (as revised by TACB on December 14, 1990).

(v) May 13, 1992 (as revised by TACB on May 8, 1992).

(vi) August 31, 1993 (as recodified, revised and adopted by TACB on August 16, 1993).

(vii) July 12, 1995 (as revised by the Texas Natural Resource Conservation Commission (TNRCC) on March 1, 1995) containing revisions to chapter 116—Control of Air Pollution for New Construction or Modification, sections 116.10, 116.141 and 116.160–116.163.

(viii) July 22, 1998 (as revised by TNRCC on June 17, 1998) containing revisions to chapter 116—Control of Air Pollution for New Construction or Modification, sections 116.160 and 116.161.

(ix) September 16, 2002 (as revised by TNRCC on October 10, 2001) containing revisions to chapter 116—Control of Air Pollution for New Construction or Modification, sections 116.160 and 116.162.

(2) The Prevention of Significant Deterioration (PSD) Supplement document, submitted October 26, 1987 (as adopted by TACB on July 17, 1987).

(3) Revision to General Rules, Rule 101.20(3), submitted December 11, 1985 (as adopted by TACB on July 26, 1985).

* * * * *

[FR Doc. 04–16202 Filed 7–21–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7790–6]

National Priorities List for Uncontrolled Hazardous Waste Sites

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (''CERCLA'' or ''the Act''), as amended, requires that the National Oil and Hazardous Substances Pollution Contingency Plan (''NCP'') include a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The National Priorities List (''NPL'') constitutes this list. The NPL is intended primarily to guide the Environmental Protection Agency (''EPA'' or ''the Agency'') in determining which sites warrant further investigation. These further investigations will allow EPA to assess the nature and extent of public health and environmental risks associated with the site and to determine what CERCLA-financed remedial action(s), if any, may be appropriate. This rule adds nine new sites to the NPL; all to the General Superfund Section of the NPL.

DATES: *Effective Date:* The effective date for this amendment to the NCP is August 23, 2004.

ADDRESSES: For addresses for the Headquarters and Regional dockets, as well as further details on what these dockets contain, see section II, ''Availability of Information to the Public'' in the **SUPPLEMENTARY INFORMATION** portion of this preamble.

FOR FURTHER INFORMATION CONTACT: Yolanda Singer, phone (703) 603–8835, State, Tribal and Site Identification Branch; Assessment and Remediation Division; Office of Superfund Remediation and Technology Innovation (mail code 5204G); U.S. Environmental Protection Agency; 1200 Pennsylvania Avenue, NW.; Washington, DC 20460; or the Superfund Hotline, phone (800) 424–9346 or (703) 412–9810 in the Washington, DC, metropolitan area.

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I. Background

A. What Are CERCLA and SARA?

In 1980, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601–9675 (''CERCLA'' or ''the Act''), in response to the dangers of uncontrolled releases of hazardous substances. CERCLA was amended on October 17, 1986, by the Superfund Amendments and Reauthorization Act (''SARA''), Public Law 99–499, 100 Stat. 1613 *et seq.*

B. What Is the NCP?

To implement CERCLA, EPA promulgated the revised National Oil and Hazardous Substances Pollution Contingency Plan (''NCP''), 40 CFR part 300, on July 16, 1982 (47 FR 31180), pursuant to CERCLA section 105 and Executive Order 12316 (46 FR 42237, August 20, 1981). The NCP sets guidelines and procedures for responding to releases and threatened releases of hazardous substances, pollutants, or contaminants under CERCLA. EPA has revised the NCP on several occasions. The most recent comprehensive revision was on March 8, 1990 (55 FR 8666).

As required under section 105(a)(8)(A) of CERCLA, the NCP also includes ''criteria for determining priorities among releases or threatened releases throughout the United States for the purpose of taking remedial action and, to the extent practicable, taking into account the potential urgency of such action for the purpose of taking removal action.'' (''Removal'' actions are defined broadly and include a wide range of actions taken to study, clean up, prevent or otherwise address releases and threatened releases 42 U.S.C. 9601(23).)

C. What Is the National Priorities List (NPL)?

The NPL is a list of national priorities among the known or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The list, which is appendix B of the NCP (40 CFR part 300), was required under section 105(a)(8)(B) of CERCLA, as amended by SARA. Section 105(a)(8)(B) defines the NPL as a list of ''releases'' and the highest priority ''facilities'' and requires that the NPL be revised at least annually. The NPL is intended primarily to guide EPA in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with a release of hazardous substances. The NPL is only of limited significance, however, as it does not assign liability to any party or to the owner of any specific property. Neither does placing a site on the NPL mean that any remedial or removal action necessarily need be taken.

For purposes of listing, the NPL includes two sections, one of sites that are generally evaluated and cleaned up by EPA (the ''General Superfund Section''), and one of sites that are owned or operated by other Federal agencies (the ''Federal Facilities Section''). With respect to sites in the Federal Facilities Section, these sites are generally being addressed by other Federal agencies. Under Executive Order 12580 (52 FR 2923, January 29, 1987) and CERCLA section 120, each Federal agency is responsible for carrying out most response actions at facilities under its own jurisdiction, custody, or control, although EPA is responsible for preparing an HRS score and determining whether the facility is placed on the NPL. EPA generally is not the lead agency at Federal Facilities Section sites, and its role at such sites is accordingly less extensive than at other sites.

D. How Are Sites Listed on the NPL?

There are three mechanisms for placing sites on the NPL for possible remedial action (see 40 CFR 300.425(c) of the NCP): (1) A site may be included on the NPL if it scores sufficiently high on the Hazard Ranking System (''HRS''), which EPA promulgated as appendix A of the NCP (40 CFR part 300). The HRS serves as a screening device to evaluate the relative potential of uncontrolled hazardous substances to pose a threat to human health or the environment. On December 14, 1990 (55 FR 51532), EPA promulgated revisions to the HRS partly in response to CERCLA section 105(c), added by SARA. The revised HRS evaluates four pathways: ground water, surface water, soil exposure, and air. As a matter of Agency policy, those sites that score 28.50 or greater on the HRS are eligible for the NPL; (2) Each State may designate a single site as its top priority to be listed on the NPL, regardless of the HRS score. This mechanism, provided by the NCP at 40 CFR 300.425(c)(2) requires that, to the extent practicable, the NPL include within the 100 highest priorities, one facility designated by each State representing the greatest danger to public health, welfare, or the environment among known facilities in the State (see 42 U.S.C. 9605(a)(8)(B)); (3) The third mechanism for listing, included in the NCP at 40 CFR 300.425(c)(3), allows certain sites to be listed regardless of their HRS score, if all of the following conditions are met:

- The Agency for Toxic Substances and Disease Registry (ATSDR) of the U.S. Public Health Service has issued a health advisory that recommends dissociation of individuals from the release.

• EPA determines that the release poses a significant threat to public health.

• EPA anticipates that it will be more cost-effective to use its remedial authority than to use its removal authority to respond to the release.

EPA promulgated an original NPL of 406 sites on September 8, 1983 (48 FR 40658). The NPL has been expanded since then, most recently on September 29, 2003 (68 FR 55875).

E. What Happens to Sites on the NPL?

A site may undergo remedial action financed by the Trust Fund established under CERCLA (commonly referred to as the ''Superfund'') only after it is placed on the NPL, as provided in the NCP at 40 CFR 300.425(b)(1). (''Remedial actions'' are those ''consistent with permanent remedy, taken instead of or in addition to removal actions * * *.'' 42 U.S.C. 9601(24).) However, under 40 CFR 300.425(b)(2) placing a site on the NPL ''does not imply that monies will be expended.'' EPA may pursue other appropriate authorities to respond to the releases, including enforcement action under CERCLA and other laws.

F. How Are Site Boundaries Defined?

The NPL does not describe releases in precise geographical terms; it would be neither feasible nor consistent with the limited purpose of the NPL (to identify releases that are priorities for further evaluation), for it to do so.

Although a CERCLA ''facility'' is broadly defined to include any area where a hazardous substance release has ''come to be located'' (CERCLA section 101(9)), the listing process itself is not intended to define or reflect the boundaries of such facilities or releases. Of course, HRS data (if the HRS is used to list a site) upon which the NPL placement was based will, to some extent, describe the release(s) at issue. That is, the NPL site would include all releases evaluated as part of that HRS analysis.

When a site is listed, the approach generally used to describe the relevant release(s) is to delineate a geographical area (usually the area within an installation or plant boundaries) and identify the site by reference to that area. As a legal matter, the site is not coextensive with that area, and the boundaries of the installation or plant are not the ''boundaries'' of the site. Rather, the site consists of all contaminated areas within the area used to identify the site, as well as any other location to which that contamination has come to be located, or from which that contamination came.

In other words, while geographic terms are often used to designate the site (*e.g.*, the ''Jones Co. plant site'') in terms of the property owned by a particular party, the site properly understood is not limited to that property (*e.g.*, it may extend beyond the property due to contaminant migration), and conversely may not occupy the full extent of the property (*e.g.*, where there are uncontaminated parts of the identified property, they may not be, strictly speaking, part of the ''site''). The ''site'' is thus neither equal to nor confined by the boundaries of any specific property that may give the site its name, and the name itself should not be read to imply that this site is coextensive with the entire area within the property boundary of the installation or plant. The precise nature and extent of the site are typically not known at the time of listing. Also, the site name is merely used to help identify the geographic location of the contamination. For example, the name ''Jones Co. plant site,'' does not imply that the Jones company is responsible for the contamination located on the plant site.

EPA regulations provide that the ''nature and extent of the problem presented by the release'' will be determined by a remedial investigation/feasibility study (RI/FS) as more information is developed on site contamination (40 CFR 300.5). During the RI/FS process, the release may be found to be larger or smaller than was originally thought, as more is learned about the source(s) and the migration of the contamination. However, this inquiry focuses on an evaluation of the threat posed; the boundaries of the release need not be exactly defined. Moreover, it generally is impossible to discover the full extent of where the contamination ''has come to be located'' before all necessary studies and remedial work are completed at a site. Indeed, the known boundaries of the contamination can be expected to change over time. Thus, in most cases, it may be impossible to describe the boundaries of a release with absolute certainty.

Further, as noted above, NPL listing does not assign liability to any party or to the owner of any specific property. Thus, if a party does not believe it is liable for releases on discrete parcels of property, supporting information can be submitted to the Agency at any time after a party receives notice it is a potentially responsible party.

For these reasons, the NPL need not be amended as further research reveals more information about the location of the contamination or release.

G. How Are Sites Removed From the NPL?

EPA may delete sites from the NPL where no further response is appropriate under Superfund, as explained in the NCP at 40 CFR 300.425(e). This section also provides that EPA shall consult with states on proposed deletions and shall consider whether any of the following criteria have been met:

(i) Responsible parties or other persons have implemented all appropriate response actions required;

(ii) All appropriate Superfund-financed response has been implemented and no further response action is required; or

(iii) The remedial investigation has shown the release poses no significant threat to public health or the environment, and taking of remedial measures is not appropriate.

As of July 12, 2004, the Agency has deleted 282 sites from the NPL.

H. May EPA Delete Portions of Sites From the NPL as They Are Cleaned Up?

In November 1995, EPA initiated a new policy to delete portions of NPL sites where cleanup is complete (60 FR 55465, November 1, 1995). Total site cleanup may take many years, while portions of the site may have been cleaned up and available for productive use. As of July 12, 2004, EPA has deleted 45 portions of 37 sites.

I. What Is the Construction Completion List (CCL)?

EPA also has developed an NPL construction completion list (''CCL'') to simplify its system of categorizing sites and to better communicate the successful completion of cleanup activities (58 FR 12142, March 2, 1993). Inclusion of a site on the CCL has no legal significance.

Sites qualify for the CCL when: (1) Any necessary physical construction is complete, whether or not final cleanup levels or other requirements have been achieved; (2) EPA has determined that the response action should be limited to measures that do not involve construction (*e.g.*, institutional controls); or (3) the site qualifies for deletion from the NPL.

As of July 12, 2004, there are a total of 899 sites on the CCL. For the most up-to-date information on the CCL, see EPA's Internet site at *http://www.epa.gov/superfund.*

II. Availability of Information to the Public

A. May I Review the Documents Relevant to This Final Rule?

Yes, documents relating to the evaluation and scoring of the sites in this final rule are contained in dockets located both at EPA Headquarters and in the Regional offices.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''Quick Search,'' then key in the appropriate docket identification number; SFUND–2004–0004. (Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facilities identified below in section II D.)

B. What Documents Are Available for Review at the Headquarters Docket?

The Headquarters docket for this rule contains, for each site, the HRS score sheets, the Documentation Record describing the information used to compute the score, pertinent information regarding statutory requirements or EPA listing policies that affect the site, and a list of documents referenced in the Documentation Record. The Headquarters docket also contains comments received. For the nine sites in today's final rule, EPA received no comments or only comments supporting the listing of the sites to the NPL and therefore EPA is placing them on the final NPL at this time.

C. What Documents Are Available for Review at the Regional Dockets?

The Regional dockets contain all the information in the Headquarters docket, plus the actual reference documents containing the data principally relied upon by EPA in calculating or evaluating the HRS score for the sites located in their Region. These reference documents are available only in the Regional dockets.

D. How Do I Access the Documents?

You may view the documents, by appointment only, after the publication of this document. The hours of operation for the Headquarters docket are from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Please contact the Regional dockets for hours.

Following is the contact information for the EPA Headquarters: Docket Coordinator, Headquarters; U.S. Environmental Protection Agency; CERCLA Docket Office; 1301 Constitution Avenue; EPA West, Room B102, Washington, DC 20004, 202/566–0276.

The contact information for the Regional dockets is as follows:

Ellen Culhane, Region 1 (CT, ME, MA, NH, RI, VT), U.S. EPA, Superfund Records Center, Mailcode HSC, One Congress Street, Suite 1100, Boston, MA 02114–2023; 617/918–1225.

Dennis Munhall, Region 2 (NJ, NY, PR, VI), U.S. EPA, 290 Broadway, New York, NY 10007–1866; 212/637–4343.

Dawn Shellenberger (ASRC), Region 3 (DE, DC, MD, PA, VA, WV), U.S. EPA, Library, 1650 Arch Street, Mailcode 3PM52, Philadelphia, PA 19103; 215/814–5364.

John Wright, Region 4 (AL, FL, GA, KY, MS, NC, SC, TN), U.S. EPA, 61 Forsyth Street, SW., 9th floor, Atlanta, GA 30303; 404/562–8123.

Janet Pfundheller, Region 5 (IL, IN, MI, MN, OH, WI), U.S. EPA, Records Center, Waste Management Division 7–J, Metcalfe Federal Building, 77 West Jackson Boulevard, Chicago, IL 60604; 312/886–7570.

Brenda Cook, Region 6 (AR, LA, NM, OK, TX), U.S. EPA, 1445 Ross Avenue, Mailcode 6SF–RA, Dallas, TX 75202–2733; 214/665–7436.

Michelle Quick, Region 7 (IA, KS, MO, NE), U.S. EPA, 901 North 5th Street, Kansas City, KS 66101; 913/551–7335.

Gwen Christiansen, Region 8 (CO, MT, ND, SD, UT, WY), U.S. EPA, 999 18th Street, Suite 500, Mailcode 8EPR–SA, Denver, CO 80202–2466; 303/312–6463.

Jerelean Johnson, Region 9 (AZ, CA, HI, NV, AS, GU), U.S. EPA, 75 Hawthorne Street, San Francisco, CA 94105; 415/972–3094.

Tara Martich, Region 10 (AK, ID, OR, WA), U.S. EPA, 1200 6th Avenue, Mail Stop ECL–115, Seattle, WA 98101; 206/553–0039.

E. How May I Obtain a Current List of NPL Sites?

You may obtain a current list of NPL sites via the Internet at *http://www.epa.gov/superfund/* (look under the Superfund sites category) or by contacting the Superfund Docket (see contact information above).

III. Contents of This Final Rule

A. Additions to the NPL

This final rule adds nine sites to the NPL; all to the General Superfund Section of the NPL. Table 1 presents the nine sites in the General Superfund Section. Sites in the tables are arranged alphabetically by State.

TABLE 1.—NATIONAL PRIORITIES LIST FINAL RULE, GENERAL SUPERFUND SECTION

State	Site name	City/county
IN	Jacobsville Neighborhood Soil Contamination	Evansville.
MO	Annapolis Lead Mine	Annapolis.
MS	Picayune Wood Treating	Picayune.
NM	Grants Chlorinated Solvents Plume	Grants.
NY	Diaz Chemical Corporation	Holley.
NY	Peninsula Boulevard Ground Water Plume	Hewlett.
PA	Ryeland Road Arsenic	Heidelberg Township.
PR	Cidra Ground Water Contamination	Cidra.
VT	Pike Hill Copper Mine	Corinth.

Number of Sites Added to the General Superfund Section: 9.

B. Status of NPL

With the nine new sites added to the NPL in today's final rule; the NPL now contains 1,245 final sites; 1,087 in the General Superfund Section and 158 in the Federal Facilities Section. In addition, there are 56 sites proposed and awaiting final agency action, 50 in the General Superfund Section and six in the Federal Facilities Section. Final

and proposed sites now total 1,301. (These numbers reflect the status of sites as of July 12, 2004. Site deletions occurring after this date may affect these numbers at time of publication in the **Federal Register**.)

C. What Did EPA Do With the Public Comments It Received?

All nine sites were proposed on March 8, 2004 (69 FR 10646). EPA received no comments or only comments supporting the listing of the nine sites to the NPL and therefore, EPA is placing them on the final NPL at this time. The comments supporting the listing of the sites are contained in the Headquarters Docket and are also listed in EPA's electronic public docket and comment system at *http:/www.epa.gov/edocket/* using the SFUND–2004–0004 identification number.

IV. Executive Order 12866

A. What Is Executive Order 12866?

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether a regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

B. Is This Final Rule Subject to Executive Order 12866 Review?

No. The listing of sites on the NPL does not impose any obligations on any entities. The listing does not set standards or a regulatory regime and imposes no liability or costs. Any liability under CERCLA exists irrespective of whether a site is listed. It has been determined that this action is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

V. Unfunded Mandates

A. What Is the Unfunded Mandates Reform Act (UMRA)?

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

B. Does UMRA Apply to This Final Rule?

No, EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments in the aggregate, or by the private sector in any one year. This rule will not impose any federal intergovernmental mandate because it imposes no enforceable duty upon State, tribal or local governments. Listing a site on the NPL does not itself impose any costs. Listing does not mean that EPA necessarily will undertake remedial action. Nor does listing require any action by a private party or determine liability for response costs. Costs that arise out of site responses result from site-specific decisions regarding what actions to take, not directly from the act of listing a site on the NPL.

For the same reasons, EPA also has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. In addition, as discussed above, the private sector is not expected to incur costs exceeding $100 million. EPA has fulfilled the requirement for analysis under the Unfunded Mandates Reform Act.

VI. Effect on Small Businesses

A. What Is the Regulatory Flexibility Act?

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996) whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.,* small businesses, small organizations, and small governmental jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

B. How Has EPA Complied With the Regulatory Flexibility Act?

This rule listing sites on the NPL does not impose any obligations on any group, including small entities. This rule also does not establish standards or requirements that any small entity must meet, and imposes no direct costs on any small entity. Whether an entity, small or otherwise, is liable for response costs for a release of a hazardous substance depends on whether that entity is liable under CERCLA 107(a). Any such liability exists regardless of whether the site is listed on the NPL through this rulemaking. Thus, this rule does not impose any requirements on any small entities. For the foregoing reasons, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

VII. Possible Changes to the Effective Date of the Rule

A. Has EPA Submitted This Rule to Congress and the General Accounting Office?

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 has submitted 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 rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

B. Could the Effective Date of This Final Rule Change?

Provisions of the Congressional Review Act (CRA) or section 305 of CERCLA may alter the effective date of this regulation.

Under the CRA, 5 U.S.C. 801(a), before a rule can take effect the federal agency promulgating the rule must submit a report to each House of the Congress and to the Comptroller General. This report must contain a copy of the rule, a concise general statement relating to the rule (including whether it is a major rule), a copy of the cost-benefit analysis of the rule (if any), the agency's actions relevant to provisions of the Regulatory Flexibility Act (affecting small businesses) and the Unfunded Mandates Reform Act of 1995 (describing unfunded federal requirements imposed on state and local governments and the private sector), and any other relevant information or requirements and any relevant Executive Orders.

EPA has submitted a report under the CRA for this rule. The rule will take effect, as provided by law, within 30 days of publication of this document, since it is not a major rule. Section 804(2) defines a major rule as any rule that the Administrator of the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB) finds has resulted in or is likely to result in: an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. NPL listing is not a major rule because, as explained above, the listing, itself, imposes no monetary costs on any person. It establishes no enforceable duties, does not establish that EPA necessarily will undertake remedial action, nor does it require any action by any party or determine its liability for site response costs. Costs that arise out of site responses result from site-by-site decisions about what actions to take, not directly from the act of listing itself. Section 801(a)(3) provides for a delay in the effective date of major rules after this report is submitted.

C. What Could Cause a Change in the Effective Date of This Rule?

Under 5 U.S.C. 801(b)(1) a rule shall not take effect, or continue in effect, if Congress enacts (and the President signs) a joint resolution of disapproval, described under section 802.

Another statutory provision that may affect this rule is CERCLA section 305, which provides for a legislative veto of regulations promulgated under CERCLA. Although *INS* v. *Chadha,* 462 U.S. 919,103 S. Ct. 2764 (1983) and *Bd. of Regents of the University of Washington* v. *EPA,* 86 F.3d 1214,1222 (D.C. Cir. 1996) cast the validity of the legislative veto into question, EPA has transmitted a copy of this regulation to the Secretary of the Senate and the Clerk of the House of Representatives.

If action by Congress under either the CRA or CERCLA section 305 calls the effective date of this regulation into question, EPA will publish a document of clarification in the **Federal Register**.

VIII. National Technology Transfer and Advancement Act

A. What Is the National Technology Transfer and Advancement Act?

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), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

B. Does the National Technology Transfer and Advancement Act Apply to This Final Rule?

No. This rulemaking does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

IX. Executive Order 12898

A. What Is Executive Order 12898?

Under Executive Order 12898, ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,'' as well as through EPA's April 1995, ''Environmental Justice Strategy, OSWER Environmental Justice Task Force Action Agenda Report,'' and National Environmental Justice Advisory Council, EPA has undertaken to incorporate environmental justice into its policies and programs. EPA is committed to addressing environmental justice concerns, and is assuming a leadership role in environmental justice initiatives to enhance environmental quality for all residents of the United States. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, or income, bears disproportionately high and adverse human health and environmental effects as a result of EPA's policies, programs, and activities, and all people live in clean and sustainable communities.

B. Does Executive Order 12898 Apply to This Final Rule?

No. While this rule revises the NPL, no action will result from this rule that will have disproportionately high and adverse human health and environmental effects on any segment of the population.

X. Executive Order 13045

A. What Is Executive Order 13045?

Executive Order 13045: ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that 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.

B. Does Executive Order 13045 Apply to This Final Rule?

This rule is not subject to Executive Order 13045 because it is not an economically significant rule as defined by Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this section present a disproportionate risk to children.

XI. Paperwork Reduction Act

A. What Is the Paperwork Reduction Act?

According to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* an agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under the PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations, after initial display in the preamble of the final rules, are listed in 40 CFR part 9. The information collection requirements related to this action have already been approved by OMB pursuant to the PRA under OMB control number 2070–0012 (EPA ICR No. 574).

B. Does the Paperwork Reduction Act Apply to This Final Rule?

No. EPA has determined that the PRA does not apply because this rule does not contain any information collection requirements that require approval of the OMB.

XII. Executive Orders on Federalism

What Are the Executive Orders on Federalism and Are They Applicable to This Final Rule?

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

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

XIII. Executive Order 13084

What Is Executive Order 13084 and Is It Applicable to This Final Rule?

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Under section 3(b) of Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian Tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the Tribal governments, or EPA consults with those governments. The addition of sites to the NPL will not impose any substantial direct compliance costs on Tribes. While Tribes may incur costs from participating in the investigations and cleanup decisions, those costs are not compliance costs. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this final rule.

XIV. Executive Order 13175

A. What Is Executive Order 13175?

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

B. Does Executive Order 13175 Apply to This Final Rule?

This final rule does not have tribal implications. 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, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this final rule.

XV. Executive Order 13211

A. What is Executive Order 13211?

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)), requires EPA to prepare and submit a Statement of Energy Effects to the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, for certain actions identified as ''significant energy actions.'' Section 4(b) of Executive Order 13211 defines ''significant energy actions'' as ''any action by an agency (normally

published in the **Federal Register**) 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.''

B. Is This Rule Subject to Executive Order 13211?

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 (See discussion of Executive Order 12866 above.)

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Natural resources, Oil pollution, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: July 14, 2004.

Thomas P. Dunne,

Acting Assistant Administrator, Office of Solid Waste and Emergency Response.

■ 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

■ 1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

■ 2. Table 1 of appendix B to part 300 is amended by adding the following sites in alphabetical order to read as follows:

Appendix B to Part 300—National Priorities List

TABLE 1.—GENERAL SUPERFUND SECTION

State	Site name	City/county	Notes [a]
*	*	*	*
IN	Jacobsville Neighborhood Soil Contamination	Evansville	
*	*	*	*
MO	Annapolis Lead Mine	Annapolis	
*	*	*	*
MS	Picayune Wood Treating	Picayune	
*	*	*	*
NM	Grants Chlorinated Solvents Plume	Grants	
*	*	*	*
NY	Diaz Chemical Corporation	Holley	
*	*	*	*
NY	Peninsula Boulevard Ground Water Plume	Hewlett	
*	*	*	*
PA	Ryeland Road Arsenic	Heidelberg Township	
*	*	*	*
PR	Cidra Ground Water Contamination	Cidra	
*	*	*	*
VT	Pike Hill Copper Mine	Corinth	
*	*	*	*

[a] A = Based on issuance of health advisory by Agency for Toxic Substance and Disease Registry (if scored, HRS score need not be ≤ 28.50).
C = Sites on Construction Completion list.
S = State top priority (included among the 100 top priority sites regardless of score).
P = Sites with partial deletion(s).

* * * * *

[FR Doc. 04–16571 Filed 7–21–04; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 51

[CC Docket No. 01–338; FCC 04–164]

Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: On August 21, 2003, the Commission initiated a Further Notice of Proposed Rulemaking to determine whether it should change its interpretation of section 252(i) of the Communications Act of 1934, as amended (the Act), as implemented by § 51.809 of the Commission's rules (the ''pick-and-choose'' rule). In this Order, the Commission replaces the current

pick-and-choose rule with an ''all-or-nothing rule'' that requires a requesting carrier seeking to avail itself of terms in an interconnection agreement to adopt the agreement in its entirety, taking all rates, terms, and conditions from the adopted agreement. The Commission determines in this Order that the pick-and-choose rule is a disincentive to give and take in interconnection negotiations. In addition, the Commission finds that other provisions of the Act provide adequate protection for requesting carriers from discrimination.

DATES: Effective August 23, 2004.

FOR FURTHER INFORMATION CONTACT: Christi Shewman, Attorney, Competition Policy Division, Wireline Competition Bureau, at (202) 418–1686, or at *christi.shewman@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Second Report and Order* (Order) in CC Docket No. 01–338, FCC 04–164, adopted July 8, 2004, and released July 13, 2004. The complete text of this Order is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC, 20554. This document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (800) 378–3160 or (202) 863–2893, facsimile (202) 863–2898, or via e-mail at *http://www.bcpiweb.com.* It is also available on the Commission's Web site at *http://www.fcc.gov.*

Synopsis of the Order

1. *Background.* Section 252(i) of the Act provides that a ''local exchange carrier shall make available any interconnection, service or network element provided under an agreement approved under [section 252] to which it is a party to any other requesting carrier upon the same terms and conditions as those provided in the agreement.'' In the Local Competition Order (61 FR 45476, August 29, 1996), the Commission interpreted section 252(i) to mean that requesting carriers can choose among individual provisions contained in publicly filed interconnection agreements without being required to accept the terms and conditions of the entire agreement.

2. On review, the U.S. Court of Appeals for the Eighth Circuit (the Eighth Circuit) vacated the pick-and-choose rule stating that the Commission's interpretation did not balance the competing policies of sections 251 and 252, and that the rule hindered voluntarily negotiated agreements. The Supreme Court reversed the Eighth Circuit decision and reinstated the pick-and-choose rule, holding that the Commission's interpretation of section 252(i) was reasonable.

3. On May 25, 2001, Mpower filed a petition for forbearance and rulemaking to establish a ''New Flexible Contract Mechanism Not Subject to 'Pick and Choose,' '' and sought relief from the Commission's pick-and-choose requirement on the grounds that it inhibited innovative deal-making during negotiations. Although Mpower subsequently withdrew this petition, incumbent LECs have argued that abandoning the rule would promote mutually beneficial commercial business relationships between incumbent local exchange carriers (LECs) and competitive LECs.

4. On August 21, 2003, the Commission initiated the Further Notice of Proposed Rulemaking (FNPRM) (68 FR 52307, September 2, 2003) to determine whether it should eliminate the pick-and-choose rule and replace it with an alternative interpretation of section 252(i). The Commission requested comment on three tentative conclusions: that the Commission has legal authority to alter its interpretation of section 252(i), so long as the new rule remains a reasonable interpretation of the statutory text; that the current rule discourages give-and-take bargaining; and that the Commission should reinterpret section 252(i) so that if an incumbent LEC files for and obtains state approval for a statement of generally available terms (SGAT), the current pick-and-choose rule would apply only to that SGAT, and all other interconnection agreements would be subject to an all-or-nothing rule requiring carriers to adopt another carrier's interconnection agreement in its entirety (the conditional SGAT proposal).

5. *Discussion.* In the Order, the Commission adopts the tentative conclusion from the FNPRM that it has the legal authority to reinterpret section 252(i), and that the language in section 252(i) does not limit the Commission to a single construction. The Commission reached this conclusion based on the plain meaning of the section's text giving rise to two different, reasonable interpretations, and because the Supreme Court expressly recognized, in Iowa Utilities Board v. FCC, that the Commission has the expertise to determine a reasonable interpretation of section 252(i). The Supreme Court, however, did not hold that the Commission's current interpretation of section 252(i) is compelled by the statute. Had it done so, the Court would not have had to reach the question of whether the Commission's interpretation is reasonable, nor would it have acknowledged that the ability to interpret section 252(i) is a matter ''eminently within the expertise'' of the Commission, and would have necessarily foreclosed our ability to make any other interpretation. The Supreme Court has routinely recognized that government agencies have discretion to change interpretations of ambiguous statutes, and that an agency is not estopped from changing its view.

6. The Commission concludes that the burdens of the current pick-and-choose rule outweigh its benefits, and that the existing pick-and-choose rule fails to promote the meaningful, give-and-take negotiations envisioned by the Act. The Commission finds that the current pick-and-choose rule is not compelled by section 252(i) and an all-or-nothing approach better achieves statutory goals. Therefore, the Commission eliminates the pick-and-choose rule and replaces it with an all-or-nothing rule, requiring that a carrier that seeks to adopt terms and conditions under section 252(i) may only adopt an effective interconnection agreement in its entirety, taking all rates, terms, and conditions of the adopted agreement. In the Order, the Commission declines to adopt the FNPRM's conditional SGAT proposal. The Commission also clarifies that in order to facilitate compromise, the new all-or-nothing rule will apply to all effective interconnection agreements, including those approved and in effect before the date the new rule goes into effect. As of the effective date of the new rule, the pick-and-choose rule will no longer apply to any interconnection agreement.

7. *''All or Nothing'' Rule.* Based on the record of evidence in the Order, the Commission finds the pick-and-choose rule is a disincentive to give and take in interconnection negotiations by ''making it impossible for favorable interconnection-service or network-element terms to be traded off against unrelated provisions.'' The Commission concludes that the all-or-nothing approach is a reasonable interpretation of section 252(i) that will provide incentives to negotiate while continuing to provide safeguards against discrimination. The pick-and-choose rule has resulted in the adoption of largely standardized agreements with little compromise between the incumbent LEC and the requesting carrier. Incumbent LECs persuasively demonstrate that they seldom make

significant concessions in return for some trade-off for fear that third parties will obtain the equivalent benefits without making any trade-off at all. In addition, the record demonstrates that the pick-and-choose rule imposes material costs and delay on both parties and serves as a regulatory obstacle to mutually beneficial transactions. The Commission finds that the record evidence supports its conclusion that an all-or-nothing rule would better serve the goals of sections 251 and 252 to promote negotiated interconnection agreements because it would encourage incumbent LECs to make trade-offs in negotiations that they are reluctant to accept under the existing rule.

8. Incumbent LEC commenters show that, when there are proposed trade-offs that would be beneficial to their interests, they expend significant resources conferring internally to assess the risks of the pick-and-choose rule and to attempt to craft language that adequately limits the risk that a requesting carrier would be able to adopt a provision without associated trade-offs. Moreover, incumbent LECs submitted evidence showing that that the pick-and-choose rule deters them from testing and implementing mutually beneficial innovative business arrangements through interconnection agreements. Based on the record, the Commission determines that the pick-and-choose rule undermines negotiations by unreasonably constraining incentives to bargain during negotiations.

9. The Commission rejects arguments that incumbent LECs will have no incentive to bargain fairly with requesting carriers without the pick-and-choose rule, and that more negotiations will end inevitably in costly and burdensome arbitrations. The Commission finds that any hypothetical disadvantage in negotiating leverage is outweighed by the potential creativity in negotiation that an all-or-nothing rule would help promote. Under the new rule, requesting carriers should be able to negotiate individually tailored interconnection agreements designed to fit their business needs more precisely. Requesting carriers with limited resources will have the option of adopting a suitable agreement in its entirety if they decline to pursue negotiated interconnection agreements. The Commission recognizes that while the potential costs of arbitrations are not insignificant, the benefits of an all-or-nothing approach outweigh these transaction costs. Indeed, the arbitration process created in the Act is often invoked under the current pick-and-choose rule and will remain as a competitive safeguard for all parties.

10. Based on the record, Commission concludes that the pick-and-choose rule has not expedited the competitive entry process, as the Commission expected, and that an all-or-nothing rule would be beneficial because competitive LECs that are sensitive to delay could adopt whole agreements, while others could reach agreements on individually tailored provisions more efficiently. The Commission states that disputes over obligations under the pick-and-choose rule have become a significant obstacle to efficient negotiations of interconnection between incumbent LECs and requesting carriers. The Commission finds that the ''legitimately related'' requirement has become an obstacle to give-and-take negotiations rather than an incentive for give and take. Additionally, the record demonstrates that attempts by requesting carriers to pick and choose often devolve into protracted disputes with accusations of anticompetitive motives on both sides. As a result, negotiations are delayed, incumbent LECs are reluctant to engage in give-and-take negotiations even where terms might be legitimately related for fear of having to defend against unreasonable pick-and-choose requests, and requesting carriers are denied the benefits of individualized agreements that meet their business needs. The Commission concludes that the pick-and-choose rule has proven to be difficult to administer in practice and has impeded productive give-and-take negotiations as intended by the Act. The Commission expects the all-or-nothing rule to produce fewer disputes over implementation because compliance will be more easily identifiable and administrable, and will provide increased incentive for incumbent LECs to grant concessions in return for trade-offs in the normal course of negotiations.

11. *Protections Against Discrimination.* The Order concludes that existing state and federal safeguards against discriminatory behavior are sufficient and that any additional protection that the current pick-and-choose rule may provide is unnecessary. The current record demonstrates that in practice competitive LECs frequently adopt agreements in their entirety. The Commission believes that this practice indicates that the pick-and-choose protections against discrimination are superfluous and that the pick-and-choose rule does not afford requesting carriers protections against discrimination beyond those that would be in place under the all-or-nothing rule. The pick-and-choose rule does not provide added protection against discrimination but serves a disincentive to negotiations. Under an all-or-nothing rule, an incumbent LEC will not be able to reach a discriminatory agreement for interconnection, services, or network elements with a particular carrier without making that agreement in its entirety available to other requesting carriers. If the agreement includes terms that materially benefit the preferred carrier, other requesting carriers will likely have an incentive to adopt that agreement to gain the benefit of the incumbent LEC's discriminatory bargain. Because these agreements will be available on the same terms and conditions to requesting carriers, the all-or-nothing rule should effectively deter incumbent LECs from engaging in such discrimination.

12. Section 251(c) requires incumbent LECs to provide interconnection, unbundled network elements, telecommunications services for resale, and collocation on nondiscriminatory terms and conditions. If negotiations reach an impasse, either party may petition for arbitration by the state commission. Section 252 imposes deadlines for approvals and arbitrations that ensure that interconnection agreements are finalized in a timely manner. Section 252(e)(1) requires carriers to file any negotiated or arbitrated interconnection agreement with the relevant state commission for approval. Under section 252(e)(2)(A)(i), state commissions may reject a negotiated agreement if ''the agreement (or any portion thereof) discriminates against a telecommunications carrier not a party to the agreement. * * *'' Following a state commission determination, any party may bring an action in an appropriate federal district court to determine whether the agreement meets the requirements of sections 251 and 252. In addition, requesting carriers seeking remedies for alleged violations of section 252(i) may file complaints pursuant to section 208. Given the statutory nondiscrimination provisions and the procedural mechanisms to ensure compliance with the Act's nondiscrimination requirements at both the state and federal levels, the Commission concludes that the Act provides requesting carriers with adequate protections against discrimination without the pick-and-choose rule.

13. The Commission rejects commenters' arguments that under an all-or-nothing rule, incumbent LECs will insert onerous terms or ''poison pills'' into agreements to discourage competitive LECs from adopting

agreements in whole. They argue that to avoid such onerous terms, requesting carriers will be forced into lengthy and expensive negotiations and ultimately, arbitration. The Commission states above that the Act provides adequate protection against discrimination, including poison pills, under an all-or-nothing rule, and that the record does not demonstrate that concerns with regard to poison pills have materialized over the eight years of experience with negotiated interconnection agreements. Additionally, the Commission is not persuaded that the pick-and-choose rule must be retained at a minimum for interconnection agreements between incumbent LECs and their affiliates (including wireless and section 272 separate affiliates) due to a higher risk of discrimination by incumbent LECs in favor of affiliates. The Commission states that the Act's nondiscrimination provisions discussed in the Order apply to incumbent LECs' interconnection agreements with affiliates.

14. The Commission concludes that the benefits of the pick-and-choose rule, in terms of protection against discrimination, do not outweigh the significant disincentive it creates to negotiated interconnection agreements. The Commission recognizes that requesting carriers will be protected against discrimination under the all-or-nothing rule and other statutory provisions, and therefore, eliminates the pick-and-choose rule and replaces it with the all-or-nothing rule.

15. *The Proposed SGAT Condition.* The Commission declines to adopt the tentative conclusion that the current pick-and-choose rule would continue to apply to all approved interconnection agreements if the incumbent LEC does not file and obtain state approval for an SGAT. The record of this proceeding reflects widespread opposition to the proposed SGAT condition. Incumbent LECs, competitive LECs, wireless carriers, and state commissions generally agree that there are significant legal and practical concerns with this proposal and that an SGAT condition would not afford competitors additional protection from discrimination.

16. Based on the record, the Commission agrees with opponents to this proposal and finds that an SGAT condition would impose significant burdens on incumbent LECs, requesting carriers, and state commissions that outweigh any benefit in the form of additional protection against discrimination. Specifically, the SGAT condition would impose costs and administrative burdens on incumbent LECs to file SGATs in states currently without SGATs; on requesting carriers to participate in state SGAT proceedings; and on state commissions to conduct proceedings to review and approve the SGATs. At the same time, the Commission recognizes that section 252 does not require state review before SGATs take effect; nor does it require timely updates. As described in the Order, the Commission concludes that the existing safeguards against discrimination, including the section 252(e)(1) filing requirement and state commission approval, afford competitors adequate protection under an all-or-nothing rule. Moreover, if the SGAT condition were needed to protect against discrimination, the fact that the SGAT provision of the Act does not apply to non-BOC incumbent LECs would limit the Commission's ability to impose a uniform rule.

Final Regulatory Flexibility Analysis

17. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the FNPRM. The Commission sought written public comment on the proposals in the FNPRM, including comment on the IRFA. No comments were received on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

18. *Need for, and Objectives of, the Rule:* This Order ensures that market-based incentives exist for incumbent and competitive LECs to negotiate innovative commercial interconnection arrangements. The current pick-and-choose rule implementing section 252(i) may discourage give-and-take negotiation because incumbent LECs may be reluctant to make significant concessions (in exchange for negotiated benefit) if those concessions become automatically available—without any trade-off—to every potential market entrant. The Commission adopts an alternative approach to implementing section 252(i), requiring third parties to opt into entire agreements, to promote more innovative and flexible arrangements between parties. This Order declines to adopt the approach proposed in the FNPRM that would eliminate the current pick-and-choose regime for incumbent LECs only where the incumbent LEC has filed and received state approval of an SGAT. Instead, this Order eliminates the pick-and-choose rule and replaces it with an all-or-nothing rule, regardless of whether the state has an effective SGAT.

19. *Summary of Significant Issues Raised by Public Comments in Response to the IRFA:* There were no comments raised that specifically addressed the proposed rules and policies presented in the IRFA. Nonetheless, the agency considered the potential impact of the rules proposed in the IRFA on small entities.

20. *Description and Estimate of the Number of Small Entities To Which the Proposed Rules Would Apply:* The RFA directs agencies to provide a description of, and, where feasible, an estimate of, the number of small entities that may be affected by the rules adopted herein. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

21. In this section, the Commission further describes and estimates the number of small entity licensees and regulates that may be affected by rules adopted in this Order. The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide, as well as the number of commercial wireless entities, appears to be the data that the Commission publishes in its *Trends in Telephone Service* report. The SBA has developed small business size standards for wireline and wireless small businesses within the three commercial census categories of Wired Telecommunications Carriers, Paging, and Cellular and Other Wireless Telecommunications. Under these categories, a business is small if it has 1,500 or fewer employees. Below, using the above size standards and others, the Commission discusses the total estimated numbers of small businesses that might be affected by these actions.

22. Small incumbent local exchange carriers are included in this present RFA analysis. As noted above, a ''small business'' under the RFA is one that, inter alia, meets the pertinent small business size standard (*e.g.*, a telephone communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent local exchange carriers are not dominant in their field of operation because any such dominance is not ''national'' in scope. The Commission has therefore included small incumbent local exchange carriers in this RFA analysis, although they emphasize that this RFA action has no effect on Commission

analyses and determinations in other, non-RFA contexts.

23. *Wired Telecommunications Carriers.* The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees. According to Census Bureau data for 1997, there were 2,225 firms in this category, total, that operated for the entire year. Of this total, 2,201 firms had employment of 999 or fewer employees, and an additional 24 firms had employment of 1,000 employees or more. Thus, under this size standard, the great majority of firms can be considered small.

24. *Incumbent Local Exchange Carriers.* Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,337 carriers have reported that they are engaged in the provision of incumbent local exchange services. Of these 1,337 carriers, an estimated 1,032 have 1,500 or fewer employees and 305 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by our proposed action.

25. *Competitive Local Exchange Carriers, Competitive Access Providers (CAPs), ''Shared-Tenant Service Providers,'' and ''Other Local Service Providers.''* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 609 carriers have reported that they are engaged in the provision of either competitive access provider services or competitive local exchange carrier services. Of these 609 carriers, an estimated 458 have 1,500 or fewer employees and 151 have more than 1,500 employees. In addition, 16 carriers have reported that they are ''Shared-Tenant Service Providers,'' and all 16 are estimated to have 1.500 or fewer employees. In addition, 35 carriers have reported that they are ''Other Local Service Providers.'' Of the 35, an estimated 34 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, ''Shared-Tenant Service Providers,'' and ''Other Local Service Providers'' are small entities that may be affected by our proposed action.

26. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA has developed a small business size standard specifically for providers of interexchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 261 carriers have reported that they are engaged in the provision of interexchange service. Of these, an estimated 223 have 1,500 or fewer employees and 38 have more than 1,500 employees. Consequently, the Commission estimates that the majority of IXCs are small entities that may be affected by our proposed action.

27. *Operator Service Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for operator service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 23 carriers have reported that they are engaged in the provision of operator services. Of these, an estimated 22 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that the majority of OSPs are small entities that may be affected by our proposed action.

28. *Prepaid Calling Card Providers.* The SBA has developed a size standard for a small business within the category of Telecommunications Resellers. Under that SBA size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 32 companies reported that they were engaged in the provision of prepaid calling cards. Of these 32 companies, an estimated 31 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that the great majority of prepaid calling card providers are small entities that may be affected by the rules and policies adopted herein.

29. *Other Toll Carriers.* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to ''Other Toll Carriers.'' This category includes toll carriers that do not fall within the categories of interexchange carriers, OSPs, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission's data, 42 companies reported that their primary telecommunications service activity was the provision of payphone services. Of these 42 companies, an estimated 37 have 1,500 or fewer employees and five have more than 1,500 employees. Consequently, the Commission estimates that most ''Other Toll Carriers'' are small entities that may be affected by the rules and policies adopted herein.

30. *Wireless Service Providers.* The SBA has developed a small business size standard for wireless firms within the two broad economic census categories of ''Paging'' and ''Cellular and Other Wireless Telecommunications.'' Under both SBA categories, a wireless business is small if it has 1,500 or fewer employees. For the census category of Paging, Census Bureau data for 1997 show that there were 1,320 firms in this category, total, that operated for the entire year. Of this total, 1,303 firms had employment of 999 or fewer employees, and an additional 17 firms had employment of 1,000 employees or more. Thus, under this category and associated small business size standard, the great majority of firms can be considered small. For the census category Cellular and Other Wireless Telecommunications, Census Bureau data for 1997 show that there were 977 firms in this category, total, that operated for the entire year. Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more. Thus, under this second category and size standard, the great majority of firms can, again, be considered small.

31. *Broadband PCS.* The broadband PCS spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined ''small entity'' for Blocks C and F as an entity that has average gross revenues of $40 million or less in the three previous calendar years. For Block F, an additional classification for ''very small business'' was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years.'' These standards defining ''small entity'' in the context of broadband PCS auctions have been

approved by the SBA. No small businesses, within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F. On March 23, 1999, the Commission re-auctioned 347 C, D, E, and F Block licenses. There were 48 small business winning bidders. On January 26, 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in this auction, 29 qualified as ''small'' or ''very small'' businesses. Subsequent events, concerning Auction 305, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant. In addition, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Also, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated.

32. *Narrowband Personal Communications Services.* The Commission held an auction for Narrowband PCS licenses that commenced on July 25, 1994, and closed on July 29, 1994. A second auction commenced on October 26, 1994 and closed on November 8, 1994. For purposes of the first two Narrowband PCS auctions, ''small businesses'' were entities with average gross revenues for the prior three calendar years of $40 million or less. Through these auctions, the Commission awarded a total of 41 licenses, 11 of which were obtained by four small businesses. To ensure meaningful participation by small business entities in future auctions, the Commission adopted a two-tiered small business size standard in the *Narrowband PCS Second Report and Order.* A ''small business'' is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $40 million. A ''very small business'' is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $15 million. The SBA has approved these small business size standards. A third auction commenced on October 3, 2001 and closed on October 16, 2001. Here, five bidders won 317 (Metropolitan Trading Areas and nationwide) licenses. Three of these claimed status as a small or very small entity and won 311 licenses.

33. *220 MHz Radio Service—Phase I Licensees.* The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a definition of small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, the Commission applies the small business size standard under the SBA rules applicable to ''Cellular and Other Wireless Telecommunications'' companies. This category provides that a small business is a wireless company employing no more than 1,500 persons. According to the Census Bureau data for 1997, only twelve firms out of a total of 1,238 such firms that operated for the entire year in 1997, had 1,000 or more employees. If this general ratio continues in the context of Phase I 220 MHz licensees, the Commission estimates that nearly all such licensees are small businesses under the SBA's small business standard.

34. *220 MHz Radio Service—Phase II Licensees.* The 220 MHz service has both Phase I and Phase II licenses. The Phase II 220 MHz service is a new service, and is subject to spectrum auctions. In the *220 MHz Third Report and Order,* the Commission adopted a small business size standard for defining ''small'' and ''very small'' businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. This small business standard indicates that a ''small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. A ''very small business'' is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that do not exceed $3 million for the preceding three years. The SBA has approved these small size standards. Auctions of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998. In the first auction, 908 licenses were auctioned in three different-sized geographic areas: three nationwide licenses, 30 Regional Economic Area Group (EAG) Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold. Thirty-nine small businesses won 373 licenses in the first 220 MHz auction. A second auction included 225 licenses: 216 EA licenses and 9 EAG licenses. Fourteen companies claiming small business status won 158 licenses. A third auction included four licenses: 2 BEA licenses and 2 EAG licenses in the 220 MHz Service. No small or very small business won any of these licenses.

35. *Specialized Mobile Radio.* The Commission awards ''small entity'' bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz and 900 MHz bands to firms that had revenues of no more than $15 million in each of the three previous calendar years. The Commission awards ''very small entity'' bidding credits to firms that had revenues of no more than $3 million in each of the three previous calendar years. The SBA has approved these small business size standards for the 900 MHz Service. The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz bands. The 900 MHz SMR auction began on December 5, 1995, and closed on April 15, 1996. Sixty bidders claiming that they qualified as small businesses under the $15 million size standard won 263 geographic area licenses in the 900 MHz SMR band. The 800 MHz SMR auction for the upper 200 channels began on October 28, 1997, and was completed on December 8, 1997. Ten bidders claiming that they qualified as small businesses under the $15 million size standard won 38 geographic area licenses for the upper 200 channels in the 800 MHz SMR band. A second auction for the 800 MHz band was held on January 10, 2002 and closed on January 17, 2002 and included 23 BEA licenses. One bidder claiming small business status won five licenses.

36. *Common Carrier Paging.* The SBA has developed a small business size standard for wireless firms within the broad economic census categories of ''Cellular and Other Wireless Telecommunications.'' Under this SBA category, a wireless business is small if it has 1,500 or fewer employees. For the census category of Paging, Census Bureau data for 1997 show that there were 1,320 firms in this category, total, that operated for the entire year. Of this total, 1,303 firms had employment of 999 or fewer employees, and an additional 17 firms had employment of 1,000 employees or more. Thus, under this category and associated small business size standard, the great majority of firms can be considered small.

37. In the *Paging Second Report and Order,* the Commission adopted a size standard for ''small businesses'' for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A small business is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. The SBA has approved this definition. An auction of Metropolitan Economic Area (MEA) licenses commenced on February 24, 2000, and closed on March 2, 2000. Of the 2,499 licenses auctioned, 985 were sold. Fifty-seven companies claiming small business status won 440 licenses. An auction of MEA and Economic Area (EA) licenses commenced on October 30, 2001, and closed on December 5, 2001. Of the 15,514 licenses auctioned, 5,323 were sold. One hundred thirty-two companies claiming small business status purchased 3,724 licenses. A third auction, consisting of 8,874 licenses in each of 175 EAs and 1,328 licenses in all but three of the 51 MEAs commenced on May 13, 2003, and closed on May 28, 2003. Seventy-seven bidders claiming small or very small business status won 2,093 licenses. Currently, there are approximately 74,000 Common Carrier Paging licenses. According to the most recent *Trends in Telephone Service,* 608 private and common carriers reported that they were engaged in the provision of either paging or ''other mobile'' services. Of these, an estimated 589 are small, under the SBA-approved small business size standard, and the majority of common carrier paging providers would qualify as small entities under the SBA definition.

38. *700 MHz Guard Band Licenses.* In the *700 MHz Guard Band Order,* the Commission adopted size standards for ''small businesses'' and ''very small businesses'' for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A small business in this service is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years. Additionally, a very small business is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years. SBA approval of these definitions is not required. An auction of 52 Major Economic Area (MEA) licenses commenced on September 6, 2000, and closed on September 21, 2000. Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced on February 13, 2001, and closed on February 21, 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.

39. *Rural Radiotelephone Service.* The Commission has not adopted a size standard for small businesses specific to the Rural Radiotelephone Service. A significant subset of the Rural Radiotelephone Service is the BETRS. The Commission uses the SBA's small business size standard applicable to ''Cellular and Other Wireless Telecommunications,'' *i.e.*, an entity employing no more than 1,500 persons. There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that there are 1,000 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by the rules and policies adopted herein.

40. *Air-Ground Radiotelephone Service.* The Commission has not adopted a small business size standard specific to the Air-Ground Radiotelephone Service. The Commission will use SBA's small business size standard applicable to ''Cellular and Other Wireless Telecommunications,'' *i.e.*, an entity employing no more than 1,500 persons. There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and the Commission estimates that almost all of them qualify as small under the SBA small business size standard.

41. *Aviation and Marine Radio Services.* Small businesses in the aviation and marine radio services use a very high frequency (VHF) marine or aircraft radio and, as appropriate, an emergency position-indicating radio beacon (and/or radar) or an emergency locator transmitter. The Commission has not developed a small business size standard specifically applicable to these small businesses. For purposes of this analysis, the Commission uses the SBA small business size standard for the category ''Cellular and Other Telecommunications,'' which is 1,500 or fewer employees. Most applicants for recreational licenses are individuals. Approximately 581,000 ship station licensees and 131,000 aircraft station licensees operate domestically and are not subject to the radio carriage requirements of any statute or treaty. For purposes of our evaluations in this analysis, the Commission estimates that there are up to approximately 712,000 licensees that are small businesses (or individuals) under the SBA standard. In addition, between December 3, 1998 and December 14, 1998, the Commission held an auction of 42 VHF Public Coast licenses in the 157.1875–157.4500 MHz (ship transmit) and 161.775–162.0125 MHz (coast transmit) bands. For purposes of the auction, the Commission defined a ''small'' business as an entity that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $15 million dollars. In addition, a ''very small'' business is one that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $3 million dollars. There are approximately 10,672 licensees in the Marine Coast Service, and the Commission estimates that almost all of them qualify as ''small'' businesses under the above special small business size standards.

42. *Fixed Microwave Services.* Fixed microwave services include common carrier, private operational-fixed, and broadcast auxiliary radio services. At present, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not created a size standard for a small business specifically with respect to fixed microwave services. For purposes of this analysis, the Commission uses the SBA small business size standard for the category ''Cellular and Other Telecommunications,'' which is 1,500 or fewer employees. The Commission does not have data specifying the number of these licensees that have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of fixed microwave service licensees that would qualify as small business concerns under the SBA's small business size standard. Consequently, the Commission estimates that there are up to 22,015 common carrier fixed licensees and up to 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services that may be small and may be affected by the rules and policies proposed herein. The Commission noted, however, that the common carrier microwave fixed licensee category includes some large entities.

43. *Offshore Radiotelephone Service.* This service operates on several ultra high frequencies (UHF) television broadcast channels that are not used for television broadcasting in the coastal

areas of states bordering the Gulf of Mexico. There are presently approximately 55 licensees in this service. The Commission is unable to estimate at this time the number of licensees that would qualify as small under the SBA's small business size standard for ''Cellular and Other Wireless Telecommunications'' services. Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees.

44. *Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission defined ''small business'' for the wireless communications services (WCS) auction as an entity with average gross revenues of $40 million for each of the three preceding years, and a ''very small business'' as an entity with average gross revenues of $15 million for each of the three preceding years. The SBA has approved these definitions. The Commission auctioned geographic area licenses in the WCS service. In the auction, which commenced on April 15, 1997 and closed on April 25, 1997, there were seven bidders that won 31 licenses that qualified as very small business entities, and one bidder that won one license that qualified as a small business entity. An auction for one license in the 1670–1674 MHz band commenced on April 30, 2003 and closed the same day. One license was awarded. The winning bidder was not a small entity.

45. *39 GHz Service.* The Commission created a special small business size standard for 39 GHz licenses—an entity that has average gross revenues of $40 million or less in the three previous calendar years. An additional size standard for ''very small business'' is: an entity that, together with affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. The SBA has approved these small business size standards. The auction of the 2,173 39 GHz licenses began on April 12, 2000 and closed on May 8, 2000. The 18 bidders who claimed small business status won 849 licenses. Consequently, the Commission estimates that 18 or fewer 39 GHz licensees are small entities that may be affected by the rules and policies proposed herein.

46. *Multipoint Distribution Service, Multichannel Multipoint Distribution Service, and Instructional Television Fixed Service.* Multichannel Multipoint Distribution Service (MMDS) systems, often referred to as ''wireless cable,'' transmit video programming to subscribers using the microwave frequencies of the Multipoint Distribution Service (MDS) and Instructional Television Fixed Service (ITFS). In connection with the 1996 MDS auction, the Commission defined ''small business'' as an entity that, together with its affiliates, has average gross annual revenues that are not more than $40 million for the preceding three calendar years. The SBA has approved of this standard. The MDS auction resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs). Of the 67 auction winners, 61 claimed status as a small business. At this time, the Commission estimates that of the 61 small business MDS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent MDS licensees that have gross revenues that are not more than $40 million and are thus considered small entities.

47. In addition, the SBA has developed a small business size standard for Cable and Other Program Distribution, which includes all such companies generating $12.5 million or less in annual receipts. According to Census Bureau data for 1997, there were a total of 1,311 firms in this category, total, that had operated for the entire year. Of this total, 1,180 firms had annual receipts of under $10 million, and an additional 52 firms had receipts of $10 million or more but less than $25 million. Consequently, the Commission estimates that the majority of providers in this service category are small businesses that may be affected by the proposed rules and policies.

48. Finally, while SBA approval for a Commission-defined small business size standard applicable to ITFS is pending, educational institutions are included in this analysis as small entities. There are currently 2,032 ITFS licensees, and all but 100 of these licenses are held by educational institutions. Thus, the Commission tentatively concludes that at least 1,932 ITFS licensees are small businesses.

49. *Local Multipoint Distribution Service.* Local Multipoint Distribution Service (LMDS) is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications. The auction of the 986 Local Multipoint Distribution Service (LMDS) licenses began on February 18, 1998 and closed on March 25, 1998. The Commission established a small business size standard for LMDS licenses as an entity that has average gross revenues of less than $40 million in the three previous calendar years. An additional small business size standard for ''very small business'' was added as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. The SBA has approved these small business size standards in the context of LMDS auctions. 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 re-auctioned 161 licenses; there were 32 small and very small winning businesses that won 119 licenses.

50. *218–219 MHz Service.* The first auction of 218–219 MHz (previously referred to as the Interactive and Video Data Service or IVDS) spectrum resulted in 178 entities winning licenses for 594 Metropolitan Statistical Areas (MSAs). Of the 594 licenses, 567 were won by 167 entities qualifying as a small business. For that auction, the Commission defined a small business as an entity that, together with its affiliates, has no more than a $6 million net worth and, after federal income taxes (excluding any carry over losses), has no more than $2 million in annual profits each year for the previous two years. In the *218–219 MHz Report and Order and Memorandum Opinion and Order,* the Commission defined a small business as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and their affiliates, has average annual gross revenues not exceeding $15 million for the preceding three years. A very small business is defined as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and its affiliates, has average annual gross revenues not exceeding $3 million for the preceding three years. The SBA has approved of these definitions. At this time, the Commission cannot estimate the number of licenses that will be won by entities qualifying as small or very small businesses under our rules in future auctions of 218–219 MHz spectrum. Given the success of small businesses in the previous auction, and the prevalence of small businesses in the subscription television services and message communications industries, the Commission assumes for purposes of this analysis that in future auctions, many, and perhaps all, of the licenses may be awarded to small businesses.

51. *Incumbent 24 GH_z Licensees.* This analysis may affect incumbent licensees who were relocated to the 24 GH_z band from the 18 GH_z band, and applicants who wish to provide services in the 24 GH_z band. The applicable SBA

small business size standard is that of ''Cellular and Other Wireless Telecommunications'' companies. This category provides that such a company is small if it employs no more than 1,500 persons. According to Census Bureau data for 1997, there were 977 firms in this category, total, that operated for the entire year. Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more. Thus, under this size standard, the great majority of firms can be considered small. These broader census data notwithstanding, the Commission believes that there are only two licensees in the 24 GH_z band that were relocated from the 18 GH_z band, Teligent and TRW, Inc. It is our understanding that Teligent and its related companies have less than 1,500 employees, though this may change in the future. TRW is not a small entity. Thus, only one incumbent licensee in the 24 GH_z band is a small business entity.

52. *Future 24 GH_z* Licensees. With respect to new applicants in the 24 GH_z band, the Commission has defined ''small business'' as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the three preceding years not exceeding $15 million. ''Very small business'' in the 24 GH_z band is defined as an entity that, together with controlling interests and affiliates, has average gross revenues not exceeding $3 million for the preceding three years. The SBA has approved these definitions. The Commission will not know how many licensees will be small or very small businesses until the auction, if required, is held.

53. *Internet Service Providers.* The SBA has developed a small business size standard for Internet Service Providers. This category comprises establishments ''primarily engaged in providing direct access through telecommunications networks to computer-held information compiled or published by others.'' Under the SBA size standard, such a business is small if it has average annual receipts of $21 million or less. According to Census Bureau data for 1997, there were 2,751 firms in this category that operated for the entire year. Of these, 2,659 firms had annual receipts of under $10 million, and an additional 67 firms had receipts of between $10 million and $24,999,999. Thus, under this size standard, the great majority of firms can be considered small entities.

54. *Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities:* In this Order, the Commission eliminates the current pick-and-choose rule. The changes will restrict competitive LECs' choices to opt into specific terms and conditions of existing interconnection agreements, requiring competitors to opt into entire agreements or negotiate their own agreements with incumbents. The Commission does not expect the new rule to impose additional burdens beyond those under the existing rule.

55. *Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered:* The RFA requires an agency to describe any significant alternatives that it has considered in developing its 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 and reporting requirements under the rule for such 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 such small entities.''

56. In this Order, the Commission amends the pick-and-choose rule in a manner that encourages more customized contracts between competitive and incumbent LECs, as envisioned by the Act. The Order seeks to remove disincentives to the ability of incumbent LECs and competitive LECs to negotiate more customized agreements, including agreements that may include significant concessions in exchange for negotiated benefits. Changing the current rules, in favor of an approach where competitive LECs—including small entities—must opt into entire agreements, rather than individual terms and conditions, may impose additional burdens on these parties than they currently bear. The Commission finds that the current rules, however, expose incumbent LECs to the risk that subsequent entrants may reap a one-sided benefit from negotiated concessions made between the incumbent LEC and the actual contracting competitive LEC, and this creates a disincentive to negotiation to both negotiating parties. This may, in turn, impose additional burdens on competitors and incumbents as the parties attempt to reach agreements and resolve disputes, often through arbitration and litigation, in a regulatory environment that creates disincentives for either party to compromise. For this reason, the Commission does not establish a separate pick-and-choose regime to govern small business incumbents or competitors. The Commission believes the alternative adopted in this Order will serve the Commission's goal of encouraging negotiation while protecting the rights and interests of competitors, including small businesses. The Commission believes that this approach is the least burdensome way to achieve market-driven contract negotiations. Alternatives proposed to address small business concerns were not adopted because they do not accomplish the Commission's objectives in this proceeding.

57. *Report to Congress:* The Commission will send a copy of the Order, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the Order, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the Order and FRFA (or summaries thereof) will also be published in the **Federal Register**.

Final Paperwork Reduction Act Analysis

58. This Order does not contain information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13.

Ordering Clauses

59. Accordingly, IT IS ORDERED that pursuant to sections 1, 3, 4, 252(i), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 153, 154, 252(i), 303(r), the Second Report and Order in CC Docket No. 01–338 IS ADOPTED, and that part 51 of the Commission's rules, 47 CFR part 51, is amended as set forth in Appendix B of the Order. The requirements of this Order shall become effective August 23, 2004.

60. It is further ordered that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this ORDER, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 51

Interconnection, Telecommunications.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rule Changes

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 51 as follows:

PART 51—INTERCONNECTION

■ 1. The authority citation for part 53 continues to read as follows:

Authority: Sections 1–5, 7, 201–05, 207–09, 218, 225–27, 251–54, 256, 271, 303(r), 332, 48 Stat. 1070, as amended, 1077; 47 U.S.C. 151–55, 157, 201–05, 207–09, 218, 225–27, 251–54, 256, 271, 303(r), 332, 47 U.S.C. 157 note, unless otherwise noted.

■ 2. Revise § 51.809 to read as follows:

§ 51.809 Availability of agreements to other telecommunications carriers under section 252(i) of the Act.

(a) An incumbent LEC shall make available without unreasonable delay to any requesting telecommunications carrier any agreement in its entirety to which the incumbent LEC is a party that is approved by a state commission pursuant to section 252 of the Act, upon the same rates, terms, and conditions as those provided in the agreement. An incumbent LEC may not limit the availability of any agreement only to those requesting carriers serving a comparable class of subscribers or providing the same service (*i.e.*, local, access, or interexchange) as the original party to the agreement.

(b) The obligations of paragraph (a) of this section shall not apply where the incumbent LEC proves to the state commission that:

(1) The costs of providing a particular agreement to the requesting telecommunications carrier are greater than the costs of providing it to the telecommunications carrier that originally negotiated the agreement, or

(2) The provision of a particular agreement to the requesting carrier is not technically feasible.

(c) Individual agreements shall remain available for use by telecommunications carriers pursuant to this section for a reasonable period of time after the approved agreement is available for public inspection under section 252(h) of the Act.

[FR Doc. 04–16728 Filed 7–21–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[CC Docket No. 96–45; FCC 03–249]

Federal-State Joint Board on Universal Service

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: This document announces the effective date of the amendments to our rules for modifying the high-cost universal service support mechanism for non-rural carriers and adopting measures to induce states to ensure reasonable comparability of rural and urban rates in areas served by non-rural carriers that contained information collection requirements.

DATES: Sections 54.316(a) and 54.316(c) published at 68 FR 69622, December 15, 2003, were approved by the Office of Management and Budget (OMB) and became effective on June 7, 2004. The OMB approval of the information collection requirements contained in these rules was announced in the **Federal Register** on June 24, 2004.

FOR FURTHER INFORMATION CONTACT: Theodore Burmeister, Attorney, or Jennifer Schneider, Attorney, Wireline Competition Bureau, Telecommunications Access Policy Division, (202) 418–7400.

SUPPLEMENTARY INFORMATION: On October 27, 2003, the Commission released an Order on Remand and Memorandum Opinion and Order in CC Docket No. 96–45 (Order). In this document, in response to the decision of the United States Court of Appeals for the Tenth Circuit and the recommendations of the Federal-State Joint Board on Universal Service, the Commission modified the high-cost universal service support mechanism for non-rural carriers and adopts measures to induce states to ensure reasonable comparability of rural and urban rates in areas served by non-rural carriers. A summary of the Order was published in the **Federal Register**. See 68 FR 69622, December 15, 2003. In that summary, the Commission stated that the modified rules would become effective 30 days after publication in the **Federal Register** except for § 54.316(a) and § 54.316(c) which would become effective upon approval by OMB of the associated information collection requirements. The rule amendments other than § 54.316(a) and § 54.316(c) became effective on January 14, 2004. On June 7, 2004, OMB approved the information collections associated with § 54.316(a) and § 54.316(c), and those sections, pursuant to the Order, became effective. See OMB No. 3060–0894. The OMB approval of the information collection requirements was announced in the **Federal Register** on June 24, 2004. See 69 FR 35345.

List of Subjects in 47 CFR Part 54

Reporting and recordkeeping requirements, Telecommunications, Telephone.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–16740 Filed 7–21–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[FCC 04–154; MM Docket No. 90–66]

Radio Broadcasting Services; Lincoln, Osage Beach, Steelville, and Warsaw, MO

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration, dismissed.

SUMMARY: The Commission dismissed a petition for reconsideration filed by Twenty-One Sound Communications, licensee of Station KNSX(FM), Steelville, Missouri, of a decision, denying its application for review and its petition to upgrade the class of the Steelville station. Since Twenty-One Sound's arguments were fully considered in the prior decision, reconsideration was not warranted. *See* 67 FR 17014 (April 9, 2002).

FOR FURTHER INFORMATION CONTACT: Andrew J. Rhodes, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Memorandum Opinion and Order* in MM Docket No. 90–66, adopted June 30, 2004, and released July 8, 2004. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160, or via e-mail *http://www.BCPIWEB.com.* This document is not subject to the Congressional Review Act. (The Commission is, therefore, not required to submit a copy of this to GAO, pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A), because this proposed rule was denied or dismissed.)

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–16735 Filed 7–21–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 73 and 74

[ET Docket No. 01–75; FCC 02–298]

Broadcast Auxiliary Service Rules

AGENCY: Federal Communications Commission.

ACTION: Correcting amendment.

SUMMARY: On November 13, 2002, the Commission released a Report and Order in the matter of Broadcast Auxiliary Service Rules. This document contains corrections to the final regulations that appeared in the **Federal Register** of March 17, 2003 (68 FR 12744).

DATES: Effective July 22, 2004.

FOR FURTHER INFORMATION CONTACT: Ted Ryder, Office of Engineering and Technology, (202) 418–2803.

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of this correction relate to Broadcast Auxiliary Service Rules under §§ 73.3598 and 74.551 of the rules.

Need for Correction

As published, the final regulations contain errors, which require immediate correction.

List of Subjects in 47 CFR Parts 73 and 74

Communications equipment, Radio, Reporting and recordkeeping requirements, Television.

■ Accordingly, 47 CFR parts 73 and 74 are corrected by making the following correcting amendments:

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 73.3598 is amended by revising paragraph (a) to read as follows:

§ 73.3598 Period of Construction.

(a) Each original construction permit for the construction of a new TV, AM, FM or International Broadcast; low power TV; TV translator; TV booster; FM translator; or FM booster, or to make changes in such existing stations, shall specify a period of three years from the date of issuance of the original construction permit within which construction shall be completed and application for license filed. Each original construction permit for the construction of a new LPFM station shall specify a period of eighteen months from the date of issuance of the construction permit within which construction shall be completed and application for license filed.

* * * * *

PART 74—EXPERIMENTAL RADIO, AUXILIARY, SPECIAL BROADCASTING AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

■ 3. The authority citation for part 74 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 307, 336(f), 336(h) and 554.

■ 4. Section 74.551 is amended by revising paragraph (a) to read as follows:

§ 74.551 Equipment changes.

(a) Modifications may be made to an existing authorization in accordance with §§ 1.929 and 1.947 of this chapter.

* * * * *

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 04–16736 Filed 7–21–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 101

[WT Docket No. 97–81; FCC 99–415]

Multiple Address Systems

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: The Commission adopted new rules to maximize the use of spectrum designated for Multiple Address Systems (MAS) in the Fixed Microwave Services. One of the rules contained new and modified information collection requirements and was published in the **Federal Register** on April 3, 2000. This document announces the effective date.

DATES: Section 101.1327, published at 65 FR 17445 (April 3, 2000), became effective on September 1, 2000.

FOR FURTHER INFORMATION CONTACT: Diana Cohen or Jennifer Mock, Broadband Division, Wireless Telecommunications Bureau at (202) 418–2487.

SUPPLEMENTARY INFORMATION: On September 1, 2000, the Office of Management and Budget (OMB) approved the information collection requirements contained in § 101.1327, pursuant to OMB Control No. 3060–0947. Accordingly, the information collection requirements contained in this rule became effective on September 1, 2000.

List of Subjects in 47 CFR Part 101

Communications equipment, Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 04–16737 Filed 7–21–04; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 030221039–4208–11; I.D. 071504D]

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Atlantic Large Whale Take Reduction Plan (ALWTRP)

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

ACTION: Temporary rule.

SUMMARY: The Assistant Administrator for Fisheries (AA), NOAA, announces temporary restrictions consistent with the requirements of the ALWTRP's implementing regulations. These regulations apply to lobster trap/pot and anchored gillnet fishermen in an area totaling approximately 1,638 square nautical miles (nm^2) (5,618 km^2) in July and approximately 1,688 square nautical miles (nm^2) (5,790 km^2) in August, east of Cape Cod, MA for 15 days. The purpose of this action is to provide protection to an aggregation of North Atlantic right whales (right whales).

DATES: Effective beginning at 0001 hours July 24, 2004, through 2400 hours August 7, 2004.

ADDRESSES: Copies of the proposed and final Dynamic Area Management (DAM) rules, Environmental Assessments (EAs), Atlantic Large Whale Take Reduction Team (ALWTRT) meeting summaries, and progress reports on implementation of the ALWTRP may also be obtained by writing Diane Borggaard, NMFS/Northeast Region, One Blackburn Drive, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: Diane Borggaard, NMFS/Northeast Region, 978–281–9328 x6503; or Kristy Long, NMFS, Office of Protected Resources, 301–713–1401.

SUPPLEMENTARY INFORMATION:

Electronic Access

Several of the background documents for the ALWTRP and the take reduction planning process can be downloaded from the ALWTRP web site at *http://www.nero.noaa.gov/whaletrp/*.

Background

The ALWTRP was developed pursuant to section 118 of the Marine Mammal Protection Act (MMPA) to reduce the incidental mortality and serious injury of three endangered species of whales (right, fin, and humpback) as well as to provide conservation benefits to a fourth non-endangered species (minke) due to incidental interaction with commercial fishing activities. The ALWTRP, implemented through regulations codified at 50 CFR 229.32, relies on a combination of fishing gear modifications and time/area closures to reduce the risk of whales becoming entangled in commercial fishing gear (and potentially suffering serious injury or mortality as a result).

On January 9, 2002, NMFS published the final rule to implement the ALWTRP's DAM program (67 FR 1133). On August 26, 2003, NMFS amended the regulations by publishing a final rule, which specifically identified gear modifications that may be allowed in a DAM zone (68 FR 51195). The DAM program provides specific authority for NMFS to restrict temporarily on an expedited basis the use of lobster trap/pot and anchored gillnet fishing gear in areas north of 40° N. lat. to protect right whales. Under the DAM program, NMFS may: (1) require the removal of all lobster trap/pot and anchored gillnet fishing gear for a 15–day period; (2) allow lobster trap/pot and anchored gillnet fishing within a DAM zone with gear modifications determined by NMFS to sufficiently reduce the risk of entanglement; and/or (3) issue an alert to fishermen requesting the voluntary removal of all lobster trap/pot and anchored gillnet gear for a 15–day period and asking fishermen not to set any additional gear in the DAM zone during the 15–day period.

A DAM zone is triggered when NMFS receives a reliable report from a qualified individual of three or more right whales sighted within an area (75 nm^2 (139 km^2)) such that right whale density is equal to or greater than 0.04 right whales per nm^2 (1.85 km^2). A qualified individual is an individual ascertained by NMFS to be reasonably able, through training or experience, to identify a right whale. Such individuals include, but are not limited to, NMFS staff, U.S. Coast Guard and Navy personnel trained in whale identification, scientific research survey personnel, whale watch operators and naturalists, and mariners trained in whale species identification through disentanglement training or some other training program deemed adequate by NMFS. A reliable report would be a credible right whale sighting.

On July 11, 2004, NMFS Aerial Survey Team reported a sighting of four right whales in the proximity of 41° 33′ N lat. and 68° 38′ W long. This position lies east of Cape Cod, MA. Thus, NMFS has received a reliable report from a qualified individual of the requisite right whale density to trigger the DAM provisions of the ALWTRP.

Once a DAM zone is triggered, NMFS determines whether to impose restrictions on fishing and/or fishing gear in the zone. This determination is based on the following factors, including but not limited to: the location of the DAM zone with respect to other fishery closure areas, weather conditions as they relate to the safety of human life at sea, the type and amount of gear already present in the area, and a review of recent right whale entanglement and mortality data.

NMFS has reviewed the factors and management options noted above relative to the DAM under consideration. As a result of this review, NMFS prohibits lobster trap/pot and anchored gillnet gear in this area during the 15–day restricted period unless it is modified in the manner described in this temporary rule. Through July 31, 2004, the DAM zone and restrictions include waters bounded by the following coordinates:

41°53′N, 69°06′W (NW Corner)
41°53′N, 68°21.5′W
41°45′N, 68°17′W
41°45′N, 68°11′W
41°12′N, 68°11′W
41°12′N, 69°06′W

In July, the DAM zone excludes areas of overlap within the Seasonal Area Management (SAM) East area. On August 1, 2004, due to the termination of the gear restrictions within the SAM East area, the DAM zone and restrictions will be expanded to include the waters bounded by the following coordinates:

41° 53′N , 69° 06′W (NW Corner)
41° 53′N, 68° 11′W
41° 12′N, 68° 11′W
41° 12′N, 69° 06′W
41° 53′N, 69° 06′W

In addition to those gear modifications currently implemented under the ALWTRP at 50 CFR 229.32, the following gear modifications are required in the DAM zone. If the requirements and exceptions for gear modification in the DAM zone, as described below, differ from other ALWTRP requirements for any overlapping areas and times, then the more restrictive requirements will apply in the DAM zone. Special note for gillnet fisherman: The southwest corner of this DAM zone overlaps the year round Northeast Multispecies' Closed Area I. This DAM action does not supersede Northeast multispecies closures found at 50 CFR 648.81.

Lobster Trap/Pot Gear

Fishermen utilizing lobster trap/pot gear within the portion of the Offshore Lobster Waters Area and the Great South Channel Restricted Lobster Area that overlap with the DAM zone are required to utilize all of the following gear modifications while the DAM zone is in effect:

1. Groundlines must be made of either sinking or neutrally buoyant line. Floating groundlines are prohibited;
2. All buoy lines must be made of either sinking or neutrally buoyant line, except the bottom portion of the line, which may be a section of floating line not to exceed one-third the overall length of the buoy line;
3. Fishermen are allowed to use two buoy lines per trawl; and
4. A weak link with a maximum breaking strength of 1,500 lb (680.4 kg) must be placed at all buoys.

Anchored Gillnet Gear

Fishermen utilizing anchored gillnet gear within the portion of the Other Northeast Gillnet Waters and the Great South Channel Restricted Gillnet Area that overlap with the DAM zone are required to utilize all the following gear modifications while the DAM zone is in effect:

1. Groundlines must be made of either sinking or neutrally buoyant line. Floating groundlines are prohibited;
2. All buoy lines must be made of either sinking or neutrally buoyant line, except the bottom portion of the line, which may be a section of floating line not to exceed one-third the overall length of the buoy line;
3. Fishermen are allowed to use two buoy lines per string;
4. Each net panel must have a total of five weak links with a maximum breaking strength of 1,100 lb (498.8 kg). Net panels are typically 50 fathoms (91.4 m) in length, but the weak link requirements would apply to all variations in panel size. These weak links must include three floatline weak

links. The placement of the weak links on the floatline must be: one at the center of the net panel and one each as close as possible to each of the bridle ends of the net panel. The remaining two weak links must be placed in the center of each of the up and down lines at the panel ends; and

5. All anchored gillnets, regardless of the number of net panels, must be securely anchored with the holding power of at least a 22 lb (10.0 kg) Danforth-style anchor at each end of the net string.

The restrictions will be in effect beginning at 0001 hours July 24, 2004, through 2400 hours August 7, 2004, unless terminated sooner or extended by NMFS through another notification in the **Federal Register**.

The restrictions will be announced to state officials, fishermen, ALWTRT members, and other interested parties through e-mail, phone contact, NOAA website, and other appropriate media immediately upon filing with the **Federal Register**.

Classification

In accordance with section 118(f)(9) of the MMPA, the Assistant Administrator (AA) for Fisheries has determined that this action is necessary to implement a take reduction plan to protect North Atlantic right whales.

Environmental Assessments for the DAM program were prepared on December 28, 2001, and August 6, 2003. This action falls within the scope of the analyses of these EAs, which are available from the agency upon request.

NMFS provided prior notice and an opportunity for public comment on the regulations establishing the criteria and procedures for implementing a DAM zone. Providing prior notice and opportunity for comment on this action, pursuant to those regulations, would be impracticable because it would prevent NMFS from executing its functions to protect and reduce serious injury and mortality of endangered right whales. The regulations establishing the DAM program are designed to enable the agency to help protect unexpected concentrations of right whales. In order to meet the goals of the DAM program, the agency needs to be able to create a DAM zone and implement restrictions on fishing gear as soon as possible once the criteria are triggered and NMFS determines that a DAM restricted zone is appropriate. If NMFS were to provide prior notice and an opportunity for public comment upon the creation of a DAM restricted zone, the aggregated right whales would be vulnerable to entanglement which could result in serious injury and mortality. Additionally, the right whales would most likely move on to another location before NMFS could implement the restrictions designed to protect them, thereby rendering the action obsolete. Therefore, pursuant to 5 U.S.C. 553(b)(B), the AA finds that good cause exists to waive prior notice and an opportunity to comment on this action to implement a DAM restricted zone to reduce the risk of entanglement of endangered right whales in commercial lobster trap/pot and anchored gillnet gear as such procedures would be impracticable.

For the same reasons, the AA finds that, under 5 U.S.C. 553(d)(3), good cause exists to waive the 30–day delay in effective date. If NMFS were to delay for 30 days the effective date of this action, the aggregated right whales would be vulnerable to entanglement, which could cause serious injury and mortality. Additionally, right whales would likely move to another location between the time NMFS approved the action creating the DAM restricted zone and the time it went into effect, thereby rendering the action obsolete and ineffective. Nevertheless, NMFS recognizes the need for fishermen to have time to either modify or remove (if not in compliance with the required restrictions) their gear from a DAM zone once one is approved. Thus, NMFS makes this action effective 2 days after the date of publication of this notice in the **Federal Register**. NMFS will also endeavor to provide notice of this action to fishermen through other means as soon as the AA approves it, thereby providing approximately 3 additional days of notice while the Office of the **Federal Register** processes the document for publication.

NMFS determined that the regulations establishing the DAM program and actions such as this one taken pursuant to those regulations are consistent to the maximum extent practicable with the enforceable policies of the approved coastal management program of the U.S. Atlantic coastal states. This determination was submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act. Following state review of the regulations creating the DAM program, no state disagreed with NMFS' conclusion that the DAM program is consistent to the maximum extent practicable with the enforceable policies of the approved coastal management program for that state.

The DAM program under which NMFS is taking this action contains policies with federalism implications warranting preparation of a federalism assessment under Executive Order 13132. Accordingly, in October 2001 and March 2003, the Assistant Secretary for Intergovernmental and Legislative Affairs, DOC, provided notice of the DAM program and its amendments to the appropriate elected officials in states to be affected by actions taken pursuant to the DAM program. Federalism issues raised by state officials were addressed in the final rules implementing the DAM program. A copy of the federalism Summary Impact Statement for the final rules is available upon request (**ADDRESSES**).

The rule implementing the DAM program has been determined to be not significant under Executive Order 12866.

Authority: 16 U.S.C. 1361 *et seq.* and 50 CFR 229.32(g)(3).

Dated: July 19, 2004.

Rebecca Lent,

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

[FR Doc. 04–16738 Filed 7–19–04; 3:12 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 69, No. 140
Thursday, July 22, 2004

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NE–50–AD]

RIN 2120–AA64

Airworthiness Directives; Hartzell Propeller Inc. Model HC–B3TN–5( )/T10282( ) Propellers

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede an existing Priority Letter Airworthiness Directive (AD) for Hartzell Propeller Inc. Model HC–B3TN–5()/T10282() propellers. That Priority Letter AD currently requires initial and repetitive inspections of the blade pilot tube bore area. This proposed AD would require the same inspections. This proposed AD results from a review of all currently effective ADs. That review determined that Priority Letter AD 88–24–15 was not published in the **Federal Register** to make it effective to all operators, as opposed to just the operators who received actual notice of the original Priority Letter AD. This proposed AD also results from the discovery that the original AD omitted an airplane model with a certain Supplemental Type Certificate (STC) from the applicability. We are proposing this AD to prevent possible blade failure near the hub which can result in blade separation, engine separation, damage to the airplane, and possible loss of the airplane.

DATES: We must receive any comments on this proposed AD by September 20, 2004.

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

- By mail: Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–NE–50–AD, 12 New England Executive Park, Burlington, MA 01803–5299.
- By fax: (781) 238–7055.
- By e-mail: *9-ane-adcomment@faa.gov.*

You can get the service information identified in this proposed AD from Hartzell Propeller Inc. Technical Publications Department, One Propeller Place, Piqua, OH 45356; telephone (937) 778–4200; fax (937) 778–4391.

You may examine the AD docket, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Melissa T. Bradley, Aerospace Engineer, Chicago Aircraft Certification Office, FAA, Small Airplane Directorate, 2300 East Devon Avenue, Des Plaines, IL 60018; telephone (847) 294–8110; fax (847) 294–7834.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''AD Docket No. 2003–NE–50–AD'' in the subject line of your comments. If you want us to acknowledge receipt of your mailed comments, send us a self-addressed, stamped postcard with the docket number written on it; we will date-stamp your postcard and mail it back to you. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. If a person contacts us verbally, and that contact relates to a substantive part of this proposed AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

Examining the AD Docket

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

Discussion

On November 18, 1988, the FAA issued Priority Letter AD 88–24–15, applicable to Hartzell Propeller Inc. model HC–B3TN–5()/T10282() propellers. That AD requires initial and repetitive inspections of the blade pilot tube bore area, and repair or replacement of parts as necessary. That AD was the result of a report of a cracked blade found on a propeller. That condition, if not corrected, could result in possible blade failure near the hub which can result in blade separation, engine separation, damage to the airplane, and possible loss of the airplane.

Actions Since AD 88–24–15 Was Issued

Since that AD was issued, we have reviewed all currently effective ADs. We found that Priority Letter AD 88–24–15 was not published in the **Federal Register** to make it effective to all operators, as opposed to just the operators who received actual notice of the original Priority Letter AD.

Also, since that AD was issued, the Chicago Aircraft Certification Office approved as optional terminating action to the repetitive inspections, an alternative method of compliance (AMOC). That AMOC exempts propeller model HC–B3TN–5() with blades part number (P/N) T10282N(), T10282NB(), T10282NK(), or T10282NE() installed, from the AD action. This proposed AD incorporates that AMOC.

Also, since that AD was issued, we discovered that the AD applicability omitted Fairchild model SA226–AT airplanes, modified by Garrett General Aviation Services Company, STC SA345GL–D, with Garrett Model TPE331–10UA–511G engines. We are issuing this proposed AD to ensure that all affected propellers be inspected.

Relevant Service Information

We have reviewed and approved the technical contents of Hartzell Service Bulletin (SB) No. 136I, dated April 25, 2003, which describes the procedures

for doing the inspections required by this proposed AD.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other products of this same type design. Therefore, we are proposing this AD, which would require for Hartzell Propeller Inc. model HC–B3TN–5()/T10282() propellers (excluding model HC–B3TN–5() propellers with blades P/N T10282N(), T10282NB(), T10282NK(), or T10282NE() installed), initial and repetitive inspections of the blade pilot tube bore area, and repair or replacement of parts as necessary. The proposed AD would require that you do these actions using the service information described previously.

Cost of Compliance

By adding STC SA345GL applicability, there are about 50 additional Hartzell Propeller Inc. Model HC–B3TN–5()/T10282() propellers of the affected design in the worldwide fleet. Including the additional applicability, we estimate a total of 500 propellers have been installed on airplanes of U.S. registry and would be affected by this proposed AD. We also estimate that it would take about 2.5 work hours per propeller blade to perform the proposed actions, and that the average labor rate is $65 per work hour. Based on these figures, we estimate the total cost of the proposed AD to U.S. operators is $243,750.

Regulatory Findings

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

For the reasons discussed above, I certify that the 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. Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this proposal and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**. Include ''AD Docket No. 2003–NE–50–AD'' in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding a new airworthiness directive, to read as follows:

Hartzell Propeller Inc.: Docket No. 2003–NE–50–AD. Supersedes Priority Letter AD 88–24–15.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this airworthiness directive (AD) action by September 20, 2004.

Affected ADs

(b) This AD supersedes Priority Letter AD 88–24–15.

Applicability: (c) This AD applies to Hartzell Propeller Inc. model HC–B3TN–5()/T10282() propellers installed on the airplane and engine combinations shown in the following Table 1 (excluding propellers with blades P/N T10282N(), T10282NB(), T10282NK(), or T10282NE() installed).

TABLE 1.—APPLICABILITY

Airplane model	Propeller model	Engine model
Fairchild SA226–TC. Fairchild SA226–AT ..... Fairchild SA226–T.	HC–B3TN–5()/T10282()	Garrett TPE331–10UA–511G

(d) For reference, airplanes incorporating supplemental type certificates (STCs) SA344GL–D, SA4872SW, and SA345GL–D have these engine, propeller, and airplane combinations.

(e) The parentheses appearing in the propeller model number indicates the presence or absence of an additional letter(s) that varies the basic propeller model. This AD still applies regardless of whether these letters are present or absent in the propeller model designation.

Unsafe Condition

(f) This AD results from a review of all currently effective ADs. That review determined that Priority Letter AD 88–24–15 was not published in the **Federal Register** to make it effective to all operators, as opposed to just the operators who received actual notice of the original Priority Letter AD. This AD also results from the discovery that the original AD omitted an airplane model with a certain STC from the applicability. We are issuing this AD to prevent possible blade failure near the hub which can result in blade separation, engine separation, damage to the airplane, and possible loss of the airplane.

Compliance: (g) You are responsible for having the actions required by this AD performed within the compliance times specified unless the actions have already been done.

Required Actions

(h) Within 10 hours time-in-service (TIS) after the effective date of this AD, perform a document search to determine if the following actions have been done:

(1) The propeller blades meet the initial and repetitive compliance requirements of Priority Letter AD 88–24–15.

(2) The T10282() propeller blades have been replaced with P/N T10282N(), T10282NB(), T10282NK(), or T10282NE() propeller blades.

(i) If the actions in paragraph (h)(1) or (h)(2) of this AD have not been done, then do one of the following:

(1) Inspect the blades using Paragraph 3 of Accomplishment Instructions of Hartzell Service Bulletin (SB) No. 136I, dated April 25, 2003, within 500 hours time-since-new (TSN) or time-since-last-overhaul (TSLO) and not to exceed two years after the effective date of this AD, whichever occurs first; and thereafter within 500 service-hour intervals; or

(2) Replace with P/N T10282N(), T 10282NB(), T10282NK(), or T10282NE() propeller blades as applicable, within 500 hours TSN or TSLO and not to exceed two years after the effective date of this AD, whichever occurs first.

(j) If the actions in paragraph (h)(1) of this AD have been done, but not the actions in paragraph (h)(2) of this AD, then do the following:

(1) Inspect the blades within 500 hours since the last Hartzell SB No. 136E, or later Revision, inspection, and thereafter within 500 service hour intervals, using Paragraph 3 of the Accomplishment Instructions of Hartzell SB No. 136I, dated April 25, 2003.

(2) Replace before further flight all blades showing evidence of cracks or other unairworthy conditions, as noted in Hartzell SB No. 136I, dated April 25, 2003, with airworthy blades.

Hartzell SB No. 136

(k) Since Hartzell SB No. 136E was issued, the SB has been revised to 136F, 136G, 136H, and 136I. Any of these revisions are suitable for determining past compliance, as they are all approved as alternative methods of compliance (AMOC). After the effective date of this AD, compliance is restricted to SB No. 136I or later versions when approved by an AMOC.

Optional Terminating Action

(l) Installation of propeller blades, P/N T10282NE(), T10282NB(), T10282NK(), or T10282NE() as applicable, onto a Hartzell Propeller Inc. model HC–B3TN–5() propeller constitutes terminating action to the inspections, repairs, and replacements specified in paragraphs (i) through (j)(2) of this AD.

Alternative Methods of Compliance

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

Material Incorporated by Reference

(n) None.

Related Information

(o) None.

Issued in Burlington, Massachusetts, on July 16, 2004.

Robert Guyotte,

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

[FR Doc. 04–16662 Filed 7–21–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–85–AD]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–135 and EMB–145 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 EMBRAER Model EMB–135 and EMB–145 series airplanes, that would have required inspection of the housings of the main landing gear (MLG) leg strut bushings; repair of the housings if necessary; and replacement of the MLG leg strut bushings with new bushings. This new action revises the proposed rule by requiring inspection of additional MLG leg strut bushings; removing the requirement to replace the MLG leg strut bushings; and clarifying that related investigative and corrective actions must be accomplished. The actions specified by this new proposed AD are intended to prevent corrosion of the housings of the MLG leg strut bushings and consequent failure of the MLG. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by August 16, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–85–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–85–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 Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

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

SUPPLEMENTARY INFORMATION:

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–85–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–85–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 EMBRAER Model EMB–135 and EMB–145 series airplanes, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on December 31, 2003 (68 FR 75468). That NPRM would have required inspection of the housings of the main landing gear (MLG) leg strut bushings; repair of the housings if necessary; and replacement of the MLG leg strut bushings with new bushings. That NPRM was prompted by a report that corrosion was discovered

on the housings of certain MLG leg strut bushings due to water accumulation in the holes of those bushings. That condition, if not corrected, could result in failure of the MLG.

Explanation of New Relevant Service Information

Since the issuance of the original NPRM, EMBRAER has issued Service Bulletin 145–32–0066, Change 03, dated April 19, 2004. (The original NPRM refers to Change 01 of that service bulletin, dated August 15, 2002, as the appropriate source of service information for the proposed actions.) Change 03 of the service bulletin identifies additional part numbers and serial numbers of MLG leg struts that are affected by that service bulletin. Change 03 of the service bulletin describes procedures for an inspection for corrosion of the housings of the MLG leg strut bushings; and related investigative and corrective actions; which are similar to those described in Change 01 of the service bulletin. The procedures for investigative and corrective actions include removing any corrosion; enlarging the diameter of the bushing housing, if necessary; performing a dye-penetrant inspection of the housings for further sign of corrosion, if necessary; reworking and installing the bushings; and applying corrosion-inhibiting compound to the bushing housings. The Departmento de Aviacao Civil, which is the airworthiness authority for Brazil, has approved this service bulletin.

EMBRAER Service Bulletin 145–32–0066, Change 03, refers to Embraer Liebherr Equipamentos do Brasil S.A. (ELEB) Service Bulletin 2309–2006–32–01, Revision 03, dated April 19, 2004, as an additional source of service information for the inspection and repair of the MLG leg strut bushings. The ELEB service bulletin is included within the EMBRAER service bulletin.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. The FAA has duly considered the comments received.

Request To Revise Applicability Statement

Several commenters request that we revise the applicability statement of the original NPRM to eliminate certain airplane serial numbers. The commenters note that defining the applicability in terms of installed MLG leg strut part numbers results in airplanes that are not affected by the original NPRM being included in the applicability. The commenters point out that the bushing housings on certain airplane serial numbers have already received corrosion protection, and thus should not be subject to the proposed actions. Other airplane serial numbers have received, in production, a modification equivalent to that in EMBRAER Service Bulletin 145–32–0066, Change 01.

We partially agree with the commenters' requests. We agree to revise the manner in which the applicability is stated in this supplemental NPRM, so that it more closely matches the effectivity of the service bulletin. Thus, instead of listing the affected MLG leg strut part numbers, the applicability statement of this supplemental NPRM refers to the table under the heading ''Affected component'' in paragraph 1.B., ''Effectivity,'' of EMBRAER Service Bulletin 145–32–0066, Change 03, as the source for affected MLG leg strut part and serial numbers.

However, we do not agree to revise the applicability statement to exclude certain airplane serial numbers. The service bulletin notes that the MLG leg struts are line replaceable units. Thus, an affected MLG leg strut may have been removed from the airplane on which it was delivered and subsequently installed on an airplane outside the serial number range specified in the service bulletin.

Request To Remove Replacement Requirement

One commenter, the airplane manufacturer, requests that we remove the requirement to replace the MLG leg strut bushings, which is specified in paragraph (b) of the original NPRM. The commenter states that the new bushings are not necessary to prevent corrosion because, although water can accumulate in the holes of the leg strut bushings, the primary cause of the unsafe condition is lack of corrosion protection in the housings. Thus, the application of corrosion protection in the housings, as described in the service bulletin, eliminates the need to replace the bushings. We concur and have omitted paragraph (b) of the original NPRM from this supplemental NPRM.

Request To Provide Credit for Actions Accomplished Previously

One commenter requests that we revise the original NPRM to give credit for accomplishment of the proposed actions per EMBRAER Service Bulletin 145–32–0066, dated January 8, 2002.

We concur. We have reviewed the original issue of the service bulletin and find that the procedures therein are substantively similar to those in Change 01. Accordingly, we have added a new paragraph (b) to this supplemental NPRM to give credit for actions accomplished before the effective date of the AD per the original issue, Change 01, or Change 02 of the service bulletin. (As explained previously, paragraph (b) of the original NPRM has been omitted from this supplemental NPRM. Thus, adding a new paragraph (b) does not necessitate the re-identification of subsequent paragraphs.)

Explanation of Additional Change to Original NPRM

We have revised paragraph (a) of the original NPRM to clarify that, if no corrosion is found, all applicable actions specified in the service bulletin (*e.g.*, applying corrosion-inhibiting compound) must be done to comply with the intent of the proposed AD.

We have also revised the estimated number of work hours stated in the Cost Impact section of this supplemental NPRM from 7 to 14, to reflect the estimate contained in the EMBRAER service bulletin.

Conclusion

Since certain changes described previously expand the scope of the originally proposed rule, we have determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

Cost Impact

We estimate that 75 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 14 work hours per airplane to accomplish the proposed inspection of the bushing housings for corrosion, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the proposed inspection on U.S. operators is estimated to be $68,250, or $910 per airplane.

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 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:

Empresa Brasileira De Aeronautica S.A. (EMBRAER): Docket 2003–NM–85–AD.

Applicability: Model EMB–135 and EMB–145 series airplanes, certificated in any category, equipped with a main landing gear (MLG) leg strut having a part number (P/N) and serial number (S/N) listed in the table under the heading ''Affected component'' in paragraph 1.B., ''Effectivity,'' of EMBRAER Service Bulletin 145–32–0066, Change 03, dated April 19, 2004.

Compliance: Required as indicated, unless accomplished previously.

To prevent corrosion of the housings of the main landing gear (MLG) leg strut bushings and consequent failure of the MLG, accomplish the following:

Inspection and Investigative and Corrective Actions

(a) Within 5,500 flight hours after the effective date of this AD, perform a detailed inspection of the housings of the MLG leg strut bushings for corrosion per the Accomplishment Instructions of EMBRAER Service Bulletin 145–32–0066, Change 03, dated April 19, 2004.

(1) If no corrosion is found, before further flight, do all applicable actions in and per the Accomplishment Instructions of the service bulletin.

(2) If any corrosion is found, before further flight, do all applicable investigative and corrective actions in and per the Accomplishment Instructions of the service bulletin.

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.''

Note 2: EMBRAER Service Bulletin 145–32–0066, Change 03, dated April 19, 2004, refers to Embraer Liebherr Equipamentos do Brasil S.A. (ELEB) Service Bulletin 2309–2006–32–01, Revision 03, dated April 19, 2004, as an additional source of service information for the inspection and repair of the MLG leg strut bushings. The ELEB service bulletin is included within the EMBRAER service bulletin.

Inspections Accomplished Per Previous Issue of Service Bulletin

(b) Inspections and related investigative and corrective actions, accomplished before the effective date of this AD per EMBRAER Service Bulletin 145–32–0066, dated January 8, 2002; Change 01, dated August 15, 2002; or Change 02, dated February 26, 2004; are considered acceptable for compliance with the corresponding action specified in this AD.

Alternative Methods of Compliance

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

Note 3: The subject of this AD is addressed in Brazilian airworthiness directive 2002–12–01, effective January 6, 2003.

Issued in Renton, Washington, on July 9, 2004.

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–16681 Filed 7–21–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–18661; Directorate Identifier 2003–NM–273–AD]

RIN 2120–AA64

Airworthiness Directives; Short Brothers Model SD3–60, SD3–SHERPA, and SD3–60 SHERPA Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede an existing airworthiness directive (AD) for certain Short Brothers Model SD3–60, SD3–SHERPA, and SD3–60 SHERPA series airplanes. That AD currently requires a one-time inspection to detect cracks and/or corrosion of the gland nut on the shock absorber of the main landing gear (MLG), and follow-on actions. That AD also requires repair or replacement of any cracked/corroded gland nut with a new nut. This proposed AD would add airplanes to the applicability; add repetitive inspections and corrective actions; and provide an optional action that would end the repetitive inspections. This proposed AD is prompted by reports of cracked aluminum alloy gland nuts that had been inspected previously using the existing AD. We are proposing this AD to prevent failure of the aluminum alloy gland nut on the MLG shock absorber, which could cause the MLG to collapse.

DATES: We must receive comments on this proposed AD by August 23, 2004.

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

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400

Seventh Street SW., Nassif Building, room PL–401, Washington, DC 20590.

• *Fax:* (202) 493–2251.

• *Hand Delivery:* room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You can get the service information identified in this proposed AD from Short Brothers, Airworthiness & Engineering Quality, P.O. Box 241, Airport Road, Belfast BT3 9DZ, Northern Ireland.

You may examine the contents of this AD docket on the Internet at *http://dms.dot.gov*, or at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, on the plaza level of the Nassif Building, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–1175; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Docket Management System (DMS)

The FAA has implemented new procedures for maintaining AD dockets electronically. As of May 17, 2004, new AD actions are posted on DMS and assigned a docket number. We track each action and assign a corresponding directorate identifier. The DMS AD docket number is in the form ''Docket No. FAA–2004–99999.'' The Transport Airplane Directorate identifier is in the form ''Directorate Identifier 2004–NM–999–AD.'' Each DMS AD docket also lists the directorate identifier (''Old Docket Number'') as a cross-reference for searching purposes.

Comments Invited

We invite you to submit any written relevant data, views, or arguments regarding this proposed AD. Send your comments to an address listed under **ADDRESSES.** Include ''Docket No. FAA–2004–18661; Directorate Identifier 2003–NM–273–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of our docket Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov*.

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

Examining the Docket

You may examine the AD docket in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the DMS receives them.

Discussion

On October 18, 1996, we issued AD 96–22–09, amendment 39–9797 (61 FR 57311, November 6, 1996), for certain Short Brothers Model SD3–60 and SD3–SHERPA series airplanes. That AD requires a one-time inspection to detect cracks and/or corrosion of the gland nut on the shock absorber of the main landing gear (MLG), and follow-on actions. That AD also requires repair or replacement of any cracked/corroded gland nut with a new nut. That AD was prompted by a report indicating that, due to stress corrosion and cracking of the gland nut on the shock absorber, the MLG collapsed on an in-service airplane. We issued that AD to detect and correct such stress corrosion or cracking in a timely manner and consequent reduced structural integrity of the gland nut, which could result in separation of the shock absorber cylinder from the MLG shock absorber body and, consequently, lead to the collapse of the MLG during landing.

Actions Since Existing AD Was Issued

Since we issued AD 96–22–09, the Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, notified us of cracked aluminum alloy gland nuts on the MLG shock absorber of a Short Brothers Model SD3–60 and an SD3–SHERPA series airplane. These airplanes had been inspected using AD 96–22–09. The cracks were caused by corrosion around the inner shoulder radius of the gland nut. This condition, if not corrected, could cause the aluminum alloy gland nut on the MLG shock absorber to fail. A failed gland nut could cause the MLG to collapse.

The gland nut that is installed on certain Short Brothers Model SD3–60 SHERPA series airplanes is almost identical to that on the Model SD3–60 and SD3–SHERPA series airplanes that had the cracked gland nuts. Therefore, the Model SD3–60 SHERPA series airplanes may be subject to the same unsafe condition that occurred on the Model SD3–60 and SD3–SHERPA series airplanes.

Relevant Service Information

Short Brothers has issued the following service bulletins:

• Service Bulletin SD360 SHERPA–32–1, dated June 30, 2003, for Model SD3–60 SHERPA series airplanes;

• Service Bulletin SD360–32–34, Revision 1, dated June 30, 2003, for Model SD3–60 series airplanes; and

• Service Bulletin SD3 SHERPA–32–2, Revision 1, dated June 30, 2003, for Model SD3–SHERPA series airplanes.

These service bulletins describe procedures for doing a detailed inspection for corrosion and/or cracks of the aluminum alloy gland nut, part number (P/N) 200920604, on the MLG shock absorber, and procedures for doing any necessary corrective actions. The corrective actions include the following:

• Repairing the gland nut if only corrosion is found. The repair involves machining the inner faces and radius of the gland nut to remove the corrosion. If the gland nut is machined to a certain limit and the corrosion has not been removed, the gland nut must be replaced with a new gland nut.

• Replacing the gland nut with a new aluminum alloy gland nut having the same part number if any cracking is found or if the repair does not remove the corrosion.

The Short Brothers service bulletins refer to Messier-Dowty Service Bulletin 32–78SD, Revision 1, dated December 9, 2002. This Messier-Dowty service bulletin gives additional information about how to do the inspection and corrective actions.

Accomplishing the actions specified in these service bulletins will address

the unsafe condition adequately. The CAA mandated Short Brothers Service Bulletin SD360 SHERPA–32–1 and Messier-Dowty Service Bulletin 32–78SD, and issued British airworthiness directive 008–06–2003, to ensure the continued airworthiness of these airplanes in the United Kingdom.

The Short Brothers service bulletins also refer to Messier-Dowty Service Bulletin 32–80SD, dated August 31, 2000, which describes procedures for installing a new steel gland nut that has improved resistance to corrosion. Accomplishing this Messier-Dowty service bulletin eliminates the need to repeat the inspections described in the Short Brothers service bulletins.

FAA's Determination and Requirements of the Proposed AD

These airplane models are manufactured in the United Kingdom and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. We have examined the CAA's findings, evaluated all pertinent information, and determined that AD action is necessary for airplanes of this type design that are certificated for operation in the United States.

Therefore, we are proposing to supersede AD 96–22–09 to continue to require a one-time inspection to detect cracks and/or corrosion of the gland nut on the shock absorber of the MLG, and follow-on actions. This proposed AD would also:

- Add airplanes to the applicability;
- Add repetitive inspections and corrective actions; and
- Provide an optional action that would end the repetitive inspections.

The proposed AD would require you to use the service information described previously to perform these actions, except as discussed under ''Difference Between the Proposed AD and the British Airworthiness Directive.''

Difference Between the Proposed AD and the British Airworthiness Directive

The British airworthiness directive applies only to Short Brothers Model SD3–60 SHERPA series airplanes; however, the unsafe condition also exists on Short Brothers Model SD3–60 and SD3–SHERPA series airplanes. Therefore, this proposed AD would apply to any of these three airplane models with an aluminum alloy gland nut, P/N 200920604, on the MLG shock absorber. This difference has been coordinated with the CAA.

Change to Applicability of Existing AD

We have changed the way the airplane models are listed in the Applicability section of the proposed AD. This change identifies the airplane models as they are published in the most recent type certificate data sheet.

Additional Change to Existing AD

This proposed AD would retain all requirements of AD 96–22–09. Since AD 96–22–09 was issued, the AD format has been revised, and certain paragraphs have been rearranged. As a result, the corresponding paragraph identifiers have changed in this proposed AD, as listed in the following table:

REVISED PARAGRAPH IDENTIFIERS

Requirement in AD 96–22–09	Corresponding requirement in this proposed AD
paragraph (a)	paragraph (g)
paragraph (b)	paragraph (h)
paragraph (c)	paragraph (k)

Change to Labor Rate

We have reviewed the figures we have used over the past several years to calculate AD costs to operators. We have increased the labor rate used in these calculations from $60 per work hour to $65 per work hour. This new figure accounts for various inflationary costs in the airline industry. The cost information, below, reflects this increase in the hourly labor rate.

Costs of Compliance

The following table provides the estimated costs for U.S. operators to comply with this proposed AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Inspections required by AD 96–22–095	5	$65	N/A	$325	58	$18,850
Proposed inspections (per inspection cycle).	5	65	N/A	325	85	26,625

Regulatory Findings

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

For the reasons discussed above, I certify that the 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. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing amendment 39–9797 (61 FR 57311, November 6, 1996) and adding the following new airworthiness directive (AD):

Short Brothers PLC: Docket No. FAA–2004–18661; Directorate Identifier 2003–NM–273–AD.

Comments Due Date

(a) The Federal Aviation Administration must receive comments on this AD action by August 23, 2004.

Affected ADs

(b) This AD supersedes AD 96–22–09, amendment 39–9797.

Applicability

(c) This AD applies to Short Brothers Model SD3–60, SD3–SHERPA, and SD3–60 SHERPA series airplanes, that are equipped with aluminum alloy gland nuts, part number (P/N) 200920604, on the main landing gear (MLG) shock absorber; certificated in any category.

Unsafe Condition

(d) This AD was prompted by reports of cracked aluminum alloy gland nuts on the MLG shock absorber that had been previously inspected using AD 96–22–09. We are issuing this AD to prevent failure of the aluminum alloy gland nut on the MLG shock absorber, which could cause the MLG to collapse.

Compliance

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

Service Bulletin Reference

(f) The term ''service bulletin,'' as used in this AD, means the Accomplishment Instructions of the applicable service bulletin or service bulletins listed in the following paragraphs:

(1) For the requirements specified in paragraphs (g) and (h) of this AD, which are restated from AD 96–22–09, use the applicable service bulletin in Table 1 of this AD.

TABLE 1.—SHORT BROTHERS SERVICE BULLETINS FOR RESTATED REQUIREMENTS

Model	Service bulletin	Revision	Date
SD3–60 series airplanes	SD360–32–34	Original	September 22, 1995.
SD3–60 series airplanes	SD360–32–34	1	June 30, 2003.
SD3–SHERPA series airplanes	SD3 SHERPA–32–2	Original	September 22, 1995.
SD3–SHERPA series airplanes	SD3 SHERPA–32–2	1	June 30, 2003.

(2) For the new requirements specified in paragraphs (i) and (j) of this AD, use the applicable service bulletin in Table 2 of this AD.

TABLE 2.—SHORT BROTHERS SERVICE BULLETINS FOR NEW REQUIREMENTS

Model	Service bulletin	Revision	Date
SD3–60 SHERPA series airplanes	SD360 SHERPA–32–1	Original	June 30, 2003.
SD3–SHERPA series airplanes	SD3 SHERPA–32–2	1	June 30, 2003.
SD3–60 series airplanes	SD360–32–34	1	June 30, 2003.

Note 1: The Messier-Dowty service bulletins listed in Table 3 of this AD are additional sources of service information for certain actions in the Short Brothers Service Bulletins.

TABLE 3.—ADDITIONAL SOURCES OF SERVICE INFORMATION

This Messier-Dowty service bulletin—	Is an additional source of service information for these Short Brothers service bulletins—
32–78SD, dated July 19, 1995	SD360–32–34, dated July 19, 1995. SD3 SHERPA–32–2, dated July 19, 1995.
32–78SD, Revision 1, dated December 9, 2002	SD 360–32–34, Revision 1, dated June 30, 2003. SD3 SHERPA–32–1, dated June 30, 2003.
32–80SD, dated August 31, 2000	SD3 SHERPA–32–1, dated June 30, 2003. SD3 SHERPA–32–2, Revision 1, dated June 30, 2003. SD360–32–34, Revision 1, dated June 30, 2003.

Restatement of the Requirements of AD 96–22–09

(g) For Model SD3–60 series airplanes and Model SD3–SHERPA series airplanes: Within 90 days after December 11, 1996 (the effective date AD 96–22–09), perform a one-time visual and fluorescent dye penetrant inspection to detect cracks and/or corrosion of the gland nut on the shock absorber of the MLG, in accordance with the applicable service bulletin.

(1) If no crack and/or corrosion is detected, no further action is required by paragraph (g) of this AD.

(2) If no crack is detected, but corrosion is detected that is within the limits specified in the service bulletin, prior to further flight, repair the gland nut in accordance with the applicable service bulletin.

(3) If any crack is detected, or if any corrosion is detected that is outside the limits specified in the applicable service bulletin, prior to further flight, replace the gland nut with a new gland nut, in accordance with the applicable service bulletin.

(h) Following accomplishment of paragraph (g) of this AD, prior to further flight, apply grease to the threads of the cylinder, and apply sealant to the inner radius of the gland nut, in accordance with the applicable service bulletin.

New Requirements of this AD

Detailed Inspection and Corrective Action

(i) For all airplanes: Within 4 months after the effective date of this AD, do a detailed inspection of the P/N 200920604 gland nut on the MLG shock absorber for corrosion and/or cracking, and do any applicable corrective action before further flight, in accordance with the applicable service bulletin. Repeat the inspection at intervals not to exceed 12 months.

Note 2: For the purposes of this AD, a detailed inspection is: ''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.''

Optional Terminating Action

(j) Replacing the aluminum alloy gland, P/N 200920604, with a new steel gland nut, P/N 200920639, in accordance with the applicable service bulletin, terminates the requirements of this AD.

Alternative Methods of Compliance (AMOCs)

(k) The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

Related Information

(l) British airworthiness directive 008–06–003 also addresses the subject of this AD.

Issued in Renton, Washington, on July 9, 2004.

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–16682 Filed 7–21–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–224–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A320–211, –212, –214, –232 and –233 Series Airplanes and Model A321–211, –231 and –232 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Proposed rule; withdrawal.

SUMMARY: This action withdraws a notice of proposed rulemaking (NPRM) that proposed a new airworthiness directive (AD), applicable to certain Airbus Model A320–211, –212, –214, –232, and –233 series airplanes and Model A321–211, –231, and –232 series airplanes. That action would have required a one-time ultrasonic inspection of certain floor crossbeams to determine if they are of nominal thickness; and a structural modification to reinforce any crossbeam that is not of nominal thickness. Since the issuance of the NPRM, the Federal Aviation Administration (FAA) has received new data showing that all airplanes subject to the NPRM have already been inspected and all incorrect crossbeams modified as required, which makes the NPRM unnecessary. Accordingly, the proposed rule is withdrawn.

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

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add a new airworthiness directive (AD), applicable to certain Airbus Model A320–211, –212, –214, –232, and –233 series airplanes and Model A321–211, –231, and –232 series airplanes, was published in the **Federal Register** as a Notice of Proposed Rulemaking (NPRM) on March 17, 2004 (69 FR 12596). The proposed rule would have required a one-time ultrasonic inspection of certain floor crossbeams to determine if they were of nominal thickness; and a structural modification to reinforce any crossbeam that was not of nominal thickness. That action was prompted by reports that an Airbus quality check revealed that, due to a process discrepancy during production, certain floor structural crossbeams were manufactured that were not of nominal thickness and were installed in certain airplanes before the discrepancy was discovered. The proposed actions were intended to prevent reduced structural integrity of the floor in the event of rapid depressurization or rapid vertical acceleration.

Actions That Occurred Since the NPRM Was Issued

Since the issuance of the NPRM, the FAA has received reports from Airbus indicating that all airplanes listed in the applicability section of the NPRM (corresponding to paragraph 1.A., ''Effectivity,'' of Airbus Service Bulletin A320–53A1162, including Appendix 01 and Appendix 02, dated June 25, 2002) have been inspected and all incorrect crossbeam fittings have been found and modified in accordance with Airbus Service Bulletin A320–53A1163, dated June 25, 2002.

FAA's Conclusions

Upon further consideration, the FAA has determined that all airplanes subject to the proposed rule have already been inspected and repaired as needed and the proposed rule has become unnecessary. Accordingly, the proposed rule is hereby withdrawn.

Withdrawal of this NPRM constitutes only such action, and does not preclude the agency from issuing another action in the future, nor does it commit the agency to any course of action in the future.

Regulatory Impact

Since this action only withdraws a notice of proposed rulemaking, it is neither a proposed nor a final rule and therefore is not covered under Executive Order 12866, the Regulatory Flexibility Act, or DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Withdrawal

Accordingly, the notice of proposed rulemaking, Docket 2002–NM–224–AD, published in the **Federal Register** on March 17, 2004 (69 FR 12596), is withdrawn.

Issued in Renton, Washington, on July 13, 2004.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–16683 Filed 7–21–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–18660; Directorate Identifier 2003–NM–161–AD]

RIN 2120–AA64

Airworthiness Directives; Raytheon (Beech) Model MU–300–10, 400, 400A, and 400T Series Airplanes; and Raytheon (Mitsubishi) Model Beech MU–300 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Raytheon (Beech) Model MU–300–10, 400, 400A, and 400T series airplanes; and certain Raytheon (Mitsubishi) Model Beech MU–300 airplanes. This proposed AD would require a one-time inspection of certain panels in the spoiler mixer bay for the presence of drain holes, and the addition of at least one new drain hole; and a one-time inspection for discrepancies of the sealant on the relief cutout on the aft pressure bulkhead, and on certain baffles; and corrective actions

if necessary. This proposed AD is prompted by a report of fuel leaking from components in the spoiler mixer bay of several Raytheon (Beech) Model 400A series airplanes. We are proposing this AD to prevent the accumulation of fuel and/or fuel vapor in the spoiler mixer bay and/or the aft fuselage compartment, which could result in a fire in the airplane.

DATES: We must receive comments on this proposed AD by September 7, 2004.

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

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Nassif Building, room PL–401, Washington, DC 20590.
- *By fax:* (202) 493–2251.
- *Hand Delivery:* room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. For service information identified in this proposed AD, contact Raytheon Aircraft Company, Department 62, P.O. Box 85, Wichita, Kansas 67201–0085.

You can examine the contents of this AD docket on the Internet at *http://dms.dot.gov,* or at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, on the plaza level of the Nassif Building, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jeff Pretz, Aerospace Engineer, Airframe Branch, ACE–118W, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Propulsion 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4153; fax (316) 946–4107.

SUPPLEMENTARY INFORMATION:

Docket Management System (DMS)

The FAA has implemented new procedures for maintaining AD dockets electronically. As of May 17, 2004, new AD actions are posted on DMS and assigned a docket number. We track each action and assign a corresponding directorate identifier. The DMS AD docket number is in the form ''Docket No. FAA–2004–99999.'' The Transport Airplane Directorate identifier is in the form ''Directorate Identifier 2004–NM–999–AD.'' Each DMS AD docket also lists the directorate identifier (''Old Docket Number'') as a cross-reference for searching purposes.

Comments Invited

We invite you to submit any written relevant data, views, or arguments regarding this proposed AD. Send your comments to an address listed under **ADDRESSES.** Include ''Docket No. FAA–2004–18660; Directorate Identifier 2003–NM–161–AD'' in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments submitted by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of that website, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You can review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you can visit *http://dms.dot.gov.*

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

Examining the Docket

You can examine the AD docket in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the DMS receives them.

Discussion

We have received a report indicating that fuel leaked from components in the spoiler mixer bay of several Raytheon (Beech) Model 400A series airplanes. On one occasion, fuel migrated into the aft fuselage, resulting in fuel odor in the aft baggage compartment. Further investigation by the manufacturer showed that both the left and right spoiler bay mixer panels of certain Raytheon airplane models lacked the drain holes required by the type design. If there is a fuel leak, and the mixer panels do not have the requisite drain holes, fuel could pool in the spoiler mixer bay. Fuel could also migrate from the mixer bay into the aft fuselage if the sealant is missing from the bulkhead between the mixer bay and the aft fuselage compartment. This condition, if not corrected, could result in the accumulation of fuel and/or fuel vapor in the spoiler mixer bay and/or the aft fuselage compartment, which could result in a fire in the airplane.

Raytheon (Beech) Model 400 and 400T series airplanes, and Raytheon (Beech) Model MU–300 airplanes, are similar in design to the Raytheon (Beech) Model 400A series airplanes that had the fuel leaks. Therefore, all of these airplanes could have the same unsafe condition, and all are subject to the requirements of this proposed AD.

Relevant Service Information

We have reviewed Raytheon Service Bulletin SB 53–3486, dated June 2003. The service bulletin describes procedures for a one-time inspection of the spoiler mixer bay panels to determine if there are the correct number of drain holes; and a one-time inspection for discrepancies of the sealant on the relief cutout on the aft pressure bulkhead, and the baffles at left butt line (BL) 19.13 and right BL 10.43; and corrective actions, if necessary. Discrepancies include missing sealant, or inadequate sealant, which is defined as sealant not adhering properly, flaking, peeling, or having voids, gaps, or pinholes. The service bulletin also describes procedures for corrective actions. The corrective actions include drilling at least one new drain hole, and any additional drain holes needed to make a total of five at specified places in each mixer bay panel; and applying sealant, if necessary, to repair discrepancies. We have determined that accomplishing the actions specified in the service bulletin will adequately address the unsafe condition.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other airplanes of this same type design. Therefore, we are proposing this AD, which would require a one-time inspection of the spoiler

mixer bay panels to determine if there are the correct number of drain holes; and a one-time inspection of the sealant on the relief cutout on the aft pressure bulkhead, and the baffles at left butt line (BL) 19.13 and right BL 10.43 for discrepancies; and corrective actions, if necessary. The proposed AD would require you to use the service information described previously to perform these actions.

Clarification of Inspection Language

Although the service bulletin does not define the type of inspection required for the drain holes and the sealant, this proposed AD would classify the inspection as a ''general visual inspection.'' Note 1 of this proposed AD defines this inspection.

Costs of Compliance

This proposed AD would affect about 673 airplanes worldwide. The following table provides the estimated costs for U.S. operators to comply with this proposed AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Inspections	1	$65	None	$65	610	$39,650
Drilling one drain hole	3	$65	None	$195	610	$118,950

Regulatory Findings

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

For the reasons discussed above, I certify that the 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. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Raytheon Aircraft Company (Formerly Beech): Docket No. FAA–2004–18660; Directorate Identifier 2003–NM–161–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this AD action by September 7, 2004.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Raytheon (Beech) Model MU–300–10, 400, 400A, and 400T series airplanes; and Raytheon (Mitsubishi) Model Beech MU–300 airplanes; certificated in any category; as listed in Raytheon Service Bulletin SB 53–3486, dated June 2003.

Unsafe Condition

(d) This AD was prompted by a report of fuel leaking from components in the spoiler mixer bay of several Raytheon (Beech) Model 400A series airplanes. We are issuing this AD to prevent the accumulation of fuel and/or fuel vapor in the spoiler mixer bay and/or the aft fuselage compartment, which could result in a fire in the airplane.

Compliance

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

Inspections and Corrective Actions

(f) Within 400 flight hours or 12 months after the effective date of this AD, whichever occurs first, do the actions in paragraphs (a)(1) and (a)(2) of this AD. Do all actions in accordance with the Accomplishment Instructions of Raytheon Service Bulletin SB 53–3486, dated June 2003.

(1) Do a one-time general visual inspection of the spoiler mixer bay panels to determine the presence of drain holes. Before further flight after doing this inspection, drill at least one new drain hole, and any additional drain holes needed to make a total of five, at the places in each mixer bay panel specified in the service bulletin.

(2) Do a one-time general visual inspection for discrepancies of the sealant on the relief cutout on the aft pressure bulkhead, and of the small triangular-shaped baffles at left butt line (BL) 19.13 and right BL 10.43. Before further flight after doing this inspection, do any applicable corrective actions.

Note 1: For the purposes of this AD, a general visual inspection is: ''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.''

Parts Installation

(g) As of the effective date of this AD, no person may install on any airplane a spoiler mixer bay panel that has a part number listed in paragraph 3.B., ''Spares,'' of the Accomplishment Instructions of Raytheon Service Bulletin SB 53–3486, dated June 2003, unless the panel has been inspected and modified in accordance with paragraph (f)(1) of this AD.

Alternative Methods of Compliance (AMOCs)

(h) The Manager, Wichita Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

Issued in Renton, Washington, on July 9, 2004.

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–16684 Filed 7–21–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–101447–04]

RIN 1545–BD07

Deemed IRAs in Governmental Plans/ Qualified Nonbank Trustee Rules

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations relating to qualification of governmental units as qualified nonbank trustees for deemed IRAs under section 408(q). The text of those regulations also serves as the text of these proposed regulations.

DATES: Written or electronic comments must be received by October 20, 2004.

ADDRESSES: The public may submit comments in three ways. Send submissions to: CC:PA:LPD:PR (REG–101447–04), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–101447–04), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or send electronically, via the IRS Internet site at *http://www.irs.gov/regs* or via the Federal eRulemaking Portal at *http://www.regulations.gov* (indicate IRS and REG–101447–04).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Linda L. Conway, (202) 622–6090; concerning submissions of comments, Treena Garrett, (202) 622–3401 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

The temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend 26 CFR part 1 relating to section 408(a). The temporary regulations set forth special rules for a governmental unit that maintains a plan qualified under section 401(a), 403(a), 403(b) or 457 to qualify as a nonbank trustee for deemed IRAs under section 408(q). The text of those regulations also serves as the text of these proposed regulations. The preamble of the temporary regulations explains the amendments and these proposed regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and because the proposed regulations do not impose a collection of information by small entities, the provisions of the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Requests for Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department specifically request comments on the clarity of the proposed rule and how it may be made easier to understand. All comments will be available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Linda L. Conway, Office of Assistant Chief Counsel (Tax Exempt & Government Entities). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read, in part, as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. In § 1.408-(e)(8)T is added to read as follows:

§ 1.408–2 Special rules for governmental entities.

[The text of proposed § 1.408–2 paragraph (e)(8) is the same as the text of § 1.408–2(e)(8)T published elsewhere in this issue of the **Federal Register**].

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 04–16595 Filed 7–21–04; 8:45 am]

BILLING CODE 4830–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 73 and 76

[MM Docket No. 98–204; DA 04–2015]

RIN 3060–AH95

Review of the Commission's Broadcast and Cable EEO Rules and Policies

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of time.

SUMMARY: This document grants extension of time for filing comments and reply comments. The Commission takes this action at the request of a group of participants in this proceeding to ensure that the public has sufficient time to prepare filings which would help resolve complex issues in this matter.

DATES: Comments are due July 29, 2004; reply comments are due August 9, 2004.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

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 Order in MM Docket No. 98–204; DA 04–2015, adopted July 1, 2004, and released on July 2, 2004. The full text of this *Order* 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 *www.BCPIWEB.COM*. To request materials in accessible formats

for people with disabilities (electronic files, large print, audio format and Braille), 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 Order

1. On June 30, 2004, the National Organization for Women and four other groups (''NOW'') jointly filed a Motion for Extension of Time. NOW seeks an extension of the deadline for filing comments and reply comments responsive to the *Third Report and Order and Fourth Notice of Proposed Rule Making* (''*3R&O*'', 69 FR 34950, June 23, 2004; ''*4NPRM*'', 69 FR 34986, June 23, 2004), in this proceeding.

2. NOW states that the additional time is necessary to enable it to devote adequate time and resources to this proceeding. NOW states that it also needs time to permit various interested parties to work together to formulate an approach that may successfully resolve the issue in this proceeding.

3. We find that the public interest would be served by granting the requested extension of the comments and reply comments deadlines. The brief extension requested will enable NOW and other parties to prepare comprehensive comments and replies that will help the Commission in its decision-making and help resolve the complex and significant public policy issues raised in this proceeding.

4. NOW's Motion for Extension of Time is *granted*.

5. This action is taken pursuant to delegated authority under § 0.283 of the Commission's Rules, 47 CFR 0.283.

Federal Communications Commission.

William H. Johnson,

Chief, Media Bureau.

[FR Doc. 04–16602 Filed 7–21–04; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA 2002–12411]

Federal Motor Vehicle Safety Standards

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

ACTION: Denial of petition for rulemaking.

SUMMARY: This document denies a petition for rulemaking submitted by Mr. Paul Wagner of Bornemann Products to amend Federal Motor Vehicle Safety Standard (FMVSS) No. 207, ''Seating systems.''

FOR FURTHER INFORMATION CONTACT: For non-legal issues: Louis Molino, Office of Crashworthiness Standards, NVS–112, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone (202) 366–1833. Fax: (202) 366–4329. For legal issues: Eric Stas, Office of Chief Counsel, NCC–112, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366–2992. Fax: (202) 366–3820.

SUPPLEMENTARY INFORMATION:

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II. Additional Data from Petitioner
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B. Analysis of the Petitioner's Argument
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I. The Petition

On October 28, 1997, the agency received a petition [1] from Paul N. Wagner, President, Bornemann Products Incorporated (Bornemann) requesting, ''that the National Highway Traffic Safety Administration initiate rulemaking on the necessary test procedures for a seating system that incorporates all safety belt anchorages on the seating system, so as to specifically define the testing processes required accordingly. If denied, it is requested that the National Highway Traffic Safety Administration reaffirm that the current test standards for seating systems hold as written.''

In the petition, Bornemann referenced an August 3, 1994 amendment to Federal Motor Vehicle Safety Standard (FMVSS) No. 208, ''Occupant crash protection,'' (59 FR 39472), which had the goal of providing adjustability of Type 2 seat belts to improve the fit and increase the comfort of the belt for a variety of different sized occupants as means of increasing belt use. Section S7.1.2.2(a) of FMVSS No. 208 states that the adjustability requirement does not apply to a seat ''which is adjustable fore and aft while the vehicle is in motion and whose seat frame above the fore-and-aft adjuster is part of each of the assembly's seat belt anchorages.'' This effectively exempts seats that have the torso belt anchored to the seat belt (integrated seats). The petitioner drew the conclusion that, therefore, NHTSA believes that integrated seats ''would be an appropriate way to promote further seat belt use.''

Bornemann pursued the manufacture of integrated seats. The petition states that ''[i]n the development process, it was noticed that different recliner mechanisms, or reclining devices, used in certain integrated seating systems tested could suffer a change in detent, or reclined position, due to the design of the recliner adjustment latch, or 'teeth'; these teeth in the reclining device, which provide the back strength to an integrated system, when tested with the prescribed loads in #571.210, would actually shear during the test loading, and deform dramatically.'' Correspondence between Bornemann and NHTSA and a series of letters of interpretation from NHTSA from 1994 to 1997 [2] established:

- Compliance testing for FMVSS No. 207, ''Seating systems,'' requires the attachment of a reinforcing strut between the seat back and seat base to facilitate inertial load application through the seat's center of gravity. The seat belt loads specified in FMVSS No. 210, ''Seat belt assembly anchorages,'' are applied simultaneously with the seat inertial loading, including the load applied to the torso belt anchored to the seat back.
- The seat must stay in the pre-load position of adjustment during the test.
- FMVSS No. 210 may be applied independently of FMVSS No. 207. No reinforcing strut is applied when testing to FMVSS No. 210. However, under FMVSS No. 210, the seat recliner may fail without jeopardizing compliance.

Bornemann believes that when FMVSS No. 207 is applied to integrated seats and the belt anchorages are tested under S4.2(c) of FMVSS No. 207, ''the struts attached to the seat actually may become a strengthening apparatus for the seat back itself for this test.'' This in turn fails to test the requirement that the seat stay in the pre-load position of adjustment. Bornemann goes on to state that ''the issue to be determined by the Agency would be to ascertain whether or not this adjustment issue should be applied to the recliner mechanism in the specific circumstance.''

II. Additional Data From Petitioner

On July 15, 1998, the agency sent a letter to Mr. Wagner, asking for more supporting information. In response to the agency's request, Bornemann conducted an integrated seat test program. Tests were performed on three identical seat designs. The seat recliners tested were modified by Bornemann

[1] Docket Management System NHTSA–2002–12411.

[2] Docket Management System NHTSA–2002–12411.

specifically for these tests and did not represent any existing design by any manufacturer. The tests were as follows: A FMVSS No. 210 test (no struts), a FMVSS Nos. 207/210 combined test (with struts), and a 56 km/h (35 mph) velocity change sled test with a 50th percentile male dummy occupant. In letters dated May 27, 1999, and June 8, 1999, Mr. Wagner provided the results of these three tests.[3]

In the first test (called the 210 test), the seat was subjected to the FMVSS No. 210 belt anchorage load of 1,361 kg (3,000 pounds) on the shoulder belt and 1,361 kg (3,000 pounds) on the lap belt. However, the recliner mechanism reportedly failed, shearing the recliner gear teeth and changing the detent during the test. The seat back moved forward to, approximately, a 45 degree forward angle. This would not constitute a failure in FMVSS No. 210 since the seat need only ''withstand'' the applied loads and the belt anchorages did not separate from the seat. Next, a new seat was subjected to a FMVSS Nos. 207/210 combined test (called the 207 test), with the seat back support struts. In this test, the seat withstood the loads with no change in adjusted position or reported damage. The seat and the recliner successfully held the load, with the seat back and seat base rotating as a unit and the seat back moving to an approximately vertical position. Finally, a third test was conducted with a 50th percentile male dummy belted into a new seat. The sled test simulated a frontal crash with a 56 km/h (35 mph) change in velocity and a 29 g peak acceleration. The results of this test reportedly mimicked the first FMVSS No. 210 test, that is, the seat recliner/lock failed causing the seat back to collapse forward.

III. Discussion

A. Summary of Relevant Regulatory Issues

- FMVSS No. 207 requires the attachment of a reinforcing strut between the seat back and seat base to facilitate inertial load application through the seat's center of gravity. Seat belt loading specified in FMVSS No. 210 is applied simultaneously with the seat inertial loading, including the load applied to the torso belt anchored to the seat back.
- The seat must stay in the pre-load position of adjustment during the test, yet the strut may prevent a failure that may have occurred if the strut were not present.
- The loads of FMVSS No. 210 may be applied independently of the loads in FMVSS No. 207. No reinforcing strut is applied when testing to FMVSS No. 210. However, under FMVSS No. 210, the seat recliner may fail without jeopardizing compliance.
- FMVSS No. 208 dynamically tests front outboard seats and restraint systems in vehicles with a Gross Vehicle Weight Rating (GVWR) of 3,856 kg (8,500 lbs) or less.

B. Analysis of the Petitioner's Position

In two interpretation letters to Bornemann, the agency noted that in accordance with S4.2 of FMVSS No. 207, a seat must remain in its adjusted position during the load application, and that the seat recliner mechanism may not have its adjustment teeth shear during the seat back strength tests.[4,5] Further, Bornemann correctly stated in its October 28, 1997 petition that S4.2(c) of FMVSS No. 207 requires that when seat belt assemblies are attached to the seat, the seat belt anchorage loading specified in S4.2 of FMVSS No. 210 is applied in conjunction with the FMVSS No. 207 loading. However, S5.1.1(b) of FMVSS No. 207 permits the seat back to be braced by securing struts on each side of the seat between the seat back and seat base. This is done to facilitate load application through the seat's center of gravity. For the case of an integrated seat, the struts will alter the load path of the pull force applied to the upper torso restraint.

In a frontal impact, a belted occupant's body will be restrained by the seat belts. In turn, these belts will load the seat belt anchors. An upper torso anchor on a seat back would tend to apply a rotation force or torque at the connection of the seat back to the seat base. In most seat designs, the recliner mechanism or some other type of seat back locking mechanism would resist this torque. The petitioner points out that in the FMVSS No. 207 test procedure, the struts may strengthen the seat back. Thus, the petitioner indicated that there is an inherent conflict between the requirement that the seat, including the seat back, remain in its adjusted position during the test, and the requirement that the seat back is braced to the seat base prior to testing. This leaves open the possibility that some seat back restraining devices or recliner mechanisms might comply with FMVSS No. 207 as currently written, but would fail if tested in a non-braced configuration. Further, the petitioner provided test data from a non-production seat that complied with the FMVSS Nos. 207/210 combined loading when braced, but in a sled test simulating a 56 km/h frontal impact the recliner/lock of a non-braced seat failed, causing the seat back to collapse forward.

The petition correctly states that a seat could also be subject to FMVSS No. 210 apart from FMVSS No. 207. FMVSS No. 210 does not require the attachment of a strut to the seat. However, failure of the recline/lock mechanism would not result in noncompliance with FMVSS No. 210.

Based on our analysis of the information submitted by Bornemann, we believe that the issue may merit further investigation. At its core, it is a question of whether integrated seats are adequately and/or appropriately tested by the current vehicle safety standards. Integrated seats may be installed in the front or rear rows of vehicles. In addition to having to comply with FMVSS Nos. 207 and 210, front outboard seats in light passenger vehicles are dynamically tested in order to establish that a vehicle meets the frontal barrier crash test requirements found in S5.1 of FMVSS No. 208. FMVSS No. 208 utilizes instrumented test dummies in frontal barrier crash tests to assess occupant protection. So we believe that there is sufficient assurance that front outboard integrated seats will perform adequately. However, seats located in the rear seating positions of vehicles are not subject to performance requirements during the frontal barrier crash tests in FMVSS No. 208.

NHTSA has in the past supported the development and implementation of integrated seats.[6] These seats have the potential of providing better belt fit to their occupants because the torso belt moves as the occupant moves the seat fore and aft. In rear impacts, they may assist in preventing large relative motion between the occupant and the seat back.

IV. Conclusion

There are insufficient data available now to assess the feasibility of an improved test for integrated rear seats,

[3] Docket Management System NHTSA–2002–12411.

[4] Letter of Interpretation from NHTSA to Paul N. Wagner of Bornemann Products, Inc., December 23, 1994. Viewable on the Internet at *www.nhtsa.dot.gov/cars/rules/interps/files/10392.html.* Docket Management System NHTSA–2002–12411.

[5] Letter of Interpretation from NHTSA to Paul N. Wagner of Bornemann Products, Inc., March 21, 1995. Viewable on the Internet at *www.nhtsa.dot.gov/cars/rules/interps/files/10650.html.* Docket Management System NHTSA–2002–12411.

[6] Advanced Integrated Safety Seat, NHTSA Research and Development Contract DTNH22–97–C–07003.

as requested in this petition. A new research effort would be needed to generate this data. Consequently, we conclude that there is no potential agency action that can result in initiation of the rulemaking process in the near future. Since there is no possibility of rulemaking action in the near future, the petition is denied.

Authority: 49 U.S.C. 30162; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8.

Issued on: July 17, 2004.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 04–16655 Filed 7–21–04; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 040628196–4196–01; I.D. 061704A]

RIN 0648–AQ92

Fisheries Off the West Coast States and in the Western Pacific; Western Pacific Pelagic Fisheries; American Samoa Longline Limited Entry Program

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues this proposed rule that would limit entry into the American Samoa-based pelagic longline fishery. This proposed rule, which would implement Amendment 11 to the Fishery Management Plan for the Pelagic Fisheries of the Western Pacific Region (Pelagics FMP), is intended to: avoid a possible ''boom and bust'' cycle of development that could disrupt community participation in the small-scale pelagic fishery; establish an accepted regulatory framework for the American Samoa-based longline fishery; reduce the potential for the EEZ around American Samoa; maintain local catch rates of albacore tuna at economically viable levels; and provide opportunity for substantial participation in the large vessel (greater than 50 ft or 15.1 m in length) sector of the fishery by indigenous people of American Samoa. This proposed rule would apply to the owners and operators of vessels that fish for pelagic management species under Hawaii limited access longline permits or western Pacific general longline permits within the EEZ and high seas around the Western Pacific Region (American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, Hawaii, Midway, Johnston, and Palmyra Atolls, Kingman Reef, and Wake, Jarvis, Baker, and Howland Islands).

DATES: Comments on this proposed rule must be received by September 7, 2004.

ADDRESSES: Written comments on this proposed rule or its Initial Regulatory Flexibility Analysis (IRFA) should be mailed to William Robinson, Regional Administrator, NMFS, Pacific Islands Regional Office (PIRO), 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814–4700; or faxed to 808–973–2941. Comments will also be accepted via e-mail and should be sent to *AQ92@noaa.gov*. Comments may also be submitted electronically through the Federal e-Rulemaking portal: *http//www.regulations.gov*. Written comments regarding the burden-hour estimates or other aspects of the collection of information requirements contained in this proposed rule may be submitted to William Robinson (see **ADDRESSES**) and to David Rostker, Office of Management and Budget (OMB), by email at *David_Rostker@omb.eop.gov* or by facsimile (Fax) to 202–395–7285. Copies of Amendment 11, which includes an Environmental Assessment (EA) and an IRFA, may be obtained from Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council (Council), 1164 Bishop St. Suite 1400, Honolulu, HI 96813 or on the internet at *http://www.wpcouncil.org*.

FOR FURTHER INFORMATION CONTACT: Eric Kingma, Council, at 808–522–8220 or Alvin Katekaru, PIRO, at 808–973–2937.

SUPPLEMENTARY INFORMATION: The pelagic longline fishery within the EEZ around American Samoa was established in 1995 by fishermen operating small ''alias'' twin-hulled vessels less than 40 ft (12.2 m) in length. The American Samoa-based longline fishery, which primarily targets albacore tuna for domestic canning, has undergone rapid expansion since 1995. Between 1997 and 2002 the longline fleet increased from approximately 21 mostly small vessels to 75 vessels of various sizes and capabilities. Of the 75 active longline vessels, 40 were alias 40 ft (12.2 m) or less in length, 5 vessels were greater than 40 ft (12.2 m) and ranged up to 50 ft (15.2 m) in length, 15 vessels were greater than 50 ft (15.2 m) ranged up to 70 ft (21.3 m) in length, and 15 vessels are greater than 70 ft (21.3 m) in length. Generally, vessels over 50 ft (15.2 m) set five to six times more hooks than the smaller vessels.

Due to regional geography, operators of longline vessels based in American Samoa have access to limited fishing grounds because the EEZ around American Samoa is bounded on all sides by the EEZ's of neighboring countries. These shared boundaries are generally less than 200 miles from American Samoa's shores, and therefore the U.S. has only 113,560 nm2 (389,997 km2) of EEZ around American Samoa.

To avoid gear conflicts between small and large vessels, NMFS issued a final rule on January 30, 2002, (67 FR 4369), prohibiting large vessels >50 ft (15.2 m) from fishing for pelagic species within 50 nm around American Samoa (a few large-scale boats received exemptions to the large vessel closed area). As a result, most of the large-scale longline fishing effort became concentrated in the remaining 260,000 km^2 (75,700 nm^2) of the EEZ (outside of 50 nm) around American Samoa. It was determined that an unrestrained longline fishery has the potential of reaching a hook density level of 70 hooks per km^2 per year (20 hooks per nm^2 per year). And it was also known that a hook density of 55 hooks per km^2 per year (16 hooks per nm^2 per year) is likely to result in gear conflict in the fishery. Therefore, concern was raised that the large vessel closed area alone will not prevent gear conflicts. It became readily apparent that preventing gear conflicts among the longliners in the EEZ around American Samoa might require a limited entry program.

In addition to gear conflicts, over-capitalization in the American Samoa-based longline fishery may produce conditions not consistent with the objectives of the Pelagics FMP. Such conditions may include, among other things, a reduction in local catch rates of albacore tuna below economically viable levels, and a possible ''boom and bust'' cycle of development that could disrupt current community participation and future participation by indigenous American Samoans within the fishery.

To avoid the previously mentioned conditions listed above, the Council convened several public workshops in 2001 regarding the management of the expanding American Samoa longline fishery. The workshops focused on various management options such as catch quotas, effort restrictions (e.g. hook limits), and landing restrictions. Overall, the general consensus among workshop participants, which included longline fishermen and community members, was that a limited entry program was needed for the American Samoa-based longline fishery.

In 2002, the Council prepared an amendment to the Pelagics FMP

(Amendment 11). At its 113th meeting in June 2002 (67 FR 39330), the Council took final action approving Amendment 11 that would establish a Federal limited entry program for the American Samoa-based longline fishery. It is estimated that the number of vessels authorized for use under an American Samoa limited access longline permits will not exceed 138.

This proposed rule would require that American Samoa longline limited access permits only be issued to individuals who owned vessels that were used to legally harvest Pacific pelagic management unit species with longline gear in the EEZ around American Samoa (with those fish landed in American Samoa) at some time prior to March 22, 2002. To solicit participation in the proposed limited entry program, NMFS would publish a notice in the **Federal Register** and the Regional Administrator would send notices to persons on the American Samoa pelagics mailing list, in addition to other means to notify prospective applicants of the availability of permits.

Under this proposed rule, permits would be established for four categories based on vessel length: (a)less than or equal to 40 ft (12.2 m); (b)over 40 ft (12.2 m) to 50 ft (15.2 m) inclusive; (c) over 50 ft (15.2 m) to 70 ft (21.3 m) inclusive; and (d) over 70 ft (21.3 m). The proposed rule would also set a schedule of 120 days from the effective date of the final rule for individuals to apply for an initial permit, and if found to qualify for an initial permit, would provide another 120 days to register a vessel to that permit. The proposed rule would also allow for 26 ''upgrade permits'' to be made available, following the issuance of initial limited access permits, for the exclusive use of permit holders in the smallest vessel size class (less than or equal to 40 ft (12.2 m)), with priority based on documented historical participation in the fishery. Those receiving an ''upgrade permit'' would not be allowed to transfer their new permit for 3 years. All other permits would be transferable to any individual who could document (regardless of date) that they worked on a vessel that caught Pacific pelagic management species on longline gear in the EEZ around American Samoa, with those fish landed in American Samoa. This proposed rule would also: prohibit any individual from owning more than 10 percent of the maximum permits allowed (in all vessel size classes combined), with any fractional interest in a permit counted as a whole permit; establish an administrative fee for the issuance, renewal, or transfer of any permit; require documented landings of at least 1,000 lb (455 kg) every 3 consecutive calendar years for vessels in the smaller vessel size classes, and at least 5,000 lb (2,273 kg) every 3 consecutive calendar years for vessels in the two larger vessel size classes in order to renew permits; require all vessels permitted under the limited access system that are 50 ft (15.2 m) in length or greater carry active vessel monitoring systems (VMS) if requested by NMFS; require vessels greater than 40 ft (12.2 m) in length to carry observers if requested by NMFS; and require operators of permitted vessels greater than 40 ft (12.2 m) in length to notify NMFS no less than 72 hours before embarking on a longline fishing trip.

Classification

At this time, NMFS has not determined that the amendment that this rule would implement is consistent with the national standards of the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period.

The Council prepared an EA for this amendment that discusses the impact on the environment as a result of this rule. A copy of the EA is available from Kitty M. Simonds, Executive Director, WPFMC (See **ADDRESSES**).

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

An IRFA was prepared that describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, its objectives, and the legal basis for this action are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble. A summary of the analysis follows.

Based on fishing information and vessel ownership records available from the Government of American Samoa's Department of Safety, NMFS anticipates that 138 entities that owned active longline vessels prior to the control date of March 21, 2002, will be eligible for limited access permits. Of these, it is believed that 93 vessels were less than or equal to 40 ft (12.2 m) in length, 9 were greater than 40 ft (12.2 m) ranging up to 50 ft (15.2 m) in length inclusive, 15 were greater than 50 ft (15.2 m) ranging up to 70 ft (21.3 m) in length inclusive, and 21 were greater than 70 ft (21.3 m) in length. The average capital investment in vessels less than 40 ft (12.2 m) is estimated to be between $25,000 and $125,000, with annual landings of approximately 50,000 lbs (22,680 kg) and annual ex-vessel revenues estimated to average $65,000. These are typically catamaran style vessels which average 50–100 one to two day fishing trips annually. These vessels are permanently based in American Samoa and may have been used to pelagic handline or troll in the past. Longline vessels greater than 40 ft (12.2 m) are typically monohull vessels with an average capital investment of up to $400,000. These vessels take 17 to 28 fishing trips annually, with trips extending from 4 to 25 days. Annual landings for these vessels range from 200,000 lb to 600,000 lb (90,909.1 kg - 272,727.3 kg) per vessel, with an ex-vessel revenue of $220,000 to $660,000. These vessels are currently based in American Samoa, and have also been used in other Pacific pelagic longline or jig fisheries. Based on their ex-vessel revenues, all of these entities are considered to be small businesses with annual revenues of less than $3.5 million each.

Under this action, these small entities or businesses would be required to submit applications for permits to participate in the American Samoa-based limited access longline fishery and provide information of their vessel ownership and participation in the fishery. As such this proposed rule contains collection-of-information requirements subject to review and approval by the OMB pursuant to the Paperwork Reduction Act (PRA). These requirements have been submitted to OMB for approval. The annual collection-of-information burden to fishermen is estimated at 181 hours: 112 hours for initial permits, 20 hours for appeals, 49 hours for permit upgrades and transfers. It is estimated that the time required by a fisherman to compile, organize, and submit documentation for each permit application is 45 minutes and 2 hours for each permit appeal case. Since the longline limited access permits are valid for a 3–year period (until 2007), clearance for collection-of-information concerning permit renewals will be addressed at a later date, prior to expiration of the current collection-of-information (OMB No. 0648–0490) on December 31, 2006.

Besides the collection-of-information requirement associated with the limited access permit program, this proposed rule would require operators of large (greater than 40 ft (12.2 m) in length) fishing vessels registered with American Samoa longline limited access permits to notify NMFS at least 72 hours prior to leaving port on a longline fishing trip targeting Pacific pelagic management

unit species in the EEZ around American Samoa. Notification is necessary for NMFS to determine whether or not observers should be placed on these large vessels. It is estimated that the time required by a vessel operator to notify NMFS prior to each trip is 3 minutes per telephone call. The collection-of-information burden to fishermen is estimated at 67 hours annually, an addition to the currently approved collection under OMB No. 0648–0214)

This proposed rule also would require vessels greater than 50 ft (15.2 m) in length and registered with American Samoa longline limited access permits to carry vessel monitoring system (VMS) units, if directed to do so by NMFS. While the vessel is at sea, NMFS will receive from the VMS unit information on the position of the vessel. NMFS uses the reports to monitor vessel location and activities, while enforcing the established large-vessel pelagic fishing area closure around American Samoa. It is estimated that the annual burden of this new collection of information is 175 hours. This includes the time to install the VMS units, VMS maintenance, and transmission of automated vessel position reports. Since the VMS units automatically transmits reports automatically, there is no requirement for the fishermen themselves to report to NMFS on the location of their vessels while at sea.

The proposed rule would require that vessels greater than 40 feet (12.2 m) in length carry a vessel observer if directed by NMFS. Potential costs of this requirement include the reduced accommodations available for crew and, depending on the size of the vessel, the cost of reduced fishing efficiency as a result of a reduction in crew size and crowding on board the vessel.

Public comment is sought on the proposed rule, in addition to whether the collection of information requirement is appropriate for the proposed rule; if 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 the proposed rule to William Robinson, Regional Administrator (see ADDRESSES) or any other aspects regarding the collection of information requirements to William Robinson or by email to *David__Rostker@omb.eop.gov* or fax to 202–395–283.

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.

Ten alternatives, including the preferred alternative, were considered. The alternatives included various combinations of measures that addressed: (1) how longline fishing effort in the EEZ around American Samoa would be limited (including no-action, establishing a limited access program, and establishing a per-trip landing limit of 5,000 pounds); (2) whether operators of longline vessels in the EEZ around American Samoa would be required to land all captured pelagic management unit species (PMUS) in order to minimize bycatch; (3) whether longline vessels greater than 50 feet (15.2 m) in length would be required to carry and operate a transmitter as part of a vessel monitoring system (VMS); and (4) whether longline vessels greater than 40 feet (12.2 m) in length would be required to carry a vessel observer if directed by NMFS.

For those alternatives that would establish a limited access program, the combinations of measures further addressed: (a) what the limit on permits would be (ranging from 106 to 215 total permits, as well as one alternative in which the initial number of available permits would be equal to the number of individuals with historical experience in the fishery but after allowing the fleet size to decrease through attrition the number of available permits would ultimately be limited to the number of permits predicted to result in an annual fishing effort level of no more than 7.15 million hooks in the nearshore area (within 50 miles of shore) and 14.3 million hooks in the offshore area (beyond 50 miles from shore); (b) how the limited number of permits would be allocated among vessel size classes (with various allocations among four or five vessel size classes, with zero permits available for vessels greater than 100 feet (30.4 m) in length in all but two alternatives); (c) how the available permits would be initially allocated (including allowing initial entry only to individuals that held a longline permit and landed PMUS in American Samoa prior to March 21, 2002, allowing initial entry only to individuals that owned a longline vessel on March 21, 2002 that was used to harvest PMUS from the EEZ around American Samoa and land them in American Samoa prior to March 21, 2002, and allowing entry only to individuals that owned a longline vessel on or before March 21, 2002 that was used to harvest PMUS from the EEZ around American Samoa and land them in American Samoa prior to March 21, 2002; (d) how many permits would be reserved for participants indigenous to American Samoa (ranging from zero to 100 percent of the permits for certain vessel size classes); (e) how many permits would be reserved for participants initially using vessels in the smallest size class (ranging from zero to 26 ''upgrade'' permits that could be used by holders of permits for the smallest size class to upgrade to permits for larger size classes); (f) how available permits would be allocated in the future (including giving priority according to the date of application, giving priority according to the amount of historical pelagic fishing based out of American Samoa, giving first priority to permit holders wanting to upgrade to a larger vessel size class then according to the amount of historical pelagic fishing based out of American Samoa, giving priority first according to the vessel size class (with smaller classes given higher priority) than according to the earliest date of a longline landing in American Samoa); (g) whether permits could be re-registered to replacement vessels (including allowing re-registrations to vessels of any size class provided that a permit in that size class is available and allowing re-registrations only to vessels in the same size class); (h) whether maintenance of a permit would be contingent on continued participation in the fishery that is, whether there would be a ''use-it-or-lose-it'' requirement (in all cases, yes, ranging from having to make a landing at least once every year to at least once every three years, with various minimum qualifying landing tonnages according to vessel size class); and (i) whether permits would be transferable among holders (including not allowing transfers, allowing transfers only by holders of permits for the smallest vessel size class and only to immediate family or community groups, allowing transfers only by indigenous holders of permits for smallest size class and only to immediate family or community groups, and in the case of ''upgrade'' permits, allowing transfers only after three years).

The alternative with a per-trip landing limit of 5,000 pounds was rejected because it would likely result in poorer economic performance than a limited access program and it would encourage high-grading and bycatch. The alternatives that would require that all captured PMUS be landed were rejected

because they would be economically inefficient. The alternatives that would not have required that longline vessels greater than 50 feet (15.2 m) in length carry and operate VMS transmitters or not require that longline vessels greater than 40 feet (12.2 m) in length carry a vessel observer if directed by NMFS were rejected because they would not ensure an adequately high level of compliance with certain fishery regulations and not ensure that adequate information about fishing activities is gathered. The alternatives with larger permit limits than the preferred alternative (including the no-action alternative) were rejected because they would be unlikely to sufficiently reduce the potential for gear conflict and catch competition. The alternatives with smaller permit limits than the preferred alternative were rejected because they were determined to be unfair to some prospective participants and socially unacceptable. The alternatives with fewer permits allocated to the smallest vessel size class than the preferred alternative, as well as those without provisions for permit upgrades from the smallest to the larger vessel size classes, those with a one-year rather than three-year use-it-or-lose-it requirement, and those that would not have allowed permit transfers, were rejected because they would be unlikely to maintain sufficiently high levels of participation by American Samoa residents and individuals who have traditionally operated smaller vessels.

It has been determined that there are no Federal rules that duplicate, overlap, or conflict with this proposed rule.

A copy of the IRFA is available from the Council (see **ADDRESSES**).

In December 2003, a formal section 7 consultation under the Endangered Species Act was initiated for the new Pelagics FMP management measures to implement new technologies for western Pacific longline fisheries, in addition to proposed Amendment 11. In a biological opinion issued on February 23, 2004, NMFS determined that fishing activities conducted under Amendment 11 are not likely to jeopardize the continued existence of threatened or endangered species or result in the destruction or adverse modification of critical habitat.

List of Subjects in 50 CFR Part 660

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Guam, Hawaiian Natives, Indians, Northern Mariana Islands, and Reporting and recordkeeping requirements.

Dated: July 15, 2004.

Rebecca Lent,

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

For the reasons set out in the preamble, 50 CFR part 660 is proposed to be amended as follows:

PART 660—FISHERIES OFF THE WEST COAST STATES AND IN THE WESTERN PACIFIC

1. The authority citation for part 660 continues to read as follows:

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

2. In § 660.12, the definitions of ''Fisheries Management Division (FMD)'', ''Longline general permit'', and ''Pacific Islands Area Office'' are removed, the definition for ''Special Agent-In-Charge (SAC)'' is revised, and new definitions for ''American Samoa longline limited access permit'', ''American Samoa pelagics mailing list'', ''Freeboard'', ''Hawaiian Archipelago'', ''Pacific Islands Regional Office (PIRO)'', ''Pacific Remote Island Areas (PRIA) pelagic troll and handline fishing permit'', ''Western Pacific Fishery Management Area'' and ''Western Pacific general longline permit'' are added in alphabetical order to read as follows:

§ 660.12 Definitions.

* * * * *

American Samoa longline limited access permit means the permit required by § 660.21 to use a vessel shoreward of the outer boundary of the EEZ around American Samoa to fish for Pacific pelagic management unit species using longline gear or to land or tranship Pacific pelagic management unit species that were caught in the EEZ around American Samoa using longline gear.

American Samoa pelagics mailing list means the list maintained by the Pacific Islands Regional Office of names and mailing addresses of parties interested in receiving notices of availability for American Samoa longline limited access permits.

* * * * *

Freeboard means the straight-line vertical distance between a vessel's working deck and the sea surface. If the vessel does not have gunwale door or stern door that exposes the working deck, freeboard means the straight-line vertical distance between the top of a vessel's railing and the sea surface.

* * * * *

Hawaiian Archipelago means the Main and Northwestern Hawaiian Islands, including Midway Atoll.

* * * * *

Pacific Islands Regional Office (PIRO) means the headquarters of the Pacific Islands Region, NMFS, located at 1601 Kapiolani Blvd., Suite 1110, Honolulu, Hawaii 96814; telephone number (808) 973–2937.

* * * * *

Pacific Remote Island Areas (PRIA) pelagic troll and handline fishing permit means the permit required by § 660.21 to use a vessel shoreward of the outer boundary of the EEZ around the PRIA to fish for Pacific pelagic management unit species using pelagic handline or troll fishing methods.

* * * * *

Special Agent-In-Charge (SAC) means the Special-Agent-In-Charge, NMFS, Pacific Islands Enforcement Division, or a designee of the SAC, located at 300 Ala Moana Blvd., Suite 7–118, Honolulu, Hawaii, 96850; telephone number (808) 541–2727.

* * * * *

Western Pacific Fishery Management Area means those waters shoreward of the outer boundary of the EEZ around American Samoa, Guam, Hawaii, the Northern Mariana Islands, Midway, Johnston and Palmyra Atolls, Kingman Reef, and Wake, Jarvis, Baker, and Howland Islands.

Western Pacific general longline permit means the permit authorized under § 660.21 to use a vessel shoreward of the outer boundary of the EEZ around the Guam, the Northern Mariana Islands, Johnston or Palmyra Atolls, Kingman Reef, or Wake, Jarvis, Baker or Howland Islands to fish for Pacific pelagic management unit species using longline gear or to land or to transship Pacific pelagic management unit species that were caught using longline gear.

3. In § 660.13, paragraphs (d) and (e), and the first and last sentences of paragraph (f)(2) are revised to read as follows:

§ 660.13 Permits and fees.

* * * * *

(d) *Change in application information.* A minimum of 10 days should be given for PIRO to record any change in information from the permit application submitted under paragraph (c) of this section, except in the event of a complete change in the ownership of a vessel registered to an American Samoa longline limited access permit, in which case the permit holder must notify PIRO within 30 days of the change. Failure to report such changes may result in invalidation of the permit.

(e) *Issuance.* After receiving a complete application, the Regional Administrator will issue a permit to an

applicant who is eligible under §§ 660.21, 660.36, 660.41, 660.61, 660.601, or 660.8, or 660.602 as appropriate.

(f) *Fees.* * * *

(2) PIRO will charge a fee for each application for a Hawaii longline limited access permit, Mau Zone limited access permit, coral reef ecosystem special permit, or a American Samoa longline limited access permit (including permit transfers and renewals). * * * Failure to pay the fee will preclude the issuance, transfer or renewal of a Hawaii longline limited access permit, Mau Zone limited access permit, coral reef ecosystem special permit, or an American Samoa longline limited access permit.

* * * * *

4. Section 660.21 is revised to read as follows:

§ 660.21 Permits.

(a) A vessel of the United States must be registered for use with a valid permit under the High Seas Fishing Compliance Act if that vessel is used to fish on the high seas, as required under § 300.15 of this title.

(b) A vessel of the United States must be registered for use under a valid Hawaii longline limited access permit if that vessel is used:

(1) To fish for Pacific pelagic management unit species using longline gear in the EEZ around the Hawaiian Archipelago; or

(2) To land or transship, shoreward of the outer boundary of the EEZ around the Hawaiian Archipelago, Pacific pelagic management unit species that were harvested using longline gear.

(c) A vessel of the United States must be registered for use under a valid American Samoa longline limited access permit, in accordance with § 660.36, if that vessel is used:

(1) To fish for Pacific pelagic management unit species using longline gear in the EEZ around American Samoa; or

(2) To land shoreward of the outer boundary of the EEZ around American Samoa Pacific pelagic management unit species that were harvested using longline gear in the EEZ around American Samoa; or

(3) To tranship shoreward of the outer boundary of the EEZ around American Samoa Pacific pelagic management unit species that were harvested using longline gear in the EEZ around American Samoa or on the high seas.

(d) A vessel of the United States must be registered for use under a valid Western Pacific longline general permit, American Samoa longline limited access permit, or Hawaii longline limited access permit if that vessel is used:

(1) To fish for Pacific pelagic management unit species using longline gear in the EEZ around Guam, the Northern Mariana Islands, or the Pacific remote island areas (with the exception of Midway Atoll); or

(2) To land or tranship shoreward of the outer boundary of the EEZ around Guam, the Northern Mariana Islands, or the Pacific remote island areas (with the exception of Midway Atoll), Pacific pelagic management unit species that were harvested using longline gear.

(e) A receiving vessel of the United States must be registered for use with a valid receiving vessel permit if that vessel is used to land or transship, within the Western Pacific Fishery Management Area, Pacific pelagic management unit species that were harvested using longline gear.

(f) A vessel of the United States must be registered for use with a valid PRIA pelagic troll and handline fishing permit if that vessel is used to fish for Pacific pelagic management unit species using pelagic handline or trolling fishing methods in the EEZ around the PRIA.

(g) Any required permit must be on board the vessel and available for inspection by an authorized agent, except that, if the permit was issued (or registered to the vessel) during the fishing trip in question, this requirement applies only after the start of any subsequent fishing trip.

(h) A permit is valid only for the vessel for which it is registered. A permit not registered for use with a particular vessel may not be used.

(i) An application for a permit required under this section will be submitted to PIRO as described in § 660.13.

(j) General requirements governing application information, issuance, fees, expiration, replacement, transfer, alteration, display, and sanctions for permits issued under this section, as applicable, are contained in § 660.13.

(k) A Hawaii longline limited access permit may be transferred as follows:

(1) The owner of a Hawaii longline limited access permit may apply to transfer the permit:

(i) To a different person for registration for use with the same or another vessel; or

(ii) For registration for use with another U.S. vessel under the same ownership.

(2) An application for a permit transfer must be submitted to PIRO as described in § 660.13(c).

(l) A Hawaii longline limited access permit will not be registered for use with a vessel that has a LOA greater than 101 ft (30.8 m).

(m) Only a person eligible to own a documented vessel under the terms of 46 U.S.C. 12102(a) may be issued or may hold (by ownership or otherwise) a Hawaii longline limited access permit.

(n) *Permit Appeals.* Except as provided in subpart D of 15 CFR part 904, any applicant for a permit or any permit owner may appeal to the Regional Administrator the granting, denial, conditioning, suspension, or transfer of a permit or requested permit under this section. To be considered by the Regional Administrator, the appeal will be in writing, will state the action(s) appealed, and the reasons therefor, and will be submitted within 30 days of the action(s) by the Regional Administrator. The appellant may request an informal hearing on the appeal.

(1) Upon receipt of an appeal authorized by this section, the Regional Administrator may request additional information. Upon receipt of sufficient information, the Regional Administrator will decide the appeal in accordance with the criteria set out in this part. In making such decision, the Administrator may review relevant portions of the Fishery Management Plan for the Pelagic Fisheries of the Western Pacific Region, to the extent such review would clarify the criteria in this part. Such decision will be based upon information relative to the application on file at NMFS and the Council and any additional information available; the summary record kept of any hearing and the hearing officer's recommended decision, if any, as provided in paragraph (n)(3) of this section; and such other considerations as deemed appropriate. The Regional Administrator will notify the appellant of the decision and the reasons therefor, in writing, normally within 30 days of the receipt of sufficient information, unless additional time is needed for a hearing.

(2) If a hearing is requested, or if the Regional Administrator determines that one is appropriate, the Regional Administrator may grant an informal hearing before a hearing officer designated for that purpose. Such a hearing normally shall be held no later than 30 days following receipt of the appeal, unless the hearing officer extends the time. The appellant and, at the discretion of the hearing officer, other interested persons, may appear personally or be represented by counsel at the hearing and submit information and present arguments as determined appropriate by the hearing officer. Within 30 days of the last day of the

hearing, the hearing officer shall recommend, in writing, a decision to the Regional Administrator.

(3) The Regional Administrator may adopt the hearing officer's recommended decision, in whole or in part, or may reject or modify it. In any event, the Regional Administrator will notify the appellant, and interested persons, if any, of the decision, and the reason(s) therefor, in writing, within 30 days of receipt of the hearing officer's recommended decision. The Regional Administrator's action shall constitute final Agency action for purposes of the Administrative Procedure Act.

(4) In the case of a timely appeal from an American Samoa longline limited access permit initial permit decision, the Regional Administrator will issue the appellant a temporary American Samoa longline limited access permit. A temporary permit will expire 20 days after the Regional Administrator's final decision on the appeal. In no event will a temporary permit be effective for longer than 60 days.

(5) With the exception of temporary permits issued under paragraph (n)(4) of this section, any time limit prescribed in this section may be extended for a period not to exceed 30 days by the Regional Administrator for good cause, either upon his/her own motion or upon written request from the appellant stating the reason(s) therefor.

5. Section 660.22 is revised to read as follows:

§ 660.22 Prohibitions.

In addition to the prohibitions specified in § 660.725 of this chapter, it is unlawful for any person to do any of the following:

(a) Falsify or fail to make and/or file all reports of Pacific pelagic management unit species landings, containing all data and in the exact manner, as required by applicable state law or regulation, as specified in § 660.3, provided that the person is required to do so by applicable state law or regulation.

(b) Use a vessel without a valid permit issued under the High Seas Fishing Compliance Act to fish for Pacific pelagic management unit species using longline gear,on the high seas, in violation of §§ 300.15 and 660.21(a)of this title .

(c) Use a vessel in the EEZ around the Hawaiian Archipelago without a valid Hawaii longline limited access permit registered for use with that vessel, to fish for Pacific pelagic management unit species using longline gear in violation of § 660.21(b)(1).

(d) Use a vessel shoreward of the outer boundary of the EEZ around the Hawaiian Archipelago without a valid Hawaii longline limited access permit registered for use with that vessel, to land or tranship Pacific pelagic management unit species that were harvested with longline gear, in violation of § 660.21(b)(2).

(e) Use a vessel in the EEZ around American Samoa without a valid American Samoa longline limited access permit registered for use with that vessel, to fish for Pacific pelagic management unit species using longline gear, in violation of § 660.21(c)(1).

(f) Use a vessel shoreward of the outer boundary of the EEZ around American Samoa without a valid American Samoa longline limited access permit registered for use with that vessel, to land Pacific pelagic management unit species that were caught with longline gear within the EEZ around American Samoa, in violation of § 660.21(c)(2).

(g) Use a vessel within the EEZ around American Samoa without a valid American Samoa longline limited access permit registered for use with that vessel, to tranship Pacific pelagic management unit species that were caught with longline gear, in violation of § 660.21(c)(3).

(h) Use a vessel in the EEZ around Guam, the Northern Mariana Islands, or the Pacific remote island areas (with the exception of Midway Atoll) without either a valid Western Pacific longline general permit, American Samoa longline limited access permit or a Hawaii longline limited access permit registered for use with that vessel, to fish for Pacific pelagic management unit species using longline gear, in violation of § 660.21(d)(1).

(i) Use a vessel shoreward of the outer boundary of the EEZ around Guam, the Northern Mariana Islands, or the Pacific remote island areas (with the exception of Midway Atoll) without either a valid Western Pacific longline general permit, American Samoa longline limited access permit or a Hawaii longline limited access permit registered for use with that vessel, to land or tranship Pacific pelagic management unit species that were harvested using longline gear, in violation of § 660.21(d)(2).

(j) Use a vessel in the Western Pacific Fishery Management Area to land or transship Pacific pelagic management unit species caught by other vessels using longline gear, without a valid receiving vessel permit registered for use with that vessel, in violation of § 660.21(e).

(k) Use a vessel in the EEZ around the PRIA employing handline or trolling methods to fish for Pacific pelagic management unit species without a valid PRIA pelagic troll and handline fishing permit registered for use for that vessel in violation of § 660.21(f).

(l) Fish in the fishery after failing to comply with the notification requirements in § 660.23.

(m) Fail to comply with notification requirements set forth in § 660.23 or in any EFP issued under § 660.17.

(n) Fail to comply with a term or condition governing the vessel monitoring system when using a vessel registered for use with a Hawaii longline limited access permit, or a vessel registered for use with a size Class C or D American Samoa longline limited access permit in violation of § 660.25.

(o) Fish for, catch, or harvest Pacific pelagic management unit species with longline gear without a VMS unit on board the vessel after installation of the VMS unit by NMFS in violation of § 660.25(d)(2).

(p) Possess on board a vessel without a VMS unit Pacific pelagic management unit species harvested with longline gear after NMFS has installed the VMS unit on the vessel in violation of § 660.25(d)(2).

(q) Interfere with, tamper with, alter, damage, disable, or impede the operation of a VMS unit or to attempt any of the same; or to move or remove a VMS unit without the prior permission of the SAC in violation of § 660.25(d)(3).

(r) Make a false statement, oral or written, to an authorized officer, regarding the use, operation, or maintenance of a VMS unit in violation of § 660.25(d)(3).

(s) Interfere with, impede, delay, or prevent the installation, maintenance, repair, inspection, or removal of a VMS unit in violation of § 660.25(d)(3).

(t) Interfere with, impede, delay, or prevent access to a VMS unit by a NMFS observer in violation of § 660.25(d)(3).

(u) Connect or leave connected additional equipment to a VMS unit without the prior approval of the SAC in violation of § 660.25(d)(3).

(v) Fish with longline gear within a longline fishing prohibited area, except as allowed pursuant to an exemption issued under § 660.17 or § 660.27, in violation of § 660.26.

(w) Fish for Pacific pelagic management unit species with longline gear within the protected species zone in violation of § 660.26(b).

(x) Fail to comply with a term or condition governing the observer program established in § 660.28 if using a vessel registered for use with a Hawaii longline limited access permit, or a vessel registered for use with a size Class B, C or D American Samoa longline limited access permit, to fish

for Pacific pelagic management unit species using longline gear.

(y) Fail to comply with other terms and conditions that the Regional Administrator imposes by written notice to either the permit holder or the designated agent of the permit holder to facilitate the details of observer placement.

(z) Enter the EEZ around the Hawaiian Archipelago with longline gear that is not stowed or secured in accordance with § 660.29, if operating a U.S. vessel without a valid Hawaii longline limited access permit registered for use with that vessel.

(aa) Enter the EEZ around Guam, the Northern Mariana Islands, or PRIA with longline gear that is not stowed or secured in accordance with § 660.29 if operating a U.S. vessel without a valid Western Pacific longline general permit, American Samoa longline limited access permit, or Hawaii longline limited access permit, registered for use with that vessel.

(bb) Enter the EEZ around American Samoa with longline gear that is not stowed or secured in accordance with § 660.29, if operating a U.S. vessel without a valid American Samoa longline limited access permit registered for use with that vessel.

(cc) Fail to carry, or fail to use, a line clipper, dip net, or dehooker on a vessel registered for use under a Hawaii longline limited access permit in violation of § 660.32(a).

(dd) When operating a vessel registered for use under a American Samoa longline limited access permit or a Hawaii longline limited access permit, fail to comply with the sea turtle handling, resuscitation, and release requirements in violation of § 660.32(b).

(ee) Engage in shallow-setting without a valid shallow-set certificate for each shallow set made in violation of § 660.33(c).

(ff) Fail to attach a valid shallow-set certificate for each shallow-set to the original logbook form submitted to the Regional Administrator under § 660.14, in violation of § 660.33(c).

(gg) Possess float lines less than 20 meters in length on board a vessel registered for use under a Hawaii longline limited access permit at any time during a trip for which notification to NMFS under § 660.23(a) indicated that deep-setting would be done, in violation of § 660.33(d).

(hh) Possess light sticks on board a vessel registered for use under a Hawaii longline limited access permit at any time during a trip for which notification to NMFS under § 660.23(a) indicated that deep-setting would be done, in violation of § 660.33(d).

(ii) Transfer a shallow-set certificate to a person other than a holder of a Hawaii longline limited access permit in violation of § 660.33(e).

(jj) Engage in shallow-setting from a vessel registered for use under a Hawaii longline limited access permit north of the equator (0° lat.) with hooks other than offset circle hooks sized 18/0 or larger, with 10° offset, in violation of § 660.33(f).

(kk) Engage in shallow-setting from a vessel registered for use under a Hawaii longline limited access permit north of the equator (0° lat.) with bait other than mackerel-type bait in violation of 0° 660.33(g).

(ll) From a vessel registered for use under a Hawaii longline limited access permit, make any longline set not of the type (shallow-setting or deep-setting) indicated in the notification to the Regional Administrator pursuant to § 660.23(a), in violation of § 660.33(h).

(mm) Engage in shallow-setting from a vessel registered for use under a Hawaii longline limited access permit after the shallow-set component of the longline fishery has been closed pursuant to § 660.33(b)(3)(ii), in violation of § 660.33(i).

(nn) Land or possess more than 10 swordfish on board a vessel registered for use under a Hawaii longline limited access permit on a fishing trip for which the permit holder notified NMFS under § 660.23(a) that the vessel would conduct a deep-setting trip, in violation of § 660.33(j).

(oo) Own or operate a vessel that is registered for use under a Hawaii longline limited access permit and engaged in longline fishing for Pacific pelagic management unit species and fail to be certified for completion of a NMFS protected species workshop in violation of § 660.34(a).

(pp) Operate a vessel registered for use under a Hawaii longline limited access permit while engaged in longline fishing without having on board a valid protected species workshop certificate issued by NMFS or a legible copy thereof in violation of § 660.34(d).

(qq) Fail to use a line setting machine or line shooter, with weighted branch lines, to set the main longline when operating a vessel that is registered for use under a Hawaii longline limited access permit and equipped with monofilament main longline, when making deep sets north of 23° N. lat., in violation of § 660.35(a)(1) or (a)(2).

(rr) Fail to employ basket-style longline gear such that the mainline is deployed slack when operating a vessel registered for use under a Hawaii longline limited access north of 23° N. lat., in violation of § 660.35(a)(3).

(ss) Fail to maintain and use blue dye to prepare thawed bait when operating a vessel registered for use under a Hawaii longline limited access permit that is fishing north of 23° N. lat., in violation of § 660.35(a)(4), (a)(5), or (a)(6).

(tt) Fail to retain, handle, and discharge fish, fish parts, and spent bait, strategically when operating a vessel registered for use under a Hawaii longline limited access permit that is fishing north of 23° N. lat., in violation of § 660.35(a)(7), through (a)(9).

(uu) Fail to be begin the deployment of longline gear at least one hour after local sunset or fail to complete the setting process before local sunrise from a vessel registered for use under a Hawaii longline limited access permit while shallow-setting north of 23° N. lat. in violation of § 660.35(a)(1).

(vv) Fail to handle short-tailed albatrosses that are caught by pelagic longline gear in a manner that maximizes the probability of their long-term survival, in violation of § 660.35 (b).

(ww) Fail to handle seabirds other than short-tailed albatrosses that are caught by pelagic longline gear in a manner that maximizes the probability of their long-term survival, in violation of § 660.35(c).

(xx) Use a large vessel to fish for Pelagic management unit species within an American Samoa large vessel prohibited area except as allowed pursuant to an exemption issued under § 660.38.

(yy) Fish for Pacific pelagic management unit species using gear prohibited under § 660.30 or not permitted by an EFP issued under § 660.17.

6. Section 660.23 is revised to read as follows:

§ 660.23 Notifications.

(a) The permit holder for any vessel registered for use under a Hawaii longline limited access permit or for any vessel greater than 40 ft in length overall that is registered for use under an American Samoa longline limited access permit, shall provide a notice to the Regional Administrator at least 72 hours (not including weekends and Federal holidays) before the vessel leaves port on a fishing trip, any part of which occurs in the EEZ around the Hawaiian Archipelago or American Samoa. The vessel operator will be presumed to be an agent designated by the permit holder unless the Regional Administrator is otherwise notified by the permit holder. The notice must be provided to the office or telephone number designated by the Regional

Administrator. The notice must provide the official number of the vessel, the name of the vessel, the intended departure date, time, and location, the name of the operator of the vessel, and the name and telephone number of the agent designated by the permit holder to be available between 8 a.m. and 5 p.m. (local time) on weekdays for NMFS to contact to arrange observer placement. Permit holders for vessels registered for use under Hawaii longline limited access permits must also provide notification of the trip type (either deep-setting or shallow-setting).

(b) The operator of any vessel subject to the requirements of this subpart who does not have on board a VMS unit while transiting the protected species zone as defined in § 660.12, must notify the NMFS Special-Agent-In-Charge immediately upon entering and immediately upon departing the protected species zone. The notification must include the name of the vessel, name of the operator, date and time (GMT) of access or exit from the protected species zone, and location by latitude and longitude to the nearest minute.

(c) The permit holder for any American Samoa longline limited access permit, or an agent designated by the permit holder, must notify the Regional Administrator within 30 days of a complete change in ownership of the vessel registered for use with the permit.

7. In § 660.25, paragraph (b), the first sentence of paragraph (c), and the introductory text of paragraph (d) are revised to read as follows:

§ 660.25 Vessel monitoring systems.

* * * * *

(b) *Notification.* After a Hawaii longline limited access permit holder or size Class C or D American Samoa longline limited access permit holder has been notified by the SAC of a specific date for installation of a VMS unit on the permit holder's vessel, the vessel must carry the VMS unit after the date scheduled for installation.

(c) *Fees and Charges.* During the experimental VMS program, a Hawaii longline limited access permit holder or size Class C or D American Samoa longline permit holder with a size Class D or D permit shall not be assessed any fee or other charges to obtain and use a VMS unit, including the communication charges related directed to requirements under this section. * * *

(d) *Permit holder duties.* The holder of a Hawaii longline limited access permit or a size Class C or D American Samoa longline permit and master of the vessel must:

* * * * *

8. Section 660.36 is added to read as follows:

§ 660.36 American Samoa Longline Limited Entry Program.

(a) *General.* Under § 660.21(c), certain U.S. vessels are required to be registered for use under a valid American Samoa longline limited access permit. With the exception of reductions in permits in vessel size Class A under paragraph (c)(1) of this section, the maximum number of permits will be capped at the number of initial permits actually issued under paragraph (f)(1) of this section.

(b) *Terminology.* For purposes of this section, the following terms have these meanings:

(1) *Documented participation* means participation proved by a properly submitted NMFS or American Samoa logbook, an American Samoa creel survey record, a delivery or payment record from an America Samoa-based cannery, retailer or wholesaler, an America Samoa tax record, an individual wage record, ownership title, vessel registration, or other official documents showing:

(i) Ownership of a vessel that was used to fish in the EEZ around American Samoa, or

(ii) Evidence of work on a fishing trip during which longline gear was used to harvest Pacific pelagic management unit species in the EEZ around American Samoa.

(2) *Family* means those people related by blood, marriage, and formal or informal adoption.

(c) *Vessel size classes.* The Regional Administrator shall issue American Samoa longline limited access permits in the following size classes:

(1) Class A: Vessels less than or equal to 40 ft (12.2 m) length overall. The maximum number will be reduced as Class B–1, C–1, and D–1 permits are issued under paragraph (e) of this section.

(2) Class B: Vessels over 40 ft (12.2 m) to 50 ft (15.2 m) length overall.

(3) Class B–1: Maximum number of 14 permits for vessels over 40 ft (12.2 m) to 50 ft (15.2 m) length overall, to be made available according to the following schedule:

(i) Four permits in the first calendar year after the Regional Administrator has issued all initial permits in Classes A, B, C, and D (initial issuance),

(ii) In the second calendar year after initial issuance, any unissued, relinquished, or revoked permits of the first four, plus four additional permits,

(iii) In the third calendar year after initial issuance, any unissued, relinquished, or revoked permits of the first eight, plus four additional permits, and

(iv) In the fourth calendar year after initial issuance, any unissued, relinquished, or revoked permits of the first 12, plus two additional permits.

(4) Class C: Vessels over 50 ft (15.2 m) to 70 ft (21.3 m) length overall.

(5) Class C–1: Maximum number of six permits for vessels over 50 ft (15.2) to 70 ft (21.3 m) length overall, to be made available according to the following schedule:

(i) Two permits in the first calendar year after initial issuance,

(ii) In the second calendar year after initial issuance, any unissued, relinquished, or revoked permits of the first two, plus two additional permits, and

(iii) In the third calendar year after initial issuance, any unissued, relinquished, or revoked permits of the first four, plus two additional permits.

(6) Class D: Vessels over 70 ft (21.3 m) length overall.

(7) Class D–1: Maximum number of 6 permits for vessels over 70 ft (21.3 m) length overall, to be made available according to the following schedule:

(i) Two permits in the first calendar year after initial issuance,

(ii) In the second calendar year after initial issuance, any unissued, relinquished, or revoked permits of the first two, plus two additional permits, and

(iii) In the third calendar year after initial issuance, any unissued, relinquished, or revoked permits of the first four, plus two additional permits.

(d) A vessel subject to this section may only be registered with an American Samoa longline limited access permit of a size class equal to or larger than the vessel's length overall.

(e) *Initial permit qualification.* Any U.S. national or U.S. citizen or company, partnership, or corporation qualifies for an initial American Samoa longline limited access permit if the person, company, partnership, or corporation, on or prior to March 21, 2002, owned a vessel that was used during the time of their ownership to harvest Pacific pelagic management unit species with longline gear in the EEZ around American Samoa and that fish was landed in American Samoa:

(1) Prior to March 22, 2002, or

(2) Prior to June 28, 2002, provided that the person or business provided to NMFS or the Council, prior to March 22, 2002, a written notice of intent to participate in the pelagic longline fishery in the EEZ around American Samoa.

(f) *Initial permit issuance.* (1) Any application for issuance of an initial

permit must be submitted to the Pacific Islands Regional Office no later than 120 days after the effective date of the final rule. The Regional Administrator shall publish a notice in the **Federal Register**, send notices to persons on the American Samoa pelagics mailing list, and use other means to notify prospective applicants of the availability of permits. Applications for initial permits must be made, and application fees paid, in accordance with §§ 660.13(c)(1), (d) and (f)(2). If the applicant is any entity other than a sole owner, the application must be accompanied by a supplementary information sheet obtained from the Regional Administrator, containing the names and mailing addresses of all owners, partners, and corporate officers.

(2) Only permits of Class A, B, C, and D will be made available for initial issuance. Permits of Class B–1, C–1, and D–1, will be made available in subsequent calendar years.

(3) Within 30 days of receipt of a completed application, the Regional Administrator shall make a decision on whether the applicant qualifies for an initial permit and will notify the successful applicant by a dated letter. The successful applicant must register his or her vessel, of the equivalent size class or smaller to which the qualifying vessel would have belonged, to the permit within 120 days of the date of the letter of notification, and maintain this vessel registration to the permit for at least 120 days. The successful applicant must also submit a supplementary information sheet, obtained from the Regional Administrator, containing the name and mailing address of the owner of the vessel to which the permit is registered. If the registered vessel is owned by any entity other than a sole owner, the names and mailing addresses of all owners, partners, and corporate officers must be included.

(4) An appeal of a denial of an application for an initial permit shall be processed in accordance with § 660.21(n) of this subpart.

(5) After all appeals on initial permits are concluded in any vessel size class, the maximum number of permits in that class shall be the number of permits issued during the initial issuance process (including appeals). The maximum number of permits will not change, except that the maximum number of Class A permits will be reduced if Class A permits are replaced by B–1, C–1, or D–1 permits under paragraph (h) of this section. Thereafter, if any Class A, B, C, or D permit becomes available, the Regional Administrator shall re-issue that permit according to the process set forth in paragraph (g) of this section.

(g) *Additional permit issuance.* (1) If the number of permits issued in Class A, B, C, or D, falls below the maximum number of permits, the Regional Administrator shall publish a notice in the **Federal Register**, send notices to persons on the American Samoa pelagics mailing list, and use other means to notify prospective applicants of any available permit(s) in that class. The Regional Administrator shall issue permits to persons according the following priority standard:

(i) First priority accrues to the person with the earliest documented participation in the pelagic longline fishery in the EEZ around American Samoa on a Class A sized vessel.

(ii) The next priority accrues to the person with the earliest documented participation in the pelagic longline fishery in the EEZ around American Samoa on a Class B size, Class C size, or Class D size vessel, in that order.

(iii) In the event of a tie in the priority ranking between two or more applicants, then the applicant whose second documented participation in the pelagic longline fishery in the EEZ around American Samoa is first in time will be ranked first in priority. If there is still a tie between two or more applicants, the Regional Administrator will select the successful applicant by an impartial lottery.

(2) Applications must be made, and application fees paid, in accordance with §§ 660.13(c)(1), (d), and (f)(2). If the applicant is any entity other than a sole owner, the application must be accompanied by a supplementary information sheet, obtained from the Regional Administrator, containing the names and mailing addresses of all owners, partners, and corporate officers that comprise ownership of the vessel for the which the permit application is prepared.

(3) Within 30 days of receipt of a completed application, the Regional Administrator shall make a decision on whether the applicant qualifies for a permit and will notify the successful applicant by a dated letter. The successful applicant must register a vessel of the equivalent vessel size or smaller to the permit within 120 days of the date of the letter of notification. The successful applicant must also submit a supplementary information sheet, obtained from the Regional Administrator, containing the name and mailing address of the owner of the vessel to which the permit is registered. If the registered vessel is owned by any entity other than a sole owner, the names and mailing addresses of all owners, partners, and corporate officers must be included. If the successful applicant fails to register a vessel to the permit within 120 days, the Regional Administrator shall issue a letter of notification to the next person on the priority list or, in the event that there are no more prospective applicants on the priority list, re-start the issuance process pursuant to paragraph (g)(1) of this section. Any person who fails to register the permit to a vessel under this paragraph within 120 days shall not be eligible to apply for a permit for 6 months from the date those 120 days expired.

(4) An appeal of a denial of an application for a permit shall be processed in accordance with § 660.21(n).

(h) *Class B–1, C–1, and D–1 Permits.* (1) Permits of Class B–1, C–1, and D–1 may be initially issued only to persons who hold a Class A permit and who, prior to March 22, 2002, participated in the pelagic longline fishery around American Samoa.

(2) The Regional Administrator shall issue permits to persons for Class B–1, C–1, and D–1 permits based on each person's earliest documented participation, with the highest priority given to that person with the earliest date of documented participation.

(3) A permit holder who receives a Class B–1, C–1, or D–1 permit must relinquish his or her Class A permit and that permit will no longer be valid. The maximum number of Class A permits will be reduced accordingly.

(4) Within 30 days of receipt of a completed application for a Class B–1, C–1, and D–1 permit, the Regional Administrator shall make a decision on whether the applicant qualifies for a permit and will notify the successful applicant by a dated letter. The successful applicant must register a vessel of the equivalent vessel size or smaller to the permit within 120 days of the date of the letter of notification. The successful applicant must also submit a supplementary information sheet, obtained from the Regional Administrator, containing the name and mailing address of the owner of the vessel to which the permit is registered. If the registered vessel is owned by any entity other than a sole owner, the names and mailing addresses of all owners, partners, and corporate officers must be included.

(5) An appeal of a denial of an application for a Class B–1, C–1, or D–1 permit shall be processed in accordance with § 660.21(n).

(6) If a Class B–1, C–1, or D–1 permit is relinquished, revoked, or not renewed pursuant to paragraph (j)(1) of this

section, the Regional Administrator shall make that permit available according to the procedure described in paragraphs (g)(1) through (g)(4) of this section.

(i) *Permit transfer.* The holder of an American Samoa longline limited access permit may transfer the permit to another individual, partnership, corporation, or other entity as described in this section. Applications for permit transfers must be submitted to the Regional Administrator within 30 days of the transferral date. If the applicant is any entity other than a sole owner, the application must be accompanied by a supplementary information sheet, obtained from the Regional Administrator, containing the names and mailing addresses of all owners, partners, and corporate officers. After such an application has been made, the permit is not valid for use by the new permit holder until the Regional Administrator has issued the permit in the new permit holder's name under § 660.13(c).

(1) *Permits of all size classes except Class A.* An American Samoa longline limited access permit of any size class except Class A may be transferred (by sale, gift, bequest, intestate succession, barter, or trade) to the following persons only:

(i) A Western Pacific community located in American Samoa that meets the criteria set forth in section 305(i)(2) of the Magnuson-Stevens Act, 16 U.S.C. 1855(i)(2), and its implementing regulations, or

(ii) Any person with documented participation in the pelagic longline fishery in the EEZ around American Samoa.

(2) *Class A Permits.* An American Samoa longline limited access permit of Class A may be transferred (by sale, gift, bequest, intestate succession, barter, or trade) to the following persons only:

(i) A family member of the permit holder,

(ii) A Western Pacific community located in American Samoa that meets the criteria set forth in section 305(i)(2) of the Magnuson-Stevens Act, 16 U.S.C. 1855(i)(2), and its implementing regulations, or

(iii) Any person with documented participation in the pelagic longline fishery on a Class A size vessel in the EEZ around American Samoa prior to March 22, 2002.

(3) *Class B–1, C–1, and D–1 Permits.* Class B–1, C–1, and D–1 permits may not be transferred to a different owner for 3 years from the date of initial issuance, except by bequest or intestate succession if the permit holder dies during those 3 years. After the initial 3 years, Class B–1, C–1, and D–1 permits may be transferred only in accordance with the restrictions in paragraph (i)(1) of this section.

(j) *Permit renewal and registration of vessels*—(1) Use Requirements. An American Samoa longline limited access permit will not be renewed following 3 consecutive calendar years (beginning with the year after the permit was issued in the name of the current permit holder) in which the vessel(s) to which it is registered landed less than:

(i) For permit size Classes A or B: a total of 1,000 lb (455 kg) of Pacific pelagic management unit species harvested in the EEZ around American Samoa using longline gear, or

(ii) For permit size Classes C or D: a total of 5,000 lb (2,273 kg) of Pacific pelagic management unit species harvested in the EEZ around American Samoa using longline gear.

(2) An American Samoa longline limited access permit will not be renewed if the owner of the vessel to which the permit is registered does not have on file with the Regional Administrator a valid protected species workshop certificate issued by NMFS, in accordance with § 660.34(c)(2).

(k) *Concentration of ownership of permits.* No more than 10 percent of the maximum number of permits, of all size classes combined, may be held by the same permit holder. Fractional interest will be counted as a full permit for the purpose of calculating whether the 10–percent standard has been reached.

(l) *Three–year review.* Within 3 years of the effective date of this rule the Council shall consider appropriate revisions to the America Samoa limited entry program after reviewing the effectiveness of the program with respect to its biological and socioeconomic objectives, concerning gear conflict, overfishing, enforceability, compliance, and other issues.

§§ 660.13, 660.21, 660.22, 660.27, 660.28, 660.38, 660.41, 660.42, 660.48, 660.49, 660.51, 660.61, 660.62, 660.63, 660.65, and 660.86 [Amended]

9. In the table below, for each section indicated in the left column, remove the words indicated in the middle column from wherever they appear in the section, and add the words indicated in the right column:

Section	Remove	Add
660.13	Southwest Region	Western Pacific.
	FMD	Regional Administrator.
660.21	Longline general permit	Western Pacific general longline permit.
	Pacific Area Office	PIRO.
	FMD	Regional Administrator.
660.22	Longline general permit	Western Pacific general longline permit.
660.27	Pacific Area Office	PIRO.
660.28	Fisheries Observer Branch, Southwest Region	Observer Program, PIRO.
	Southwest Regional Administrator	Regional Administrator.
660.38	Longline general permit	Western Pacific general longline permit.
660.41	Pacific Area Office	PIRO.
	Regional Director	Regional Administrator.
660.42	Regional Director	Regional Administrator.
660.48	NMFS Law Enforcement Office	SAC.
660.49	Regional Director	Regional Administrator.
660.51	Regional Director	Regional Administrator.
660.61	PIAO	PIRO.
660.62	Regional Director	Regional Administrator.
660.63	Pacific Area Office	PIRO.
660.65	Pacific Area Office	PIRO.
660.86	Pacific Islands Area Office	PIRO.

[FR Doc. 04–16587 Filed 7–21–04; 8:45 am]
BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 69, No. 140

Thursday, July 22, 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

Animal and Plant Health Inspection Service

[Docket No. 04–056–1]

Notice of Request for Extension of Approval of an Information Collection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection in support of regulations that restrict the importation of certain animal materials and their derivatives, and any products containing those materials and derivatives, to prevent the introduction of bovine spongiform encephalopathy into the United States.

DATES: We will consider all comments that we receive on or before September 20, 2004.

ADDRESSES: You may submit comments by any of the following methods:

- Postal Mail/Commercial Delivery: Please send four copies of your comment (an original and three copies) to Docket No. 04–056–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 04–056–1.
- E-mail: Address your comment to *regulations@aphis.usda.gov.* Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and ''Docket No. 04–056–1'' on the subject line.
- Agency Web site: Go to *http://www.aphis.usda.gov/ppd/rad/cominst.html* for a form you can use to submit an e-mail comment through the APHIS Web site.

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

Other Information: You may view APHIS documents published in the **Federal Register** and related information, including the names of groups and individuals who have commented on APHIS dockets, on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html.*

FOR FURTHER INFORMATION CONTACT: For information on regulations that restrict the importation of animal materials and their derivatives, and any products they are used in, contact Dr. Christopher Robinson, Senior Staff Veterinarian, Technical Trade Services, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 40, Riverdale MD 20737–1231; (301) 734–7837. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

SUPPLEMENTARY INFORMATION:

Title: Importation Prohibitions Because of Bovine Spongiform Encephalopathy.

OMB Number: 0579–0183.

Type of Request: Extension of approval of an information collection.

Abstract: Under the Animal Health Protection Act (7 U.S.C. 8301–8317), the Animal and Plant Health Inspection Service, U.S. Department of Agriculture, regulates the importation of animals and animals products into the United States to prevent the introduction of animal diseases, such as bovine spongiform encephalopathy (BSE), into the United States. BSE is a progressive neurological disorder of cattle that results from infection by an unconventional transmissible agent.

The regulations in 9 CFR parts 93, 94, 95, and 96 govern the importation of certain animals, animal products, and animal byproducts into the United States in order to prevent the introduction of various animal disease, including BSE. Regulations in part 95 restrict the importation of processed animal protein, offal, tankage, fat and oils, and tallow; glands and unprocessed fat tissue from ruminants; derivatives of these materials; and products containing these materials, if they originate in or are stored, rendered, or otherwise processed, in a region listed in § 94.18(a). Section 94.18 lists regions where BSE exists or that present an undue risk of introducing BSE into the United States because of import requirements less restrictive than would be acceptable for importation into the United States or because of inadequate surveillance.

To help ensure that the restricted materials and products are not moved from a BSE-affected region into a BSE-free region and then to the United States, we require that such materials and products imported from BSE-free regions be accompanied by certification that the materials and products were derived only from animals that have never been in a region listed in § 94.18. The certification must state the species from which the material was derived; the region where the processing facility is located; a statement that the materials did not originate in and were never stored, rendered, or otherwise processed in a region listed in § 94.18(a); and were not otherwise associated with a facility located in a region listed in § 94.18(a) or with any materials that have been in a region listed in § 94.18(a). This certification is necessary to ensure that materials containing the BSE agent are not imported into the United States.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the 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 our estimate of the burden of the information collection, including the

validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, *e.g.,* permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.16 hours per response.

Respondents: U.S. importers of regulated animal products, full-time, salaried, government veterinary officials of exporting regions, and foreign exporters of processed animal protein and other regulated materials and products.

Estimated annual number of respondents: 1,000.

Estimated annual number of responses per respondent: 9.

Estimated annual number of responses: 9,000.

Estimated total annual burden on respondents: 1,440 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 16th day of July, 2004.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 04–16707 Filed 7–21–04; 8:45 am]

BILLING CODE 3410–34–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Montana Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a conference call of the Montana State Advisory Committee will convene at 12 p.m. (m.d.t.) and adjourn at 1:30 p.m. (m.d.t.), Thursday, July 22, 2004. The purpose of the conference call is to discuss specific issues to be addressed as part of regional project on discrimination against Native Americans in reservation border towns, determine site for regional project community forum, discuss status of commission and regional programs, and discuss current civil rights developments in Montana.

This conference call is available to the public through the following call-in number: 1–800–923–4207; access code: 24952455. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls not initiated using the supplied call-in number or over wireless lines and the Commission will not refund any incurred charges. Callers will incur no charge for calls using the call-in number over land-line connections. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and access code.

To ensure that the Commission secures an appropriate number of lines for the public, persons are asked to register by contacting Malee Craft, Rocky Mountain Regional Office, (303) 866–1040 (TDD 303–866–1049), by 3 p.m. (m.d.t.) on Tuesday, July 20, 2004.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, July, 9, 2004.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 04–16793 Filed 7–20–04; 11:51 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–421–807]

Certain Hot-Rolled Carbon Steel Flat Products From the Netherlands; Amended Final Results of Antidumping Duty Administrative Review

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

ACTION: Notice of amended final results of antidumping duty administrative review.

SUMMARY: On June 16, 2004, the Department of Commerce (the Department) published in the **Federal Register** its notice of final results of the antidumping duty administrative review of certain hot-rolled carbon steel flat products from the Netherlands for the period May 3, 2001 through October 31, 2002. *See Certain Hot-Rolled Carbon Steel Flat Products from the Netherlands; Final Results of Antidumping Duty Administrative Review*, 69 FR 33630 (June 16, 2004). On June 15, 2004, in accordance with 19 CFR 351.224(c)(2), we received a timely-filed ministerial error allegation from respondent, Corus Staal BV (Corus).[1] We did not receive ministerial error allegations from petitioners.[2] Based on our analysis of Corus' ministerial error allegation, the Department has revised the antidumping duty margin for Corus. Accordingly, we are amending our final results.

EFFECTIVE DATE: July 22, 2004.

FOR FURTHER INFORMATION CONTACT: Deborah Scott or Robert James, Antidumping and Countervailing Duty Enforcement Group III, Office Eight, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–2657 or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Scope of the Review

For purposes of this order, the products covered are certain hot-rolled carbon steel flat products of a rectangular shape, of a width of 0.5 inch or greater, neither clad, plated, nor coated with metal and whether or not painted, varnished, or coated with plastics or other non-metallic substances, in coils (whether or not in successively superimposed layers), regardless of thickness, and in straight lengths, of a thickness of less than 4.75 mm and of a width measuring at least 10 times the thickness. Universal mill plate (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm, but not exceeding 1250 mm, and of a thickness of not less than 4.0 mm, not in coils and without patterns in relief) of a thickness not less than 4.0 mm is not included within the scope of this review. Specifically included within the scope of this order are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (IF)) steels, high strength low alloy (HSLA) steels, and the substrate for motor lamination steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium or niobium (also commonly referred to as columbium), or both, added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with

[1] We released disclosure documents to respondent and petitioners on June 9, 2004, thereby making June 14, 2004 the deadline for submitting ministerial error comments. However, in response to a request by respondent, we extended the deadline by one day, until June 15, 2004.

[2] Petitioners are United States Steel Corporation and Nucor Corporation.

micro-alloying levels of elements such as chromium, copper, niobium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro-alloying levels of elements such as silicon and aluminum.

Steel products to be included in the scope of this order, regardless of definitions in the Harmonized Tariff Schedule of the United States (HTS), are products in which: (i) Iron predominates, by weight, over each of the other contained elements; (ii) the carbon content is 2 percent or less, by weight; and (iii) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

1.80 percent of manganese, or
2.25 percent of silicon, or
1.00 percent of copper, or
0.50 percent of aluminum, or
1.25 percent of chromium, or
0.30 percent of cobalt, or
0.40 percent of lead, or
1.25 percent of nickel, or
0.30 percent of tungsten, or
0.10 percent of molybdenum, or
0.10 percent of niobium, or
0.15 percent of vanadium, or
0.15 percent of zirconium.

All products that meet the physical and chemical description provided above are within the scope of this order unless otherwise excluded. The following products, by way of example, are outside or specifically excluded from the scope of this order:

• Alloy hot-rolled steel products in which at least one of the chemical elements exceeds those listed above (including, *e.g.*, ASTM specifications A543, A387, A514, A517, A506).

• Society of Automotive Engineers (SAE)/American Iron and Steel Institute (AISI) grades of series 2300 and higher.

sbull; Ball bearings steels, as defined in the HTS.

sbull; Tool steels, as defined in the HTS.

• Silico-manganese (as defined in the HTS) or silicon electrical steel with a silicon level exceeding 2.25 percent.

sbull; ASTM specifications A710 and A736.

sbull; USS Abrasion-resistant steels (USS AR 400, USS AR 500).

• All products (proprietary or otherwise) based on an alloy ASTM specification (sample specifications: ASTM A506, A507).

• Non-rectangular shapes, not in coils, which are the result of having been processed by cutting or stamping and which have assumed the character of articles or products classified outside chapter 72 of the HTS.

The merchandise subject to this order is classified in the HTS at subheadings: 7208.10.15.00, 7208.10.30.00, 7208.10.60.00, 7208.25.30.00, 7208.25.60.00, 7208.26.00.30, 7208.26.00.60, 7208.27.00.30, 7208.27.00.60, 7208.36.00.30, 7208.36.00.60, 7208.37.00.30, 7208.37.00.60, 7208.38.00.15, 7208.38.00.30, 7208.38.00.90, 7208.39.00.15, 7208.39.00.30, 7208.39.00.90, 7208.40.60.30, 7208.40.60.60, 7208.53.00.00, 7208.54.00.00, 7208.90.00.00, 7211.14.00.90, 7211.19.15.00, 7211.19.20.00, 7211.19.30.00, 7211.19.45.00, 7211.19.60.00, 7211.19.75.30, 7211.19.75.60, and 7211.19.75.90. Certain hot-rolled flat-rolled carbon steel flat products covered by this order, including: Vacuum degassed fully stabilized; high strength low alloy; and the substrate for motor lamination steel may also enter under the following tariff numbers: 7225.11.00.00, 7225.19.00.00, 7225.30.30.50, 7225.30.70.00, 7225.40.70.00, 7225.99.00.90, 7226.11.10.00, 7226.11.90.30, 7226.11.90.60, 7226.19.10.00, 7226.19.90.00, 7226.91.50.00, 7226.91.70.00, 7226.91.80.00, and 7226.99.00.00. Subject merchandise may also enter under 7210.70.30.00, 7210.90.90.00, 7211.14.00.30, 7212.40.10.00, 7212.40.50.00, and 7212.50.00.00. Although the HTS subheadings are provided for convenience and U.S. Customs purposes, the written description of the scope of this order is dispositive.

Amended Final Results of Review

On June 15, 2004, Corus timely filed, pursuant to 19 CFR 351.224(c)(2), an allegation that the Department made one ministerial error in its final results. For EP transactions with a sale date (*i.e.*, invoice date) prior to importation, Corus states the Department used date of entry to select the transactions used in its analysis. Corus alleges that for these transactions, the Department erred by using the entry date for purposes of currency conversions rather than date of sale. Therefore, Corus requests that the Department correct this error by using date of sale for currency conversions for those EP transactions with a sale date prior to importation. Petitioners submitted no rebuttal comments to this ministerial error allegation.

We agree with Corus. The Tariff Act of 1930, as amended (the Tariff Act), as well as the Department's regulations, define a ministerial error as one involving ''addition, subtraction, or other arithmetic function, clerical errors resulting from inaccurate copying, duplication, or the like, and any other type of unintentional error which the Secretary considers ministerial.'' *See* section 751(h) of the Tariff Act and 19 CFR 351.224(f). The Department's regulations also provide that ''[i]n an antidumping proceeding, the Secretary will convert foreign currencies into United States dollars using the rate of exchange on the date of sale of the subject merchandise.'' *See* 19 CFR 351.415(a). For purposes of our analysis, in utilizing entry date to select EP sales with a sale date prior to importation, we unintentionally set date of sale equal to entry date for those transactions. Because invoice date should have been used as date of sale for those transactions for purposes of currency conversions, we have corrected this inadvertent error by using date of sale for purposes of currency conversions. *See* lines 2601, 2608, and 2901 of the amended U.S. sales program.

In accordance with 19 CFR 351.224(e), we have amended the final results of the 2001–2002 antidumping duty administrative review of certain hot-rolled carbon steel flat products from the Netherlands, as noted above. As a result of this correction, Corus' margin decreased from 4.94 percent to 4.80 percent *ad valorem*.

The Department shall determine and U.S. Customs and Border Protection (CBP) shall assess antidumping duties on all appropriate entries. As a result of the Court of International Trade's decision in *Corus Staal BV et al.* v. *United States*, Consol. Court No. 02–00003, Slip Op. 03–127 (CIT September 29, 2003), we will not assess duties on merchandise that entered between October 30, 2001 and November 28, 2001, inclusive. For more information, *see Certain Hot-Rolled Carbon Steel Flat Products From The Netherlands: Notice of Final Court Decision and Suspension of Liquidation*, 68 FR 60912 (October 24, 2003). Thus, in accordance with 19 CFR 351.212(b)(1), we will calculate an importer-specific *ad valorem* assessment rate for merchandise based on the ratio of the total amount of antidumping duties calculated for the examined sales made during the POR to the total customs value of the sales used to calculate those duties. Where the importer-specific assessment rate is above *de minimis*, we will instruct CBP to assess duties on all appropriate entries of subject merchandise by that importer. This rate will be assessed uniformly on all entries of that particular importer made during the periods May 3, 2001 through October 29, 2001 and November 29, 2001 through October 31, 2002. The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of the final results of review.

The amended cash deposit requirement is effective for all shipments of subject merchandise manufactured by Corus entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until publication of the final results of the next administrative review.

These amended final results are issued and published in accordance with section 751(h) of the Tariff Act and 19 CFR 351.224.

Dated: July 14, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 04–16743 Filed 7–21–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

A–588–810

Mechanical Transfer Presses From Japan: Final Results of Antidumping Duty Administrative Review and Revocation, In Part

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

SUMMARY: On March 8, 2004, the Department of Commerce (the Department) published the preliminary results of its antidumping duty administrative review of, and preliminary determination not to revoke, in part, the antidumping duty order on mechanical transfer presses (MTPs) from Japan (69 FR 10657). This review covers entries of this merchandise into the United States during the period of February 1, 2002 through January 31, 2003.

We gave interested parties an opportunity to comment on our preliminary results. On May 14, 2004 we received a case brief from the respondents, Hitachi Zosen Corporation (HZC) and Hitachi Zosen Fukui Corporation (H&F). We received no other comments. Based on our review of the comments, we have made changes to our margin calculations, and are now revoking the order with respect to HZC/H&F (*see* section ''Revocation Determination'' below).

EFFECTIVE DATE: July 22, 2004.

FOR FURTHER INFORMATION CONTACT: Jacqueline Arrowsmith or Mark Hoadley, Office of Antidumping/Countervailing Duty Enforcement VII, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–5255 or (202) 482–3148, respectively.

SUPPLEMENTARY INFORMATION:

Background

On March 8, 2004, the Department published the preliminary results of its administrative review of the antidumping duty order on MTPs from Japan. *See Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination Not to Revoke, in–Part*, 69 FR 10657 (March 7, 2003) (*Preliminary Results*). In the *Preliminary Results*, we found that U.S. sales were made below normal value (NV) by the respondent. We gave interested parties an opportunity to comment on our preliminary results. On March 9, 2004, we received ministerial error allegations from Hitachi Zosen Corporation (HZC) and its subsidiary, Hitachi Zosen Fukui Corporation (H&F). On April 5, 2004, we received a request for a hearing from HZC/H&F, which was subsequently withdrawn on June 22, 2004. On May 14, 2004, we received a case brief from HZC/H&F. The Department received no other comments and no other requests for a hearing. On June 29, 2004, we published a notice of extension of the final results of review until July 14, 2004. *See Mechanical Transfer Presses from Japan: Extension of Time Limit for Final Results of Antidumping Administrative Review*, (69 FR 38881). The Department has now completed this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Antidumping Duty Order

Imports covered by this antidumping duty order include mechanical transfer presses, currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) item numbers 8462.10.0035, 8466.94.6540 and 8466.94.8540 and formerly classifiable as 8462.99.8035, 8462.21.8085, and 8466.94.5040. The HTSUS subheadings are provided for convenience and customs purposes only. The written description of the scope of this order is dispositive. The term ''mechanical transfer presses'' refers to automatic metal–forming machine tools with multiple die stations in which the work piece is moved from station to station by a transfer mechanism designed as an integral part of the press and synchronized with the press action, whether imported as machines or parts suitable for use solely or principally with these machines. These presses may be imported assembled or unassembled.

The Department published in the **Federal Register** several notices of scope rulings with respect to MTPs from Japan, determining that (1) spare and replacement parts are outside the scope of the order (*see Notice of Scope Rulings*, 57 FR 19602 (May 7, 1992)); (2) a destack feeder designed to be used with a mechanical transfer press is an accessory and, therefore, is not within the scope of the order (*see Notice of Scope Rulings*, 57 FR 32973 (July 24, 1992)); (3) the FMX cold forging press is within the scope of the order (*see Notice of Scope Rulings*, 59 FR 8910 (February 24, 1994)); and (4) certain mechanical transfer press parts exported from Japan are outside the scope of the order (*see Notice of Scope Rulings*, 62 FR 9176 (February 28, 1997)).

Comments from Interested Parties and Changes Since the Preliminary Results

HZC/H&F filed a timely allegation, in accordance with section 351.224(f) of the Department's regulations, that the Department made two ministerial errors that produced a positive (''above de minimis'') dumping margin in the *Preliminary Results*. HZC/H&F stated that, but for these two errors, the Department would have found that HZC/H&F had not sold the subject merchandise at less than NV in the *Preliminary Results*. First, HZC/H&F alleged that the Department applied an exchange rate from February 1, 2002 rather than the exchange rates for the dates of reported U.S. sales purchase order date. HZC/H&F explained that the February 1, 2002 date did not relate to the reviewed sales and appeared to be the result of a coding error in the program. The exchange rate applied significantly understated the U.S. selling prices for the subject sales, as well as the price adjustments.

HZC/H&F also alleged that the calculation of cost of production (COP) failed to incorporate home market indirect selling expenses. HZC/H&F goes on to explain that, as a result, COP was understated, and profit was overstated. HZC/H&F concluded that, if these two clerical errors were corrected, the Department would find that HZC/H&F's sales prices for MTPs shipped to the U.S. market in the 2002–2003 review period were above normal value. Thus, argues HZC/H&F, its margin should be zero, and the order should be revoked, in–part, according to the criteria outlined in 19 CFR 351.222(e)(1). No other comments were received.

After analyzing these allegations, the Department finds the two errors alleged by the respondents are ministerial errors; defined by section 351.224(f) of

the Department's regulations as an error in performing an arithmetic function or a clerical error resulting from inaccurate copying, duplication or the like, and any other similar type of unintentional error which the Department considers ministerial. The exchange rate used in the preliminary results as HZC/H&F points out was incorrect. It did not reflect the dates of sale for the MTPs under review. The date used was the unintentional result of a mistake in editing the computer code. Home market indirect selling expenses were unintentionally omitted from the cost of production. Section 773(b)(B) of the Act directs the Department to include an amount for selling, general and administrative expenses in the calculation of COP. Thus, both of these errors are ministerial in nature.

Therefore, after recalculating the margin to correct these clerical errors, the final margin is *de minimis*.

Revocation Determination

In its timely submission of February 28, 2003, HZC/H&F requested, pursuant to 19 CFR 351.222(e)(1), partial revocation of the order with respect to its sales of MTPs. HZC/H&F (1) certified that it sold the merchandise in commercial quantities at not less than NV for a period of at least three consecutive years; (2) certified that, in the future, it will not sell the subject merchandise at less than NV; and, (3) agreed to immediate reinstatement under the order if the Department determines that, subsequent to revocation, it has sold the subject merchandise at not less than NV.

As discussed above, the Department has determined in these final results that no dumping occurred during the POR. Based upon our findings in this review and the final results of the two preceding reviews, HZC/H&F has demonstrated three consecutive years of sales at not less than normal value. Furthermore, we determine that HZC/H&F's sales of MTPs to the United States have been made in commercial quantities during these three segments of the proceeding. The Department has previously determined that when an order covers large–scale products, which are individually worth millions of dollars one sale may constitute a commercial quantity. *See, e.g., Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, From Japan: Final Results of Antidumping Duty Administrative Review and Revocation in Part*, (67 FR 2190) (January 16, 2002). HZC/H&F has sold one or more MTPs in each of these three administrative review periods; however, the details of these sales are business proprietary. Therefore, the analysis of HZC/H&F's sales and why we have determined that HZC/H&F's sales of MTPs were made in commercial quantities, is incorporated in the ''Commercial Quantities'' section of the Analysis Memorandum from Jacqueline Arrowsmith to the File, dated July 14, 2004. HZC/H&F also agreed in writing that it will not sell the subject merchandise at less than NV in the future, and agreed to the immediate reinstatement of the antidumping order, as long as any exporter or producer is subject to the order, if the Department concludes that, subsequent to the partial revocation, HZC/H&F has sold the merchandise at less than normal value. Based on the above facts, the Department determines that partial revocation of the order with respect to HZC/H&F is warranted. Therefore, in accordance with 19 CFR 351.222(f)(3), we will terminate suspension of liquidation for any merchandise manufactured and exported by HZC/H&F entered, or withdrawn from warehouse, for consumption on or after February 1, 2003.

Final Results of Review

We determine that the following percentage weighted–average margin exists for the period February 1, 2002 through January 31, 2003:

Manufacturer/exporter	Time Period	Margin
H&F/HZC	02/01/02 - 01/31/03	0.00 percent

Because the weighted–average dumping margin is zero, we will instruct U.S. Customs and Border Protection to liquidate entries made during this review period without regard to antidumping duties for the subject merchandise that was manufactured and exported by H&F/HZC.

Cash Deposit Requirements

The following deposit requirements shall be effective upon publication of this notice of final results of administrative review for all shipments of MTPs from Japan entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) cash deposits for HZC/H&F will no longer be required and the suspension of liquidation will cease for subject merchandise manufactured and exported by HZC/H&F on or after February 1, 2003; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company–specific rate established for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less–than-fair value investigation (LTFV), but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and, (4) for all other producers and/or exporters of this merchandise, the cash deposit rate shall be the ''all–others'' rate established in the LTFV investigation, which is 14.51 percent. *See Notice of Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Mechanical Transfer Presses from Japan*, 55 FR 5642 (February 16, 1990). These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

Notification to Interested Parties

This notice also serves as a final reminder to importers of their responsibility under section 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO as explained in the administrative order itself. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with sections 751(a)(3)(A) and 777(i)(1) of the Act.

Dated: July 14, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 04–16741 Filed 7–21–04; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Application for Duty-Free Entry of Scientific Instrument

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether an instrument of equivalent scientific value, for the purposes for which the instrument shown below is intended to be used, is being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5 p.m. in Suite 4100W, U.S. Department of Commerce, Franklin Court Building, 1099 14th Street, NW., Washington, DC.

Docket Number: 04–014. *Applicant:* University of California, Santa Cruz. *Instrument:* Transmission Electron Microscope, Model JEM–1230. *Manufacturer:* JEOL, Japan. *Intended Use:* The instrument is intended to be used to image and study protein and Pre-mRNA macromolecular complexes purified from cellular extracts and cryo-preserved in vitreous ice to determine the 3–D architecture of the macromolecular complexes in order to understand the relationship between their structure and biochemical function. *Application accepted by Commissioner of Customs:* June 18, 2004.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 04–16742 Filed 7–21–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 071904B]

New England Fishery Management Council; Public Meetings

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

ACTION: Notice of a public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Habitat/Marine Protected Area (MPA) Oversight Committee. Recommendations from the committee will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meeting will held on Thursday, August 5, 2004 at 9:30 a.m.

ADDRESSES: The meeting will be held at the Village Inn, One Beach Street, Narragansett, RI 02882; telephone: (401) 783–6767.

Council address: New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: The Committee will discuss essential fish habitat (EFH) Omnibus Amendment #2 issues, including, but not limited to, the review of the draft purpose and need statement based on the approved goals and objectives, the draft timeline, Habitat Areas of Particular Concern and Dedicated Habitat Research Areas issues, and thresholds and terms of reference for EFH. They will also review of Monkfish Amendment 2/General legal guidance requested on deep-sea coral alternatives. Also on the agenda will be the discussion of Framework 40B to the Northeast Multispecies Fishery Management Plan with the possible development or review of alternatives related to EFH.

They will discuss the organization of a workshop, co-sponsored by the MPA Center, to assist in the development of a draft Council MPA policy. They will hear presentations on an ongoing basis in an effort to increase the understanding of habitat and MPA related issues. Other business will be discussed at the discretion of the Committee.

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: July 19, 2004.

Alan D. Risenhoover,

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

[FR Doc. E4–1637 Filed 7–21–04; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Request for Public Comments on Commercial Availability Petition under the United States - Caribbean Basin Trade Partnership Act (CBTPA)

July 19, 2004.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Request for public comments concerning twelve petitions for determinations that certain woven, 100 percent cotton, flannel fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner under the CBTPA.

SUMMARY: On July 14, 2004, the Chairman of CITA received twelve petitions from Sandler, Travis & Rosenberg, P.A., on behalf of Picacho, S.A., alleging that certain woven, 100 percent cotton, flannel fabrics, of the specifications detailed below, classified in the indicated subheadings of the Harmonized Tariff Schedule of the United States (HTSUS), cannot be supplied by the domestic industry in commercial quantities in a timely manner. The petitions request that shirts, trousers, nightwear, robes, dressing gowns and woven underwear of such fabrics assembled in one or more CBTPA beneficiary countries be eligible for preferential treatment under the CBTPA. CITA hereby solicits public comments on these petitions, in particular with regard to whether these

fabrics can be supplied by the domestic industry in commercial quantities in a timely manner. Comments must be submitted by August 6, 2004 to the Chairman, Committee for the Implementation of Textile Agreements, Room 3001, United States Department of Commerce, 14th and Constitution, N.W., Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT: Janet E. Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 213(b)(2)(A)(v)(II) of the CBERA, as added by Section 211(a) of the CBTPA; Section 6 of Executive Order No. 13191 of January 17, 2001.

BACKGROUND:

The CBTPA provides for quota- and duty-free treatment for qualifying textile and apparel products. Such treatment is generally limited to products manufactured from yarns or fabrics formed in the United States. The CBTPA also provides for quota- and duty-free treatment for apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more CBTPA beneficiary countries from fabric or yarn that is not formed in the United States, if it has been determined that such fabric or yarn cannot be supplied by the domestic industry in commercial quantities in a timely manner. In Executive Order No. 13191, the President delegated to CITA the authority to determine whether yarns or fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner under the CBTPA and directed CITA to establish procedures to ensure appropriate public participation in any such determination. On March 6, 2001, CITA published procedures that it will follow in considering requests. (66 FR 13502).

On July 14, 2004, the Chairman of CITA received a petition on behalf of Picacho, S.A., alleging that certain woven, 100 percent cotton, flannel fabrics, of the specifications detailed below, classified in the indicated HTSUS subheadings, cannot be supplied by the domestic industry in commercial quantities in a timely manner and requesting quota- and duty-free treatment under the CBTPA for apparel articles that are cut and sewn in one or more CBTPA beneficiary countries from such fabrics.

Specifications:

Fabric 1

HTS Subheading:	5208.32.30.40
Fiber Content:	100% Cotton
Weight:	152.6 g/m2
Width:	150 centimeters cuttable
Thread Count:	24.4 warp ends per centimeter; 15.7 filling picks per centimeter; total: 40.1 threads per square centimeter
Yarn Number:	Warp: 40.6 metric, ring spun; filling: 20.3 metric, open end spun; overall average yarn number: 39.4 metric
Finish:	(Piece) dyed; napped on both sides, sanforized

Fabric 2

HTS Subheading:	5208.42.30.00
Fiber Content:	100% Cotton
Weight:	152.6 g/m2
Width:	150 centimeters cuttable
Thread Count:	24.4 warp ends per centimeter; 15.7 filling picks per centimeter; total: 40.1 threads per square centimeter
Yarn Number:	Warp: 40.6 metric, ring spun; filling: 20.3 metric, open end spun; overall average yarn number: 39.4 metric
Finish:	of yarns of different colors; napped on both sides, sanforized

*cotton fiber must all be stock dyed prior to carding in order to produce the desired heather effect in the finished fabric.

Fabric 3

HTS Subheading:	5209.31.60.50
Fiber Content:	100% Cotton
Weight:	251 g/m2
Width:	160 centimeters cuttable
Thread Count:	22.8 warp ends per centimeter; 15 filling picks per centimeter; total: 37.8 threads per square centimeter
Yarn Number:	Warp: 40.6 metric, ring spun; filling: 8.46 metric, open end spun; overall average yarn number: 24.1 metric
Finish:	(Piece) dyed; napped on both sides, sanforized

Fabric 4

HTS Subheading:	5209.31.60.50
Fiber Content:	100% Cotton
Weight:	203 g/m2
Width:	150 centimeters cuttable
Thread Count:	20.5 warp ends per centimeter; 17.3 filling picks per centimeter; total: 37.8 threads per square centimeter
Yarn Number:	Warp: 40.6 metric, ring spun; filling: 13.5 metric, open end spun; overall average yarn number: 27.9 metric
Finish:	(Piece) dyed; napped on both sides, sanforized

Fabric 5

HTS Subheading:	5209.31.60.50
Fiber Content:	100% Cotton
Weight:	251 g/m2
Width:	150 centimeters cuttable
Thread Count:	21 warp ends per centimeter; 18 filling picks per centimeter; total: 39 threads per square centimeter
Yarn Number:	Warp: 40.6 metric, ring spun; filling: 13.54 metric, open end spun; overall average yarn number: 23.32 metric
Finish:	(Piece) dyed; napped on both sides, sanforized

Fabric 6

HTS Subheading:	5209.31.60.50
Fiber Content:	100% Cotton
Weight:	291.5 g/m2
Width:	160 centimeters cuttable
Thread Count:	23.2 warp ends per centimeter; 15 filling picks per centimeter; total: 38.2 threads per square centimeter
Yarn Number:	Warp: 27.07 metric, ring spun; filling: 8.46 metric, open end spun; overall average yarn number: 20.1 metric
Finish:	(Piece) dyed; napped on both sides, sanforized

Fabric 7

HTS Subheading:	5209.31.60.50
Fiber Content:	100% Cotton
Weight:	291.5 g/m2
Width:	160 centimeters cuttable
Thread Count:	26.8 warp ends per centimeter; 16.5 filling picks per centimeter; total: 43.3 threads per square centimeter
Yarn Number:	Warp: 25.46 metric, ring spun; filling: 10.16 metric, open end spun; overall average yarn number: 23.8 metric
Finish:	(Piece) dyed; napped on both sides, sanforized

Fabric 8

HTS Subheading:	5209.31.60.50
Fiber Content:	100% Cotton
Weight:	254 g/m2
Width:	160 centimeters cuttable
Thread Count:	20 warp ends per centimeter; 14.5 filling picks per centimeter; total: 34.5 threads per square centimeter
Yarn Number:	Warp: 28.8 metric, ring spun; filling: 8.46 metric, open end spun; overall average yarn number: 20.1 metric
Finish:	(Piece) dyed; napped on both sides, sanforized

Fabric 9

HTS Subheading:	5209.41.60.40
Fiber Content:	100% Cotton
Weight:	251 g/m2
Width:	160 centimeters cuttable
Thread Count:	22.8 warp ends per centimeter; 17.3 filling picks per centimeter; total: 40.18 threads per square centimeter
Yarn Number:	Warp: 40.6 metric, ring spun; filling: 8.46 metric, open end spun; overall average yarn number: 24.1 metric
Finish:	gingham check or plaid of yarns of different colors; napped on both sides, sanforized

Fabric 10

HTS Subheading:	5209.41.60.40
Fiber Content:	100% Cotton
Weight:	251 g/m2
Width:	160 centimeters cuttable
Thread Count:	22.8 warp ends per centimeter; 15 filling picks per centimeter; total: 37.8 threads per square centimeter

Yarn Number:	Warp: 40.6 metric, ring spun; filling: 8.46 metric, open end spun; overall average yarn number: 24.1 metric
Finish:	gingham check or plaid of yarns of different colors; napped on both sides, sanforized

Fabric 11

HTS Subheading:	5209.41.60.40
Fiber Content:	100% Cotton
Weight:	251 g/m2
Width:	160 centimeters cuttable
Thread Count:	20.1 warp ends per centimeter; 16.5 filling picks per centimeter; total: 36.6 threads per square centimeter
Yarn Number:	Warp: 27.07 metric, ring spun; filling: 10.16 metric, open end spun; overall average yarn number: 23.3 metric
Finish:	Plaid, of yarns of different colors; napped on both sides, sanforized

*The cotton fiber must all be stock dyed prior to carding in order to produce the desired heather effect in the finished fabric.

Fabric 12

HTS Subheading:	5209.41.60.40
Fiber Content:	100% Cotton
Weight:	251 g/m2
Width:	160 centimeters cuttable
Thread Count:	19.7 warp ends per centimeter; 11.8 filling picks per centimeter; total: 31.5 threads per square centimeter
Yarn Number:	Warp: 20.3 metric, ring spun; filling: 8.46 metric, open end spun; overall average yarn number: 20.1 metric
Finish:	Plaid of yarns of different colors; napped on both sides, sanforized

The petitioner emphasizes that the fabrics must be napped on both sides, that the yarn sizes and thread count, and consequently, the weight of the fabrics must be exactly or nearly exactly as specified or the fabrics will not be suitable for their intended uses. Further, the warp yarn must be ring spun in order to provide the additional tensile strength required to offset the degrading effects of heavy napping on both sides. The filling yarn must be open end spun to provide required loft and softness.

CITA is soliciting public comments regarding these requests, particularly with respect to whether these fabrics can be supplied by the domestic industry in commercial quantities in a timely manner. Also relevant is whether other fabrics that are supplied by the domestic industry in commercial quantities in a timely manner are substitutable for the fabric for purposes of the intended use. Comments must be received no later than August 6, 2004. Interested persons are invited to submit six copies of such comments or information to the Chairman, Committee for the Implementation of Textile Agreements, room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, DC 20230.

If a comment alleges that this fabric can be supplied by the domestic industry in commercial quantities in a timely manner, CITA will closely review any supporting documentation, such as a signed statement by a manufacturer of the fabric stating that it produces the fabric that is the subject of the request, including the quantities that can be supplied and the time necessary to fill an order, as well as any relevant information regarding past production.

CITA will protect any business confidential information that is marked ''business confidential'' from disclosure to the full extent permitted by law. CITA will make available to the public non-confidential versions of the request and non-confidential versions of any public comments received with respect to a request in room 3100 in the Herbert Hoover Building, 14th and Constitution Avenue, N.W., Washington, DC 20230. Persons submitting comments on a request are encouraged to include a non-confidential version and a non-confidential summary.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.04–16815 Filed 7–20–04; 12:52 pm]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Solicitation of Public Comments on Request for Textile and Apparel Safeguard Action on Imports from China

July 19, 2004.

AGENCY: The Committee for the Implementation of Textile Agreements (the Committee)

ACTION: Solicitation of public comments concerning a request for safeguard action on imports from China of cotton, wool, and man-made fiber socks, merged Category 332/432 and 632 part.

SUMMARY: On June 28, 2004, the Committee received a request from the Domestic Manufacturers Committee of The Hosiery Association, the American Manufacturing Trade Action Coalition, the National Council of Textile Organizations, and the National Textile Association requesting that the Committee limit imports from China of cotton, wool, and man-made fiber socks (merged Category 332/432 and 632 part). They request that a textile and apparel safeguard action, as provided for in the Report of the Working Party on the Accession of China to the World Trade Organization (the Accession Agreement), be taken on imports of such socks. The Committee hereby solicits public comments on this request, in particular with regard to whether imports from China of such socks are, due to market disruption, threatening to impede the orderly development of trade in this product. Comments must be submitted by August 23, 2004 to the Chairman, Committee for the Implementation of Textile Agreements, Room 3001A, United States Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT: Jay Dowling, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4058.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agriculture Act of 1956, as amended; Executive Order 11651, as amended.

BACKGROUND:

The Accession Agreement textile and apparel safeguard allows the United States and other World Trade Organization Members that believe imports of Chinese origin textile and apparel products are, due to market disruption, threatening to impede the orderly development of trade in these products to request consultations with China with a view to easing or avoiding such market disruption. Upon receipt of the request, China has agreed to hold its shipments to a level no greater than 7.5 percent (6 percent for wool product categories) above the amount entered during the first 12 months of the most recent 14 months preceding the request for consultations. The Member requesting consultations may implement such a limit. Consultations with China will be held within 30 days of receipt of the request for consultations, and every effort will be made to reach agreement on a mutually satisfactory solution within 90 days of receipt of the request for consultations. If agreement on a different limit is reached, the Committee will issue a **Federal Register** Notice containing a directive to the Bureau of Customs and Border Protection that implements the negotiated limit. The limit is effective beginning on the date of the request for consultations and ending on December 31 of the year in which consultations were requested, or where three or fewer

months remained in the year at the time of the request for consultations, for the period ending 12 months after the request for consultations. In order to facilitate the implementation of the Accession Agreement textile and apparel safeguard, the Committee has published procedures (the Procedures) it will follow in considering requests for Accession Agreement textile and apparel safeguard actions (68 FR 27787, published May 21, 2003; 68 FR 49440, published August 18, 2003).

On June 28, 2004, the Committee received a request that an Accession Agreement textile and apparel safeguard action be taken on imports from China of cotton, wool, and man-made fiber socks (merged Category 332/432 and 632 part). The Committee has determined that this request provides the information necessary for the Committee to consider the request in light of the considerations set forth in the Procedures. The text of the request is reproduced in full below.

The Committee is soliciting public comments on this request, in particular with regard to whether imports from China of such socks are, due to market disruption, threatening to impede the orderly development of trade in this product. Comments may be submitted by any interested person. Comments must be received no later than August 23, 2004. Interested persons are invited to submit ten copies of such comments to the Chairman, Committee for the Implementation of Textile Agreements, Room 3001A, U.S. Department of Commerce, 14th and Constitution Avenue N.W., Washington, DC 20230.

If a comment alleges that there is no market disruption or that the subject imports are not the cause of market disruption, the Committee will closely review any supporting information and documentation, such as information about domestic production or prices of like or directly competitive products. Particular consideration will be given to comments representing the views of actual producers in the United States of a like or directly competitive product.

The Committee will protect any business confidential information that is marked business confidential from disclosure to the full extent permitted by law. To the extent that business confidential information is provided, two copies of a non-confidential version must also be provided in which business confidential information is summarized or, if necessary, deleted. Comments received, with the exception of information marked ''business confidential'', will be available for inspection between Monday - Friday, 8:30 a.m and 5:30 p.m in the Trade Reference and Assistance Center Help Desk, Suite 800M, USA Trade Information Center, Ronald Reagan Building, 1300 Pennsylvania Avenue, NW, Washington, DC, (202) 482-3433.

The Committee will make a determination within 60 calendar days of the close of the comment period as to whether the United States will request consultations with China. If the Committee is unable to make a determination within 60 calendar days, it will cause to be published a notice in the **Federal Register**, including the date by which it will make a determination. If the Committee makes a negative determination, it will cause this determination and the reasons therefore to be published in the **Federal Register**. If the Committee makes an affirmative determination that imports of Chinese origin textiles and apparel products are, due to market disruption, threatening to impede the orderly development of trade in these products, the United States will request consultations with China with a view to easing or avoiding such market disruption.

Domestic Manufacturers Committee
To Preserve, Support, and Promote Hosiery Manufacturing in the United States
The DMC is a committee within The Hosiery Association

June 28, 2004

RECEIVED
JUN 28 2004

Mr. Jim Leonard
Chairman of the Committee for Implementation of Textile Agreements
Room 3000 Department of Commerce
14th and Constitution NW
Washington, DC 20230

Dear Mr. Leonard:

The Domestic Manufacturers Committee (DMC) of The Hosiery Association, hereby files this petition requesting that the Committee for the Implementation of Textile Agreements (CITA) impose textile safeguard actions with respect to sock imports from China, under the procedures set forth in Federal Register notice 03-12893 as provided for by the Report of the Working Party on the Accession of China to the World Trade Organization (WTO). We file this petition on behalf of the overwhelming majority of the companies manufacturing socks in the U.S., which represent over 2/3 of domestic sock manufacturing volume in the U.S. We are joined in submitting this petition by the American Manufacturing Trade Action Coalition, which represents domestic sock manufacturers, and representatives of the yarn suppliers to the domestic sock industry, the National Council of Textile Organizations and the National Textile Association.

QUANTITATIVE RESTRICTION REQUEST AND PRODUCT DESCRIPTION

In particular, we request that the U.S. Government establish the most stringent specific limits possible on cotton, wool, and man-made fiber socks, merged category 332/ 432 and 632/part. The specific HTS numbers for this merged category are 6115910000, 6115926000, 6115929000, 6115936010, 6115936020, 6115939010, 6115939020, 6115991410, 6115991420, 6115991810, and 6115991820.

MARKET DISRUPTION

Urgent, significant action is needed immediately to save the domestic sock industry, the most competitive sector remaining of the once flourishing U.S. domestic apparel manufacturing industry. The U.S. sock manufacturing industry has also been hit hard recently, suffering severe market disruption over the last two years as subsidized sock imports from China have soared, while U.S. production has declined steadily, sock prices have declined precipitously, and sock plant closings have multiplied. Sock imports from China have skyrocketed from less than 1 million dozen pair in 2001 to 22 million dozen pair in 2003. China's share of the U.S. sock import market has likewise ballooned from about 1 % in 2001 to about 15 % in 2003, and surged to 21% in the 1st Q of 2004. At the same time, the average market price of socks, as measured by the average landed duty paid value of sock imports from China has collapsed from $9 a dozen pair in 2001 to $4.15 a dozen pair in 2003.

Meanwhile, in addition to this steep downward price pressure, U.S. domestic sock production has declined from 207 million dozen pair in 2001 to 166 million dozen pair in 2003. U.S. market share for domestic producers has fallen from 64.0 % in 2001 to 43.6 % in 2003. And U.S. domestic sock production employment has declined from 19,300 in 2001 to 16,000 in 2003. See charts to follow.

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SOCK IMPORT DATA: World / China Sock Imports and China Share of Imports:

Note that world imports were up 63.3% from 2001 to 2003, while China imports soared by 2,153%.

Annual Data		1999	2000	2001	2002	2003	1st Qtr 2003	1st Qtr 2004
World		58,106,681	77,885,698	90,167,116	121,433,531	147,281,558	29,694,074	37,906,020
China		461,430	503,647	976,411	5,873,978	21,999,835	2,565,691	7,934,962
China Share		0.79%	0.65%	1.08%	4.84%	14.94%	8.64%	20.93%

All quantities are in dozen pairs

Source – United States International Trade Commission Website - http://dataweb.usitc.gov/

DOMESTIC SOCK PRODUCTION AND MARKET SHARE DATA - Dozen Pairs

To the best of our knowledge, the data represent substantially all of the domestic production of the like or directly competitive product(s) of U.S. origin.

	1999	2000	2001	2002	2003
U.S. Production – Quantity	209,774,000	214,968,000	207,321,337	184,820,316	166,055,894
% Change	-	2.48%	-3.56%	-10.85%	-10.15%
Imported Socks	58,106,681	77,885,698	90,167,116	121,433,531	147,281,558
Exported Socks	24,407,745	40,632,875	46,832,155	52,600,300	52,065,101
Apparent Domestic Market	243,472,936	252,220,823	250,656,298	253,653,547	261,272,351
All Imports - Domestic Market Share (DMS)	23.87%	30.88%	35.97%	47.87%	56.37%
Chinese Imports - DMS	0.19%	0.20%	0.39%	2.32%	8.42%
US production - DMS	76.13%	69.12%	64.03%	52.13%	43.63%

Source – U.S. International Trade Commission Website – http://dataweb.usitc.gov and The Hosiery Association survey of hosiery manufacturing. See Addendum 1 and 2.

DOWNWARD PRICE PRESSURE IN U.S. SOCK MARKET

The U.S. wholesale market price of socks is under heavy downward price pressure. A key factor in this downward price pressure is the accelerating flood of subsidized and extremely low priced socks from China sold to mass merchandisers. This results in an additional decrease in the price we must sell for in the U.S. market and of equal concern, a lower level of volume due to the impact of the new high volume, low cost supply of socks coming in from China.

Here is information on the value of Chinese Sock Imports to the U.S. This is arrived at by taking the Average Landed Duty Paid Value of imports from China and dividing this by the number of dozens of socks imports from China. This gives a value of $/Dozen. It shows the trend of the dozens getting lower in value as our imports from China increased.

China Sock Imports Unit Value

	1999	2000	2001	2002	2003	2003 1st Q	2004 1st Q
China $ Value of Imports	$3,924,803	$4,319,393	$8,789,813	$29,580,016	$91,207,432	$9,721,564	$30,158,200
China Quantity of Imports	461,430	503,647	976,411	5,873,978	21,999,835	2,565,691	7,934,962
China $/Dozen	$8.51	$8.58	$9.00	$5.04	$4.15	$3.79	$3.80

All numbers were from the USITC Dataweb.

Current wholesale sock prices from China are significantly lower than all other countries, including price quotes that can be achieved by finishing socks off-shore that can be knit in the U.S.

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RAPID DECLINE OF U.S. SOCK MANUFACTURING COMPANIES IN 2002 - 2003

Company	City	State	Year	Jobs	Action
Robin Lynn's Airport Road Plant	Ft Payne	AL	2002	20	Facility Closed
Shirley's Hosiery Mill	Ft Payne	AL	2002	4	Company Closed
Gold Toe Brands, Inc	Bally	PA	2002	290	Facility Closed
Sandstone Knitting	Burlington	NC	2002	45	Company Closed
Mauney Hosiery	Kings Mountain	NC	2002	130	Facility Closed
Alba Waldensian	Valdese	NC	2002	500	Facility Closed
Beagle Brand Hosiery	Hickory	NC	2002	10	Company Closed
Charleston Hosiery	Rainsville	AL	2002	120	Facility Closed
Renfro Corporation	Star	NC	2002	450	Facility Closed
Abel Hosiery	Ft Payne	AL	2003	25	Company Closed
FlisCinKim	Ft Payne	AL	2003	30	Company Closed
Ramseur Knitting	Ramseur	NC	2003	75	Company Closed
Ann-Barrett Hosiery	Ft Payne	AL	2003	20	Company Closed
Sock Factory USA	Ft Payne	AL	2003	25	Company Closed
Blue Chip Hosiery	Ft Payne	AL	2003	60	Company Closed
Silver Cloud Legwear	Concord	NC	2003	8	Company Closed
Carolina Casual Knitting	Hickory	NC	2003	10	Company Closed
Gold Toe Brands, Inc	Newton	NC	2003	175	Facility Closed
Lutz Hosiery	Hickory	NC	2003	25	Company Closed
Randolph Knitting	Ramseur	NC	2003	55	Company Closed
Jon Scott Hosiery	Hickory	NC	2003	10	Company Closed
Wade Hosiery	Hickory	NC	2003	20	Company Closed
Foothills Hosiery	Connelly Springs	NC	2003	20	Company Closed
Classic Hosiery	Burlington	NC	2003	85	Company Closed
Crossroads Knitting	Claudeville	VA	2003	15	Company Closed
Efland Hosiery	Efland	NC	2003	75	Company Closed
Piedmont Industries	Connelly Springs	NC	2003	30	Company Closed
Prewett Associated Mills	Ft Payne	AL	2003	100	Employee Layoff
Renfro Corporation	Pulaski	VA	2003	481	Facility Closed
Harriss & Covington	High Point	NC	2003	60	Employee Layoff
Auburn Hosiery	Auburn	KY	2003	190	Employee Layoff
Locklear Hosiery	Ft Payne	AL	2003	84	Employee Layoff
Kentucky Derby Hosiery	Mt Airy	NC	2003	300	Employee Layoff
Americal Hosiery	2 NC facilities	NC	2003	170	Employee Layoff
Total Job Losses				**3,717**	

Compiled by The Hosiery Association and The Hosiery Technology Center

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The previous chart dramatically shows the job losses that have occurred in this industry in the past two years. There are 20 company closings, 8 facility closings and 6 major plant layoffs. This is a total of direct job elimination of 3,717 employees for 2002 – 2003 in sock manufacturing alone. It does not include the job losses incurred by suppliers to the sock industry. Another disturbing trend is the increased number of mills that are closed permanently in 2003 verses 2002. It is no longer a matter of reducing labor to stay in business; the companies are forced to close. This trend is continuing in 2004 with the closing of three companies. Locklear Manufacturing (25 employees), Whitener Hosiery (20 employees) and Monarch Hosiery (130 employees closing in July).

NATIONAL SOCK EMPLOYMENT: Thousands of Employees (Not Seasonally Adjusted)
Thousands of Production Workers (Not Seasonally Adjusted)
Average Weekly Hours of Production Workers (Not Seasonally Adjusted)

	1999	2000	2001	2002	2003	YTD* 2003	YTD* 2004
U.S. Employees	25.6	24.6	22.3	20.1	19.0	19.2	17.9
U.S. Production Workers	21.9	21.2	19.3	17.4	16.0	16.4	14.1
Hours Worked - Production Workers	40.2	40.3	38.0	37.6	38.0	37.3	39.8

* YTD figures for January-March

Note: Data for this chart collected from the U.S. Department of Labor – Bureau of Labor Statistics website www.bls.gov. Specifically, data for U.S. Employees (Series ID CEU3231511901), U.S. Production Workers (Series ID CEU3231511903) and Hours Worked (Series ID CEU3231511905) is found under the "National Employment, Hours and Earnings" section.

ADDITIONAL FACTORS

The home field advantage for the U.S. domestic sock industry is compromised by the high degree of concentration in the retail end of the U.S. sock market. Huge low-price retailers dominate our retail market, and often employ worldwide reverse-bid auctioning on the internet to solicit low bid sock contracts. Thus with a very few successful bids, through reverse-bid auctioning, foreign manufacturers can gain access to the majority of the U.S. market with ease. No such facilitation in the retail sector is available to U.S. sock exporters in China. The top 3 sock retailers account for 52% of the U.S. sock market, according to NPD Fashionworld Market Analysis for September 2002-August 2003.

The majority of the U.S. sock industry is comprised of small family owned businesses that want to stay within their respective communities. The infrastructure of these communities is dependent on the sock industry for their survival.

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Lastly, but not least, the domestic sock industry and its direct value chain, provides employment to over **60,000** people in this country. In Dekalb County Alabama alone, the 11,580 sock industry related jobs make up 35% of total payroll in the county. The jobs provided a sales revenue impact of $386 million in 2003, and a tax revenue impact of $12.8 million, according to a 2003 study conducted by the Center for Economic Development and Business Research at Jacksonville State University.

Decisive action must be taken now by the federal government, to implement and enforce the terms of the U.S. – China WTO Accession Agreement, or we will lose most, if not all of our domestic sock manufacturing industry.

Sincerely,

Charles Cole
Chairman
Domestic Manufacturers Committee
The Hosiery Association

George Shuster
Co-Chairman
American Manufacturing Trade Action Coalition

Allan Gant
Chairman
National Council of Textile Organizations

Karl Spilhaus
President
National Textile Association

Addendum 1

Page 1

Sock Mills

Addendum 2

Explanation of Survey Methodologies

For the latest THA domestic production survey series for 2001, 2002, and 2003, all companies on the list in Addendum 1 were surveyed. There follows an explanation of how certain production numbers included in these survey results were arrived at. An earlier THA survey series covered the years 1999, 2000, 2001.

Overlap of THA Surveys – To verify the accuracy of the production numbers over 5 years using overlapping methodologies, we can look to the results for the year 2001, which both series covered, and where both methodologies were employed and overlapped. The latest THA series number for US production in 2001 based on the latest survey was 207,321,337, compared to the earlier THA estimate for 2001 done according to THA's earlier series back through 1998, which was 206,584,000. This represents a difference of only .36% between the earlier THA series methodology for 2001, and the latest THA Survey series for 2001.

(Submitted on June 28, 2004)

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.04–16734 Filed 7–21–04; 8:45 am]

BILLING CODE 3510–DR–S

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11 a.m., Friday, August 6, 2004.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 04–16799 Filed 7–20–04; 11:22 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11 a.m., Friday, August 13, 2004.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 04–16800 Filed 7–20–04; 11:22 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11 a.m., Friday, August 20, 2004.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 04–16801 Filed 7–20–04; 11:22 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11 a.m., Friday, August 27, 2004.

PLACE: 1155 21st St., NW., Washington, DC., 9th Floor Commission Conference Room

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 04–16802 Filed 7–20–04; 11:22 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense (Personnel and Readiness).

ACTION: Notice.

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Under Secretary of Defense (Personnel and Readiness) announces the following proposed reinstatement of a public information collection and seeks public comment on the provisions thereof. 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 burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by September 20, 2004.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to the Office of the Principal Deputy Under Secretary of Defense (Personnel and Readiness) (Military Personnel Policy/Compensation), Attn: Thomas R. Tower, 4000 Defense Pentagon, Washington, DC 20301–4000.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address or call (703) 693–1059.

Title, Associated Form, and OMB Control Number: Application for Annuity—Certain Military Surviving Spouses, Form #: DD Form 2769, OMB Number: 0704–0402.

Needs and Uses: This information collection requirement is necessary to identify and pay surviving spouses who meet the criteria established for benefits under the provisions of the National Defense Authorization Act for Fiscal Year 1998, Public Law 105–85, section 644, as amended. The DD Form 2769, ''Application for Annuity—Certain Military Surviving Spouses,'' used in this information collection, provides a vehicle for the surviving spouse to apply for the annuity benefit. The Department will use this information to determine if the applicant is eligible for the annuity benefit and make payment to the surviving spouse. The respondents of this information collection are a never-remarried surviving spouse of a member of a Uniformed Service who (1) died before March 21, 1974, and was entitled to retired or retainer pay on the date of death, or (2) was a member of a Reserve Component of the Armed Forces who died before October 1, 1978 and on the date of death would have been entitled to retired pay except for not yet being 60 years of age.

Affected Public: Individuals.

Annual Burden Hours: 200.

Number of Respondents: 200.

Responses Per Respondent: 1.

Average Burden Per Response: 1 hour.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

The National Defense Authorization Act for FY 1998, Public Law 105–85, section 644, requires the Secretary of Defense to pay an annuity to qualified surviving spouses. As required by the Act, no benefit shall be paid to any person under this section unless an application for such benefit is filed with the Secretary concerned by or on behalf of such person. This information collection is needed to obtain the necessary data so that the Department can determine if the applicant is eligible for the annuity benefit and make payment to the surviving spouse.

Dated: July 15, 2004.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 04–16638 Filed 7–21–04; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 04–08]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/OPS–ADMIN, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 04–08 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: July 16, 2004.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

15 JUL 2004
In reply refer to:
I-04/001754

The Honorable J. Dennis Hastert
Speaker of the House of Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 04-08, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance (LOA) to India for defense articles and services estimated to cost $40 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

Richard J. Millies
Deputy Director

Enclosures:
1. **Transmittal No. 04-08**
2. **Policy Justification**
3. **Sensitivity of Technology**

Same ltr to: House Committee on International Relations
Senate Committee on Foreign Relations
House Committee on Armed Services
Senate Committee on Armed Services
House Committee on Appropriations
Senate Committee on Appropriations

Transmittal No. 04-08

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) Prospective Purchaser: India

(ii) Total Estimated Value:

Major Defense Equipment*	$20 million
Other	$20 million
TOTAL	$40 million

(iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: three aircraft self-protection systems which consist of three components:

AN/AAQ-24 Large Aircraft Infrared Countermeasures System
AN/ALE-47H Countermeasure Dispensing System
AN/ALQ-211 Early Warning Suite Controller and Radar Warning

Also included, associated support equipment, installation, test support, spare and repair parts, publications, personnel training and training equipment, technical assistance, contractor technical and logistics personnel services and other related elements of program support.

(iv) Military Department: Air Force (QJC)

(v) Prior Related Cases, if any: none

(vi) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none

(vii) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached

(viii) Date Report Delivered to Congress: 15 JUL 2004

*** as defined in Section 47(6) of the Arms Export Control Act.**

POLICY JUSTIFICATION

India – Aircraft Self-protection Systems

The Government of India has requested a possible sale of three aircraft self-protection systems that consist of three components:

AN/AAQ-24 Large Aircraft Infrared Countermeasures System
AN/ALE-47H Countermeasure Dispensing System
AN/ALQ-211 Early Warning Suite Controller and Radar Warning

Also included, associated support equipment, installation, test support, spare and repair parts, publications, personnel training and training equipment, technical assistance, contractor technical and logistics personnel services and other related elements of program support. The estimated cost is $40 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country and strategic partner which has been, and continues to be, an important force for political stability and economic progress in South Asia.

India will install the self-protection systems on three new Boeing 737 aircraft. They will use the system for the movement and protection of their Head of State. India will have no difficulty absorbing these systems into its armed forces.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be L3 Communications of Greenville, Texas. Additional subcontractors may be needed depending on the exact nature of the contracting arrangements established. There are no known offset agreements in connection with this proposed sale.

Implementation of this proposed sale will require the assignment of ten each U.S. Government and contractor representatives for two-week intervals annually to participate in program management and technical review.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 04-08

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. The AN/AAQ-24(V) NEMESIS Directional Infrared Countermeasures (DIRCM) with a multi-band laser on large infrared signature aircraft reduces the number of required transmitters and increases effectiveness against threats from modern Man-Portable Air Defense Systems. This aircraft self-protection suite will provide fast and accurate threat detection, processing, tracking, and countermeasures to defeat current and future generation infrared missile threats. DIRCM is designed for installation on a wide range of rotary and fixed-wing aircraft. The ALQ-211 Suite of Integrated RF Countermeasures provides advanced radar warning, situational awareness, and electronic countermeasures capabilities. The AN/ALE-47 is a chaff/flare dispensing system.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware or software in this proposed sale, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advance capabilities.

3. A determination has been made that India can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

[FR Doc. 04–16636 Filed 7–21–04; 8:45 am]
BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 04–19]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/OPS–ADMIN, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 04–19 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: July 16, 2004

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 50011–06—M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

13 JUL 2004
In reply refer to:
I-04/007628

The Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 04-19, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance (LOA) to Japan for defense articles and services estimated to cost $99 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

Richard J. Millies
Deputy Director

Enclosures:
1. Transmittal No. 04-19
2. Policy Justification
3. Sensitivity of Technology

Same ltr to: House Committee on International Relations
Senate Committee on Foreign Relations
House Committee on Armed Services
Senate Committee on Armed Services
House Committee on Appropriations
Senate Committee on Appropriations

Transmittal No. 04-19

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) **Prospective Purchaser**: Japan

(ii) **Total Estimated Value**:

Major Defense Equipment*	$92 million
Other	$ 7 million
TOTAL	$99 million

(iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase**: 40 SM-2 Block IIIB Tactical STANDARD missiles with MK 13 MOD 0 canisters, 14 SM-2 Block IIIB Telemetry STANDARD missiles with MK 13 MOD 0 canisters and AN/DKT-71A telemeters and conversion kits, 10 SM-2 Block IIIB Telemetry STANDARD missiles with MK 13 MOD 0 canisters and DKT-71A telemeters, containers, spare and repair parts, supply support, U.S. Government and contractor technical assistance and other related elements of logistics support.

(iv) **Military Department**: Navy (APS, APT, APU, and APV)

(v) **Prior Related Cases, if any**:

FMS case APP	- $16 million	- 11Jul03
FMS case APG	- $27 million	- 20Jun03
FMS case AOZ	- $21 million	- 23Aug02
FMS case AOO	- $18 million	- 19Dec01
FMS case AOI	- $17 million	- 1Nov00
FMS case AOB	- $16 million	- 9Dec99
FMS case ANU	- $17 million	- 21Dec98
FMS case AMZ	- $ 7 million	- 17Oct94
FMS case ALT	- $10 million	- 27Aug93
FMS case ALI	- $ 7 million	- 28Oct92
FMS case AKV	- $12 million	- 24Mar92

(vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid**: none

(vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold**: See Annex attached

(viii) **Date Report Delivered to Congress**: 13 JUL 2004

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Japan - SM-2 Block IIIB STANDARD Missiles

The Government of Japan has requested a possible sale of 40 SM-2 Block IIIB Tactical STANDARD missiles with MK 13 MOD 0 canisters, 14 SM-2 Block IIIB Telemetry STANDARD missiles with MK 13 MOD 0 canisters and AN/DKT-71A telemeters and conversion kits, 10 SM-2 Block IIIB Telemetry STANDARD missiles with MK 13 MOD 0 canisters and DKT-71A telemeters, containers, spare and repair parts, supply support, U.S. Government and contractor technical assistance and other related elements of logistics support. The estimated cost is $99 million.

Japan is one of the major political and economic powers in East Asia and the Western Pacific and a key ally of the United States in ensuring the peace and stability of that region. It is vital to the U.S. national interest to assist Japan to develop and maintain a strong and ready self-defense capability, which will contribute to an acceptable military balance in the area. This proposed sale is consistent with these U.S. objectives and with the 1960 Treaty of Mutual Cooperation and Security.

The SM-2 missiles will be used on ships of the Japan Maritime Self Defense Force fleet and will provide enhanced capabilities in providing defense of critical sea-lanes of communication. Japan, which already has STANDARD missiles in its inventory, will have no difficulty absorbing these additional missiles.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The principle contractors will be: Raytheon Missile Systems Company in Tucson, Arizona; Raytheon Company of Camden, Arkansas; United Defense, Limited Partnership (UDLP) of Minneapolis, Minnesota; and UDLP of Aberdeen, South Dakota. There are no offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government or contractor representatives to Japan.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 04-19

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. The possible sale of SM-2 Block IIIB STANDARD missiles will result in the transfer of sensitive technology and information as well as classified and unclassified defense equipment and technical data. The STANDARD missile hardware including: guidance section, target detecting device, warhead, rocket motor, steering control section, safety and arming device, and auto-pilot battery unit are classified Confidential. Certain operating frequencies and performance characteristics are classified Secret. Confidential documentation to be provided includes: parametric documents, general performance data, firing guidance, kinematics information, Intermediate Maintenance Activity (IMA)-level maintenance, and flight analysis procedures.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

3. A determination has been made that Japan can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

[FR Doc. 04–16637 Filed 7–21–04; 8:45 am]
BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 04–15]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Pub. L. 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/OPS–ADMIN, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 04–15 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: July 16, 2004.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

15 JUL 2004
In reply refer to:
I-04/001754

The Honorable J. Dennis Hastert
Speaker of the House of Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 04-08, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance (LOA) to India for defense articles and services estimated to cost $40 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

Richard J. Millies
Deputy Director

Enclosures:
1. **Transmittal No. 04-08**
2. **Policy Justification**
3. **Sensitivity of Technology**

Same ltr to: House Committee on International Relations
Senate Committee on Foreign Relations
House Committee on Armed Services
Senate Committee on Armed Services
House Committee on Appropriations
Senate Committee on Appropriations

Transmittal No. 04-08

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) **Prospective Purchaser**: India

(ii) **Total Estimated Value**:

Major Defense Equipment*	$20 million
Other	$20 million
TOTAL	$40 million

(iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase**: three aircraft self-protection systems which consist of three components:

AN/AAQ-24 Large Aircraft Infrared Countermeasures System
AN/ALE-47H Countermeasure Dispensing System
AN/ALQ-211 Early Warning Suite Controller and Radar Warning

Also included, associated support equipment, installation, test support, spare and repair parts, publications, personnel training and training equipment, technical assistance, contractor technical and logistics personnel services and other related elements of program support.

(iv) **Military Department**: Air Force (QJC)

(v) **Prior Related Cases, if any**: none

(vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid**: none

(vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold**: See Annex attached

(viii) **Date Report Delivered to Congress**: 15 JUL 2004

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

India – Aircraft Self-protection Systems

The Government of India has requested a possible sale of three aircraft self-protection systems that consist of three components:

AN/AAQ-24 Large Aircraft Infrared Countermeasures System
AN/ALE-47H Countermeasure Dispensing System
AN/ALQ-211 Early Warning Suite Controller and Radar Warning

Also included, associated support equipment, installation, test support, spare and repair parts, publications, personnel training and training equipment, technical assistance, contractor technical and logistics personnel services and other related elements of program support. The estimated cost is $40 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country and strategic partner which has been, and continues to be, an important force for political stability and economic progress in South Asia.

India will install the self-protection systems on three new Boeing 737 aircraft. They will use the system for the movement and protection of their Head of State. India will have no difficulty absorbing these systems into its armed forces.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be L3 Communications of Greenville, Texas. Additional subcontractors may be needed depending on the exact nature of the contracting arrangements established. There are no known offset agreements in connection with this proposed sale.

Implementation of this proposed sale will require the assignment of ten each U.S. Government and contractor representatives for two-week intervals annually to participate in program management and technical review.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 04-08

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. The AN/AAQ-24(V) NEMESIS Directional Infrared Countermeasures (DIRCM) with a multi-band laser on large infrared signature aircraft reduces the number of required transmitters and increases effectiveness against threats from modern Man-Portable Air Defense Systems. This aircraft self-protection suite will provide fast and accurate threat detection, processing, tracking, and countermeasures to defeat current and future generation infrared missile threats. DIRCM is designed for installation on a wide range of rotary and fixed-wing aircraft. The ALQ-211 Suite of Integrated RF Countermeasures provides advanced radar warning, situational awareness, and electronic countermeasures capabilities. The AN/ALE-47 is a chaff/flare dispensing system.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware or software in this proposed sale, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advance capabilities.

3. A determination has been made that India can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

[FR Doc. 04–16640 Filed 7–21–04; 8:45 am]
BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Office of the Secretary

Finding of No Significant Impact for the Mobile Launch Platform

AGENCY: Missile Defense Agency, Department of Defense.

ACTION: Notice.

SUMMARY: The Missile Defense Agency (MDA) prepared an Environmental Assessment (EA) to evaluate the potential environmental impacts of activities associated with using the Mobile Launch Platform (MLP) as a platform for testing sensors, launching target missiles, and launching interceptor missiles and the EA is hereby incorporated by reference. The MLP is the former USS Tripoli (LPH 10), a converted U.S. Navy Iwo Jima class Amphibious Assault Ship (Helicopter). The EA considers the impacts of specific tests that propose to use the MLP. After reviewing and analyzing currently available data and information on existing conditions, project impacts, and measures to mitigate those impacts, the MDA has determined that the proposed action is a Federal action that would not significantly affect the quality of the human environment within the meaning of the National Environmental Policy Act (NEPA) of 1969, as amended. Therefore the preparation of an Environmental Impact Statement (EIS) is not required and MDA is issuing a Finding of No Significant Impact (FONSI). The MDA made this determination in accordance with all applicable environmental laws.

The EA was prepared in accordance with NEPA; the Council on Environmental Quality regulations that implement NEPA (Code of Federal Regulations [CFR], title 40, parts 1500–1508); Department of Defense (DoD) Instruction 4715.9, *Environmental Planning and Analysis;* the applicable service regulations that implement these laws and regulations; and Executive Order (E.O.) 12114, *Environmental Effects Abroad of Major Federal Actions,* which direct DoD lead agency officials to consider potential environmental impacts and consequences when authorizing or approving Federal actions. The Draft EA was released for public comment on April 28, 2004. The Notice of Availability was published in the **Federal Register** on May 6, 2004. All comments received were considered in the preparation of the EA. An electronic copy of the EA is available for download at the following Web site: *http://www.acq.osd.mil/bmdo/bmdolink/html/bmdolink.html.*

ADDRESSES: Submit request for a copy of the MLP EA to MDA/TER, Attn: Mr. Crate Spears, 7100 Defense Pentagon Washington, DC 20301–7100.

SUPPLEMENTARY INFORMATION:

A. *Description of the Proposed Action:* The purpose of the proposed action is to provide a mobile sea-based platform from which to more realistically test sensors (radars,

telemetry, and optical systems), ballistic missile targets, and defensive missile interceptors in support of MDA's mission. MDA's mission is to develop, test, deploy, and plan for decommissioning a Ballistic Missile Defense System (BMDS) to provide a defensive capability for the United States (U.S.), its deployed forces, friends, and allies from ballistic missile threats. The proposed action would provide the MDA with the capability to conduct launches using multiple realistic target and interceptor trajectories in existing test ranges and the Broad Ocean Area (BOA). In addition, the proposed action would allow MDA the capability to use sensors at test support positions in remote areas of the ocean by locating these sensors onboard the MLP.

The sensors that would be tested from the MLP include radars, telemetry, and optical systems. Examples of radars that could be used include: TPS–X, Mk–74, and Coherent Signal Processor radars that already exist, and the BMDS radar, being developed by the MDA. Telemetry systems could include the Transportable Telemetry System and mobile range safety systems. Mobile optical systems such as the Stabilized High-Accuracy Optical Tracking System could also be placed on the MLP. Additional sensor systems may be temporarily based on the MLP as required. The targets that would be launched from the MLP include pre-fueled and non-pre-fueled liquid and solid propellant missiles. The interceptors that would be launched from the MLP include solid propellant missiles. The MLP would be designed to operate from one or all of the following locations, Western Range, Pacific Missile Range Facility (PMRF)/ Kauai Test Facility (KTF), U.S. Army Kwajalein Atoll (USAKA)/Ronald Reagan Ballistic Missile Defense Test Site (RTS), and the BOA.

The MLP has no engines for propulsion and would be towed from port to the test event location. Either a government-owned contractor-operated or commercial tug would tow the MLP for test events. The sensors would be transported to and loaded on the MLP at the home port (Mare Island, California) and target and interceptor missiles would be transported to and loaded on the MLP at ordnance loading ports.

Tests would consist of the launch of a target missile; tracking by land, sea-, air-, and space-based sensors; launch of an interceptor missile; target intercept; and debris impacting in the ocean. For the purpose of this EA, a test event was defined as a target missile flight, an interceptor missile flight, an intercept of a target missile, or use of a sensor to observe a missile flight test or intercept. The EA addresses the impacts of conducting up to four test events per year using the MLP as a platform for operating sensors, launching target missiles, and launching interceptor missiles for a total of up to 20 test events between 2004 and 2009.

B. Alternatives To the Proposed Action: Two alternatives to the proposed action were considered in the EA. The first alternative would include using the MLP for the launch of all missile types (pre-fueled and non-pre-fueled liquid propellant target missiles, solid propellant target missiles, and solid propellant interceptor missiles) but not for testing sensors. The second alternative would include using the MLP to test sensors and launch pre-fueled liquid propellant missiles and solid propellant missiles but not non-pre-fueled liquid propellant missiles. Under the no action alternative, existing activities to be conducted from the MLP would continue and additional activities using the MLP would be considered on a case-by-case basis. Sensor testing and missile launches would continue from existing locations and facilities but the MDA would not have the flexibility of using the MLP as a platform to conduct testing of sensors or launches of missiles from the MLP. The potential benefits to the testing program from implementing realistic flight-test scenarios and the greater flexibility afforded with a mobile platform would not be realized.

C. Environmental Effects:

1. Methodology

To assess the significance of any impact, a list of activities necessary to accomplish the proposed action was developed. The affected environment at all applicable locations was then described. Next, those activities with the potential for environmental consequences were identified. The degree of analysis of proposed activities if proportionate to their potential to cause environmental impacts.

Nine resource areas were considered to provide a context for understanding the potential effects of the proposed action and to provide a basis for assessing the severity of potential impacts. These areas included air quality, airspace, biological resources, geology and soils, hazardous materials and waste, health and safety, noise, transportation and infrastructure, and water resources. The areas were analyzed as applicable for each proposed location or activity. Because the proposed action involves the use of the MLP as a mobile sea-based platform for testing sensors and launching target and interceptor missiles, the majority of potential impacts would occur in the ocean. Therefore, other resource areas, including land use, environmental justice and socioeconomic resources, visual and aesthetic resources, and cultural and historic resources were not considered in the analysis. Conclusions of the analyses were made for each of the areas of environmental consideration based on the application of the described methodology. The amount of detail presented in each resource area is proportional to the potential for environmental impacts.

2. Impact From Missile Test Events

No significant impacts to geology and soils, health and safety, transportation and infrastructure, or water resources would occur from missile test events in the Western Range, PMRF, USAKA/ RTS, or the BOA. No significant impacts would result from hazardous materials or hazardous waste used or produced as a result of the proposed action. Applicable regulations and operating procedures would be followed when handling hazardous materials and waste. Fueling procedures for non-pre-fueled liquid propellant missiles could impact air quality if an accidental release were to occur during fueling operations. The low likelihood of such a release and the implementation of approved emergency response plans would limit the potential for impact to air quality. Analyses indicated that launch emissions would not exceed Federal annual air quality (de minimis) limits. Launches of missiles would not add any new stationary emissions sources to the ranges; therefore, new permits or changes to existing air permits would not be required. In addition, dispersion in the ocean is considered good due to prevailing trade winds and lack of topographic features that inhibit dispersion. Launch preparations would follow standard evacuation procedures within the active warning area, which would marginally reduce the amount of navigable airspace. Missile launch firing areas would be selected so that trajectories would be clear of established oceanic air routes or areas of known surface or air activity. Missile launches would take place in existing restricted airspace or warning areas. Airspace would be evacuated within the launch hazard areas and commercial flights would be rerouted to avoid the cleared airspace. Missile launches occurring in the ocean would be located far enough off land that they would not be expected to interfere with existing airfield or airport arrival and departure traffic flows. Test

event sponsors would ensure coordination with the appropriate organizations, such as the International Civil Aviation Organization through the Federal Aviation Administration (FAA), to issue International Notices to Airmen, locate ships with radar capable of monitoring the airspace, contact all commercial airlines and civil and private airports, and monitor appropriate radio frequencies to minimize potential safety impact.

Noise resulting from the launch of missiles is most likely to cause startle responses in wildlife. Potential non-acoustic effects to biological resources include physical impact by falling debris, entanglement in debris, and contact with or ingestion of debris or hazardous materials. The impact of a missile with the ocean surface could impart injuries to marine mammals at close range. However injury to marine mammals by direct impact or shock wave would be extremely remote (less than 0.0006 marine mammals exposed per year).

Personnel would be located under the hardened deck of the MLP where they would be protected from noise generated during launches. Personnel on the tow vessel would be moved to a safe distance and would be protected from noise generated during launch. Personnel exposed to loud noises would be required to wear hearing protection. Missiles could generate a sonic boom however they would not affect the immediate area around the launch site.

3. Impacts From Sensor Test Events

Impacts to air quality would be limited to exhaust emissions produced by generators on the MLP and would not be significant. No significant impacts to airspace, geology and soils, hazardous materials and hazardous waste, noise, transportation and infrastructure, or water resources would occur from sensor test events in the Western Range, PMRF, USAKA/RTS, or the BOA.

Potential impacts to wildlife in the near shore environment of the ranges would include seabirds and shorebirds, including migratory species, striking the antennas, telescopes and shelters or becoming disoriented due to high intensity lighting at night. Action would be taken to increase visibility of antennas, telescopes, and other structures to birds. High intensity lighting would be used only during test events and low intensity lighting would be used whenever possible to reduce the likelihood that birds would become disoriented. Use of sensors onboard the MLP would not impact marine mammals and pelagic fish. Operational actitivies taking place in the open ocean would occur several hundred kilometers from any landmass, therefore there would be no impacts on near shore vegetation due to use of sensors on the MLP. No electromagnetic radiation (EMR) impacts to wildlife would be expected. The main beam produced by the sensor would be in motion, making it extremely unlikely that a bird would remain within the most intense area of the beam for any considerable length of time.

Operation of mobile sensor systems on board the MLP would not present a significant health and safety hazard. EMR hazard zones would be established within radar tracking space and near emitter equipment. A visual survey of the area would be conducted to verify that all personnel are outside the hazard zone prior to setup. There would be no exposure hazard expected from the operation of telemetry and optical systems equipment.

4. Mare Island

There would be no changes required to Mare Island to support docking, servicing, or maintaining the MLP. In addition, any impacts resulting from generator use onboard the MLP would not be different than vessels currently using the port, thus no significant impacts are expected from the use of the MLP at Mare Island. Radars on the MLP would radiate at the home port for system testing, calibration, and tracking of satellites. With the implementation of software controls and other operating parameters, there would be no radiation hazard area on the shore at the home port. Thus, no impacts are expected to the home port from using radars on the MLP.

5. Cumulative Impacts

Because the proposed activities would take place in the ocean, no major differences are expected to the cumulative impacts between ranges. There are no other known activities in the near shore environment or BOA that would contribute to cumulative impacts in the ocean, therefore this cumulative impact analysis focuses on the cumulative impacts of up to four test events per year. Proposed test events from the MLP in conjunction with other existing or planned activities would not be expected to produce cumulative impacts.

a. Cumulative Impacts From Missile Test Events

Missile launches are short-term, discrete events, allowing time between launches for emissions to be dispersed. Thus, no cumulative impacts would be expected for air quality. Because the volume of air traffic using the ocean environment is within structured airspace with scheduling procedures in place for jet routes and warning and control areas, there would be no cumulative impacts to airspace. Use of spill prevention, containment, and control measures would prevent or minimize impacts to biological resources from spills of propellants. Noise impacts may elicit behavioral disturbance responses in wildlife; however, the addition of at most four missile launches per year would have no cumulative effects on biological resources. No cumulative impacts to geology and soils, hazardous materials and hazardous waste, health and safety, transportation and infrastructure, or water resources would result from the proposed action.

b. Cumulative Impacts From Sensor Test Events

In instances where two radars are used together, for example if the Mk–74 is given a vector to track a target by another radar, such as the TPS–X, no additional impacts would be expected since Mk–74 support equipment would be powered by the generators on the MLP and would not require the addition of supplemental generators. The EA considered the impacts of operating sensors singularly or in groups from the MLP. Power requirements for each sensor are discussed in the EA and may be modified by the test event sponsor based on the specific mission proposed. Therefore, the impacts from using two sensors on the MLP would be similar to those outlined below.

Sensor operating areas would be restricted to minimize impacts to aircraft operations. Standards developed by the FAA and DoD, which limit EMR interference to aircraft, would preclude the potential for cumulative impacts to airspace. EMR hazard zones and safety procedures would be established to provide safety to personnel aboard the MLP, and therefore there would be no cumulative impacts to health and safety.

No cumulative impacts to air quality, biological resources, geology and soils, noise, transportation and infrastructure or water resources would result from the proposed action. No cumulative impacts would result from hazardous materials or hazardous waste used or produced as a result of the proposed action. Operational noises would be limited to the generator used on the MLP and would not be different from current marine vessels; no cumulative noise impacts would be expected.

D. *Conclusion:* After analyzing the proposed action, the MDA has

concluded that there are no significant short-term or long-term effects to the environment or surrounding populations. After careful and thorough consideration of the facts herein, the MDA finds that the proposed Federal action is consistent with existing national environmental policies and objectives set forth in section 101(a) of NEPA and that it will not significantly affect the quality of the human environment or otherwise include any condition requiring consultation pursuant to section 102(2)(c) of NEPA. Therefore, an EIS for the proposed action is not required.

Dated: July 15, 2004.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 04–16635 Filed 7–21–04; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

List of Institutions of Higher Education Ineligible for Federal Funds

AGENCY: Department of Defense.

ACTION: Notice.

SUMMARY: This document is published to identify institutions of higher education that are ineligible for contracts and grants by reason of a determination by the Secretary of Defense that the institution prohibits or in effect prevents military recruiter access to the campus, students on campus or student directory information. It also implements the requirements set forth in section 983 of title 10, United States Code, and 32 CFR part 216. The institution of higher education so identified is: Vermont Law School, South Royalton, Vermont.

ADDRESSES: Director for Accession Policy, Office of the Under Secretary of Defense for Personnel and Readiness, 4000 Defense Pentagon, Washington, DC 20301–4000.

FOR FURTHER INFORMATION CONTACT: Commander Ronda J. Syring, (703) 695–5529.

Dated: July 16, 2004.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 04–16639 Filed 7–21–04; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF ENERGY

Designation of National Interest Electric Transmission Bottlenecks (NIETB)

AGENCY: Office of Electric Transmission and Distribution, Department of Energy.

ACTION: Notice of inquiry and opportunity to comment.

SUMMARY: The Department of Energy (DOE) seeks comments on issues relating to the identification, designation and possible mitigation of National Interest Electric Transmission Bottlenecks (NIETB). This inquiry is DOE's initial step in seeking to identify and designate NIETBs. By publicly identifying and designating NIETBs, DOE will help mitigate transmission bottlenecks that are a significant barrier to the efficient operation of regional electricity markets, threaten the safe and reliable operation of the electric system, and/or impair national security. DOE seeks comments on the questions posed below and welcomes other pertinent comments or proposals.

DATES: Written comments are to be filed electronically by e-mailing to: *bottleneck.comments@hq.doe.gov* no later than 5 p.m. e.d.t. September 20, 2004. Comments can be filed at the address listed below.

ADDRESSES: Office of Electric Transmission and Distribution, TD–1, Attention: Transmission Bottleneck Comments, U.S. Department of Energy, Forrestal Building, Room 6H050, 1000 Independence Avenue, SW., Washington, DC 20585.

Note that U.S. Postal Service mail sent to DOE continues to be delayed by several weeks due to security screening. Electronic submission is therefore encouraged.

FOR FURTHER INFORMATION CONTACT: Mr. David Meyer, Office of Electric Transmission and Distribution, TD–1, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–1411, *david.meyer@hq.doe.gov*, or Lot Cooke, Office of General Counsel, GC–76, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–0503, *lot.cooke@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: The Nation's electric system includes over 150,000 miles of interconnected high-voltage transmission lines that link generators to load centers. The electric system has been built by electric utilities over a period of 100 years, primarily to serve local customers. Until recent years, electricity trade among electric utilities was modest. With the advent of wholesale electricity markets, trade has increased exponentially, and utilities now shop for the lowest cost power from suppliers reachable through the transmission network. The increase in regional electricity trade saves electricity consumers billions of dollars, but it places significant additional loads on the transmission facilities over which this trade is conducted. Steady growth in demand for electricity also has contributed to the growth in demand for transmission service.

While transmission service has become more important economically and operationally, investment in new transmission facilities has not kept pace. Over the past 25 years, investment in new transmission facilities has significantly declined. Today, bottlenecks in the transmission system impede economically efficient electricity transactions and potentially threaten the safe and reliable operation of the transmission system. DOE estimates that these bottlenecks cost consumers several billions of dollars per year by forcing wholesale electricity purchasers to buy from higher-cost suppliers. This estimate does not include the reliability costs associated with such bottlenecks.

The *National Energy Policy (May 2001)*, the Department's *National Transmission Grid Study (May 2002)*, and the *Transmission Grid Solutions Report (September 2002)* issued by the Secretary's Electricity Advisory Board, recommend that the Department initiate a process to determine how to identify and designate transmission bottlenecks of national interest, as a first step toward mitigation of them.

Specifically, the Grid Study states:

> Transmission bottlenecks affect national interests by increasing the cost of electricity to consumers and the risk of transmission system reliability problems in various regions throughout the United States. Relieving transmission bottlenecks is a regional issue. DOE will work in partnership with FERC, States, regions, and local communities to designate significant bottlenecks and take actions to ensure that they are addressed.

The report of the Electricity Advisory Board states:

> We would urge the Secretary to develop the criteria and process for determining which existing bottlenecks should qualify for special status as ''National Interest Transmission Bottlenecks'' because the bottlenecks affect the reliability and security of the nation's electric grid. The DOE must work with State, regional and local government officials to encourage proposals from industry participants and to monitor progress toward elimination of designated bottlenecks.

The Electricity Advisory Board goes on to recommend that to be designated

a *National Interest Transmission Bottleneck* the bottleneck must meet one of three criteria:

1. The bottleneck jeopardizes national security;
2. The bottleneck creates a risk of widespread grid reliability problems or the likelihood that major customer load centers will be without adequate electricity supplies; or
3. The bottleneck creates the risk of significant consumer cost increases in electricity markets that could have serious consequences on the national or a broad regional economy or risks significant consumer cost increases over an area or region.

We note that Title XII of H.R.6, as reported by a joint U.S. Senate-House of Representatives Conference Committee, as well as Title XII of S. 2095, the comprehensive energy legislation now before the U.S. Congress, contain provisions that would require the Secretary of Energy, within one year after enactment into law, and every three years thereafter, to designate ''National Interest Transmission Corridors.''

The legislation would also give certain Federal ''backstop'' siting authority to the Federal Energy Regulatory Commission for facilities to be located within DOE-designated National Interest Transmission Corridors.

This Notice of Inquiry does not ask for comment on any of the National Interest Transmission Corridor and related provisions of pending energy legislation. Should those provisions be enacted into law, the Department will issue such notices and take other actions as may be authorized or directed by those provisions.

The Department has completed some preliminary scoping studies to support DOE identification of NIETBs. These include a survey of existing models and tools that could support bottleneck assessment by DOE and a survey of bottlenecks reported by regional transmission operators or independent system operators. These studies are available at: *http://www.electricity.doe.gov/bottlenecks.*

Additionally, DOE organized a workshop on July 14, 2004, in Salt Lake City, Utah, immediately following the National Association of Regulatory Utility Commissioners (NARUC) Summer Meeting. The purpose of this workshop was to learn from stakeholders what they believe to be the major issues associated with the designation of NIETBs, and how they believe the process should be designed to maximize its benefits to the users of the grid and to electricity consumers. For proceedings from the workshop, please go to *http://www.electricity.doe.gov/bottlenecks.*

To assist DOE in developing a procedure for identifying, designating, and addressing NIETBs, we request comments on the three criteria for designation described above, and the following questions:

1. Are the Electricity Advisory Board's recommended criteria for designation of National Interest Electric Transmission Bottlenecks appropriate and sufficient? If not, what should they be? For example, should DOE also consider disaster recovery, economic development, and the enhancement of the ability to deal with market and system contingencies in designating NIETBs?

2. What should be the role of transmission grid operators, utilities, other market participants, regional entities, States, Federal agencies, Native American tribes and others in the process of identifying, designating, and addressing NIETBs? For example, should a NIETB be designated only if some entity applies to DOE for designation? Should DOE accept applications only from entities from regions that have an extant regional transmission (or resource) plan? Should DOE be able to designate a NIETB even if no entity asks DOE to do so?

3. How might DOE identify bottlenecks in regions where much pertinent data are not available, in contrast to regions where transmission expansion plans have been developed and made public?

4. What actions should DOE undertake to facilitate and monitor progress towards mitigation of designated NIETBs?

In addition to the above, commenters are encouraged to discuss, comment on, and make suggestions on other transmission bottleneck issues that may be relevant to the development of procedures to designate and address NIETBs. To the greatest extent consistent with law, comments submitted pursuant to this Notice of Inquiry will be deemed public and will not be treated as confidential.

Issued in Washington, DC, on July 16, 2004.

James W. Glotfelty,

Director, Office of Electric Transmission and Distribution.

[FR Doc. 04–16724 Filed 7–21–04; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER04–928–000]

California Independent System Operator Corporation; Notice of Availability of Filing Instructions and Summary Template

July 15, 2004.

1. Pursuant to the Commission's June 17, 2004 Order in the above captioned proceeding, the Commission staff is hereby making available for parties' use instructions for filing information on Existing Transmission Contracts (ETCs).[1] This optional template for filing ETC information is available with this notice and on *http://www.ferc.gov* under ''What's New.''

2. Parties should review the instructions for the template before using it. Summary ETC information should be submitted using the Commission's electronic filing system (eFiling link at *http://www.ferc.gov*). Parties filing supplemental information should also use the eFiling system, provided the material is not restricted from publication and meets the maximum file number and file size restrictions for electronic filing.

3. All submissions are due by 5 p.m. eastern time on July 23, 2004.[2]

Magalie R. Salas,

Secretary.

Instructions to All Parties for Filing Information on Existing Transmission Contracts Pursuant to the Commission's June 17, 2004 Order in Docket No. ER04–928–000

These instructions apply to all parties to Existing Transmission Contracts (ETCs) when making summary filings as required by the Commission's June 17 Order. These instructions include procedures for parties to submit: (1) Summary information using the Commission's *pro forma* template and (2) supplemental information. These instructions should be followed precisely.

All persons submitting information not restricted from publication must do so using the Commission's electronic filing system.

- If you do not already have an eRegistration account, you must create one before you can submit an electronic filing. Before you can use the account,

[1] Calfiornia Independent System Operator Corporation, 107 FERC ¶ 61,274 (2004) (June 17 Order).

[2] This date was clarified by an Errata Notice issued on July 13, 2004, in this proceeding.

you must validate the e-mail address by clicking on the link in the e-mail that you will receive after you submit the eRegistration account information.

• The eFiling system can only accept 10 files per session with a maximum file size of 10 Mb for each file. Use multiple sessions if you have more than 10 files; documents larger than 10 Mb must be submitted on CD ROM.

• File names are limited to 25 characters, including the file extension, but not including the directory path. All file names should contain only letters, numbers, and the underscore symbol. Do NOT use spaces, hyphens, ampersands, or other special characters.

• Privileged material must be submitted on CD ROM and paper. The eFiling system can only accept Public documents.

Composing Summary Filings (Templates)

Summary filings should be submitted using the Commission's template created for this purpose and by using the eFiling system at *http://www.ferc.gov.* Parties should submit a separate template for each ETC. Download the Excel template posted on the FERC Web site at *http://www.ferc.gov* under ''What's New'', and copy and save the template under a unique file name for each ETC reported.

The following list describes the step-by-step instructions for completing the template for each ETC.

Item 1. Insert the name of the entity responsible under the contract for scheduling the contract.

Item 2. Insert the type of agreement, *e.g.*, point to point, system integration.

Item 3. Insert the source point(s) applicable to the ETC.

Item 4. Insert the sink point(s) applicable to the ETC.

Item 5. Insert the maximum number of megawatts transmitted pursuant to the ETC for each set of source and sink points.

Item 6. Check the appropriate entry to indicate whether any modification of the ETC is subject to a ''just and reasonable'' standard of review or a *Mobile-Sierra* ''public interest'' standard of review. Select ''mixed'' if some provisions of the existing transmission contract are subject to *Mobile-Sierra* and some provisions are subject to the ''just and reasonable'' standard. If mixed, provide supplemental information in a separate file.

Item 7. Insert the contract termination date.

Item 8. Insert the FERC designation for the contract, if applicable.

Item 9. Insert the contract identifier or designation commonly used to refer to the contract.

Item 10. Indicate whether this is a firm contract (Yes/No/Undetermined). If undetermined, provide supplemental information.

Item 11. Identify the filing party.

Item 12. Specify the names of the other one or more parties to the ETC.

Item 13. Enter the date you are submitting the contract information to FERC.

Save the file (25 character limit, including the extension; do not use spaces, hyphens, or special characters other than an underscore in the file name).

Submitting Summary Filings and Any Supplemental Information (Use FERC's Electronic Filing System if All Documents Are Public)

1. Go to *http://www.ferc.gov* and select the eFiling link.
2. Log in with your e-mail address and password.
3. Select the filing type ''Production of Document.''
4. Select the signer and organization you are filing on behalf of if different from the login account information. If there are multiple parties, you will add that information in Step 6.
5. On the Docket screen, enter ER04–928, click on Query, and select ER04–928–000.
6. At the Submission Description screen, please amend the default description as follows (255-character limit): Amend the default description to read: ''Summary Filing for ETC [contract designation] between [filing party] and [other party(ies) names] in Docket No. ER04–928, *et al.*'' Use abbreviations or acronyms for party names, if necessary, to stay within the 255 character limit.
7. On the File Upload screen, click on Browse; in the Choose File box, locate and highlight the summary Excel file, then click on Open; the directory string and file name will be added to the Select File box—do not make changes to the directory string and file name at this point.
8. There is an optional description field to provide more detail about the file.
9. Click on Attach—the file appears in a table below the Attach icon.
10. Repeat the process if you need to select additional files (max of 10 files—use another eFiling session if you have more than 10 files to submit; for multiple sessions, indicate Part 1, Part 2, etc. in the description). Attach files in order, or use the Up/Down keys to revise the order after selection.
11. After attaching all files, click on Submit Files.
12. On the Confirmation screen, click on Done to complete the transaction.
13. You will receive conformation e-mails for your submission.

Filing Privileged Material or Documents That Exceed eFiling File Size Limits

Supplemental information containing privileged material should be filed on CD ROM with a separate CD ROM, paper original, and two paper copies for both the privileged material (complete filing) and the redacted public version. Use the same procedure if any supplemental information files exceed 10 Mb.

Use the following description in the cover letter: ''Supplemental Information for ETC [contract designation] between [filing party] and [other party(ies) names] in Docket No. ER04–928, *et al.*''

Mark or stamp the original and two paper copies of the public material as ''Public''. Mark or stamp the original and two paper copies of the privileged material as ''Privileged'' or ''Non-Public.''

Label each CD with the Party Name, the title or description of the contents, and the security access level of the CD—Public or Privileged.

The media and paper copies should be delivered to the Federal Energy Regulatory Commission, Room 1A, 888 First Street, NE., Washington, DC 20426.

Help Resources

Content of Summary Filings: (202) 502–6822.

Template (copying/saving/using): (202) 502–8426.

e-Filing Assistance/Problems: *FERCOnlineSupport@ferc.gov*, or call (202) 502–6652 or 1 (866) 208–3676 (toll free).

[FR Doc. E4–1628 Filed 7–21–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP04–346–000]

CenterPoint Energy—Mississippi River Transmission Corporation; Notice of Application

July 15, 2004.

On July 14, 2004, CenterPoint Energy—Mississippi River Transmission Corporation (MRT), whose main office is located at 1111 Louisiana Street, Houston, Texas 77210, filed with the Federal Energy Regulatory Commission to convert the blanket certificate authority proceeding into an application for authorization pursuant to section

7(c) of the Natural Gas Act (NGA), as amended, and the Commission's Rules and Regulations thereunder. The certificate requested would authorize MRT to construct, own, and operate a new delivery lateral (Line A–334), a new measurement station, and a new compressor station. Line A–334 will consist of approximately 3.6 miles of 20 inch pipe to serve Venice Power Plant in Venice, Illinois as previously described in the Prior Notice blanket authority notice issued on June 10, 2004. The application is on file with the Commission and open for public inspection. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

MRT states that copies of this filing have been mailed to all parties on the Official Service List in this proceeding. Further, MRT states it will comply with section 157.6 of the Commission's regulations and notify all affected landowners.

Any questions regarding this application should be directed to Lawrence O. Thomas, Director-Rates & Regulatory, CenterPoint Energy—Mississippi River Transmission Corporation, P.O. Box 21734, Shreveport, Louisiana 71101, at (318) 429–2804.

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, on or before the below listed comment date, file 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.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. 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.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

Motions to intervene, protests and comments 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 28, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1636 Filed 7–21–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–200–124]

CenterPoint Energy Gas Transmission Company; Notice of Negotiated Rate

July 16, 2004.

Take notice that on July 2, 2004, CenterPoint Energy Gas Transmission Company (CEGT) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following tariff sheets to be effective July 2, 2004:

First Revised Sheet No. 829
First Revised Sheet No. 830
First Revised Sheet No. 840
First Revised Sheet No. 841
First Revised Sheet No. 848
Fourth Revised Sheet No. 861

CEGT states that the purpose of this filing is to reflect the termination of negotiated rates with respect to certain transactions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission,

888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1638 Filed 7–21–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–314–001]

Colorado Interstate Gas Company; Notice of Compliance Filing

July 15, 2004.

Take notice that on July 12, 2004, Colorado Interstate Gas Company (CIG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Substitute Fourth Revised Sheet No. 378, with an effective date of June 28, 2004.

CIG states that the tariff sheet revises Article 37, Operational Purchases and Sales, to comply with the Commission's order issued June 25, 2004, in this proceeding.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1632 Filed 7–21–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–397–000]

Gulfstream Natural Gas System, L.L.C.; Notice of Proposed Changes in FERC Gas Tariff

July 15, 2004.

Take notice that on July 12, 2004, Gulfstream Natural Gas System, L.L.C., tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the tariff sheets listed on Appendix A to the filing, to become effective August 11, 2004.

Gulfstream states that the purpose of this filing is to implement an independent Form of Service Agreement for use under Rate Schedule ITS, to change the term for service agreements under Rate Schedules FTS, ITS and PALS, and to make minor clarifications to service agreements under Rate Schedules PALS and FTS, respectively, as well as other related changes.

Gulfstream states that copies of its filing have been mailed to all affected customers and interested State commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1635 Filed 7–21–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–395–000]

Iroquois Gas Transmission System, L.P.; Notice of Fuel Calculations

July 15, 2004.

Take notice that on July 2, 2004, Iroquois Gas Transmission System, L.P. (Iroquois) tendered for filing revised schedules reflecting calculations supporting the Measurement Variance/ Fuel Use Factors utilized during the period January 1, 2004, through June 30, 2004.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before the date as indicated below. Protests will be

considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Comment Date: 5 p.m. eastern time on July 22, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1634 Filed 7–21–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2301–019]

PPL Montana; Notice of Intent To File License Application, Filing of Pre-Application Document (Pad), Issuance of Scoping Document, Solicitation of Comments on the Pad and Scoping Document, Solicitation of Study Requests, and Commencement of Proceeding

July 15, 2004.

a. *Type of Filing:* Notice of intent to file a license application and Pre-Filing Document (PAD) under the Commission's Integrated Licensing Process and Commencing Licensing Proceeding.

b. *Project No.:* 2301–019.

c. *Date Filed:* July 1, 2004.

d. *Filed by:* PPL Montana.

e. *Project Name:* Mystic Lake Hydroelectric Project.

f. *Location:* On West Rosebud Creek, in Stillwater and Carbon Counties, Montana. The project occupies about 575.6 acres of U.S. Forest Service lands within the Custer National Forest;

g. *Filed Pursuant to:* 18 CFR part 5 of the Commission's Regulations.

h. *PPL Montana Contact:* Jon Jourdonnais, PPL Montana, 45 Basin Creek Road, Butte, MT 59701; (406) 533–3443.

i. *FERC Contact:* Steve Hocking, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426; (202) 502–8753; *steve.hocking@ferc.gov*.

j. We are asking Federal, State, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of an environmental document for this project. Agencies wanting cooperating agency status should follow the filing instructions described in paragraph p below.

k. With this notice, we are initiating informal consultation with: (1) the U.S. Fish and Wildlife Service and/or NOAA Fisheries under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR part 402 and (2) the State Historic Preservation Officer, as required by section 106, National Historical Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. By letters dated January 14, 2004, we designated PPL Montana as the Commission's non-Federal representative for carrying out informal consultation pursuant to section 7 of the Endangered Species Act and section 106 of the National Historic Preservation Act.

m. PPL Montana filed a Pre-Application Document (PAD) including a proposed process plan and schedule with the Commission, pursuant to 18 CFR 5.6 of the Commission's regulations.

n. A copy of the PAD is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in paragraph h.

Register online at *http://www.ferc.gov/esubscribenow.htm* to be notified via e-mail of new filings and issuances related to this or other Commission projects. For assistance, contact FERC Online Support.

o. Concurrently with this notice, we are issuing Scoping Document 1 (SD1) for this project which describes the alternatives and issues to be addressed in our environmental document. A copy of SD1 is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site *http://www.ferc.gov* using the ''eLibrary'' link as described in item n above. SD1 will also be mailed to all entities on the Commission's mailing list for this project and will be available at the Commission's scoping meetings. Based on Commission staff's review of the proposed project at this time, we do not intend to issue a second scoping document for the Mystic Lake Project.

p. With this notice, we are soliciting comments on the PAD and SD1, as well as any study requests. All comments on the PAD and SD1, and study requests should be sent to the address above in paragraph h. In addition, all comments on the PAD and SD1, study requests, requests for cooperating agency status, and all communications to and from Commission staff related to the merits of the potential application (original and eight copies) must be filed with the Commission at the following address: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. All filings with the Commission must include on the first page, the project name (Mystic Lake Hydroelectric Project) and number (P–2301–019), and bear the heading ''Comments on Pre-Application Document,'' ''Study Requests,'' ''Comments on Scoping Document 1,'' ''Request for Cooperating Agency Status,'' or ''Communications to and from Commission Staff.'' Any individual or entity interested in submitting study requests, commenting on the PAD or SD1, and any agency requesting cooperating status must do so by September 15, 2004.

Comments on the PAD and SD1, study requests, requests for cooperating agency status, and other permissible forms of communications with the Commission may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov* under the ''e-filing'' link.

q. At this time, the Commission intends to prepare a single Environmental Assessment for the project in accordance with the National Environmental Policy Act.

r. *Scoping Meetings:* Commission staff will hold two scoping meetings in the vicinity of the project as discussed below. The daytime meeting will focus on resource agency, Indian tribe, and non-governmental organization

concerns, while the evening meeting is primarily for receiving input from the public. We invite all interested individuals, organizations, and agencies to attend one or both of the meetings, and to assist staff in identifying particular study needs, as well as the scope of environmental issues to be addressed in our environmental document. The times and locations of these meetings are as follows:

Daytime Scoping Meeting

When: August 11, 2004; from 8:30 to 2 p.m. (m.s.t.).

Where: The Elks Club: 114 N. Broadway, Red Lodge, Montana.

Evening Scoping Meeting

When: August 12, 2004; from 7 to 10 p.m. (m.s.t.).

Where: City of Columbus Firehall: 944 East Pike Ave, Columbus, Montana.

Site Visit

PPL Montana will conduct a site visit of the project on August 10, 2004, from 8 a.m. to 4 p.m. (m.s.t.). All participants should meet at the Mystic Lake powerhouse parking lot. We will tour the powerhouse area, tour the re-regulation dam, and view Mystic Lake and dam. Persons wishing to view Mystic Lake and dam must hike a 3-mile primitive trail from the powerhouse that gains 1,130 feet in elevation. Anyone with questions about the site visit should contact Jon Jourdonnais with PPL Montana at (406) 533–3443.

Meeting Objectives

At the scoping meetings, staff will: (1) Initiate scoping of the issues; (2) review and discuss existing conditions and resource management objectives; (3) review and discuss existing information and identify preliminary information and study needs; (4) review and discuss the process plan and schedule for pre-filing activity that incorporates the time frames provided for in part 5 of the Commission's regulations and, to the extent possible, maximizes coordination of Federal, State, and tribal permitting and certification processes; and (5) discuss the appropriateness of any Federal or State agency or Indian tribe acting as a cooperating agency for development of our environmental document.

Meeting Procedures

Scoping meetings will be recorded by a court reporter and all statements, oral and written, will become part of the Commission's official public record for this project.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1630 Filed 7–21–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–382–001]

Texas Eastern Gas Transmission, LP; Notice of Supplemental Filing

July 15, 2004.

Take notice that on July 13, 2004, Texas Eastern Transmission, LP (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, First Revised Sheet No. 40A, to become effective August 1, 2004.

Texas Eastern states that the purpose of this filing is to supplement its June 30, 2004, filing in Docket No. RP04–382–000 (June 30 Filing), in which Texas Eastern submitted revised tariff sheets to reduce to zero its Gas Research Institute (GRI) surcharges, effective August 1, 2004, in compliance with the January 21, 1998, Stipulation and Agreement Concerning GRI Funding approved by the Commission in Gas Research Institute, 83 FERC ¶ 61,093, order on reh'g, 83 FERC ¶ 61,331 (1998). Texas Eastern further states that this filing supplements the June 30 Filing by including First Revised Sheet No. 40A, which was inadvertently omitted from the June 30 Filing, to be effective as of August 1, 2004, concurrently with the revised tariff sheets included in the June 30 Filing.

Texas Eastern states that copies of the filing have been served upon all affected customers of Texas Eastern and interested State commissions, as well as to parties on the Commission's official service list in this proceeding.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1633 Filed 7–21–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP04–373–000]

Texas Gas Transmission, LLC; Notice of Application

July 16, 2004.

Take notice that on July 7, 2004, Texas Gas Transmission, LLC (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP04–373–000 pursuant to section 7 of the Natural Gas Act, and subpart A of the Federal Energy Regulatory Commission's (Commission) regulations, an application seeking a certificate of public convenience and necessity for their proposed Texas Gas Storage Expansion Project. Specifically, the Texas Gas Storage Expansion Project involves the installation of two new turbine compressors in order to increase the deliverability of the Midland Gas Storage Field located in Muhlenberg County, Kentucky, which will allow Texas Gas to utilize additional working gas on a firm seasonal basis, all as more fully described in the request which is on file with the Commission and open to public inspection. The filing may also be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online

Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or TTY, contact (202) 502–8659.

Any questions regarding this application should be directed to Kathy D. Fort, Manager, Certificates and Tariffs; Texas Gas Transmission, LLC; P.O. Box 20008, Owensboro, Kentucky 42304 or call (270) 688–6825.

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 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) by the comment date, below. 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.

The Commission strongly encourages electronic filings of comments, protests and interventions 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.

Comment Date: August 6, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1641 Filed 7–21–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–290–011]

Viking Gas Transmission Company; Notice of Compliance Filing

July 15, 2004.

Take notice that on July 13, 2004, Viking Gas Transmission Company (Viking) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to become effective on August 12, 2004:

Tenth Revised Sheet No. 1
Eleventh Revised Sheet No. 69
Ninth Revised Sheet No. 5
Seventh Revised Sheet No. 5A
Twelfth Revised Sheet No. 82
Seventh Revised Sheet No. 5B
Seventh Revised Sheet No. 5D
Ninth Revised Sheet No. 85
Seventh Revised Sheet No. 5E
Seventh Revised Sheet No. 5F
Fourth Revised Sheet No. 87.01
Tenth Revised Sheet No. 5H
Seventh Revised Sheet No. 15
Seventh Revised Sheet No. 88
Fifth Revised Sheet No. 15E
Fifth Revised Sheet No. 21
Third Revised Sheet No. 89
Fifth Revised Sheet No. 26
Tenth Revised Sheet No. 40
Seventh Revised Sheet No. 90
First Revised Sheet No. 41B
Tenth Revised Sheet No. 50
Eighth Revised Sheet No. 91
Seventh Revised Sheet No. 52
Third Revised Sheet No. 92
Third Revised Sheet No. 93
Fourth Revised Sheet No. 94
Fourth Revised Sheet No. 95
Sixth Revised Sheet No. 96
Fifth Revised Sheet No. 97A
Sixth Revised Sheet No. 136

Viking states that the purpose of this filing is to comply with Article XI of the Stipulation and Agreement (Settlement) in Docket No. RP98–290–001 approved by Letter Order dated May 12, 1999. Article XI provides that Viking would file to cancel Rate Schedule(s) FT–B and FT–C and remove all references to service under these rate schedules upon completion of Stage 4 of the rolled-in rate treatment of its expansion facilities approved by the Commission in Docket No. RP96–32–000 and CP97–93–000.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1627 Filed 7–21–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–313–001]

Wyoming Interstate Company, Ltd; Notice of Compliance Filing

July 15, 2004.

Take notice that on July 12, 2004, Wyoming Interstate Company, Ltd (WIC) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 2, the following tariff sheets to its FERC Gas Tariff, with an effective date of June 28, 2004.

Second Revised Sheet No. 49D
Second Revised Sheet No. 49E
Substitute Second Revised Sheet No. 85A
Second Revised Sheet No. 85B

WIC states that these tariff sheets revise Article 33, Operational Purchases and Sales, and section 3.2 to comply with the Commission's Order issued June 25, 2004, in this proceeding.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make

protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1631 Filed 7–21–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EL00–95–000, et al., EL00–98–000, et al., and ER03–746–000, et al.]

San Diego Gas & Electric Company; Investigation of Practices of the California Independent System Operator and the California Power Exchange California Independent System Operator; Notice of Meeting With the California Independent System Operator and the California Power Exchange

July 16, 2004.

The Federal Energy Regulatory Commission (FERC) staff will hold a meeting with the California Independent System Operator (CAISO) and the California Power Exchange (CalPX) to discuss procedures, remaining steps and timeline for completing the calculation of refunds in the California Refund proceeding. The meeting will be held on Monday, July 26, 2004.

The purpose of the meeting is to provide a forum for FERC staff, CAISO, and CalPX to discuss the remaining work to complete the refund calculations. The following issues will be among those to be discussed at the July 26 meeting:

I. Preparatory Rerun Process

A. Status and timeline for completion of the refund rerun effort.
B. Status of dispute resolution process.
C. Process for resolving GFN requests during the refund period.
D. Impact of CalPX bankruptcy on preparatory reruns.
E. Process for calculating fuel price adjustment.
F. Compliance filing—elements of the filing and timetable for filing.

II. Refund Reun Process

A. Process for allocation of emissions allowance.
B. Process for accounting for imbalance energy.
C. Any other procedural issues related to the refund rerun.

III. Financial Settlement Phase

A. Process for completing this stage, including interest calculations, fuel price adjustments or other inputs.
B. Process for calculating interest.
C. Scope of the compliance filing.
D. Flow chart for the refunds.
E. Impact of global settlements on this process.

This meeting will begin at 10 a.m. (e.s.t.) at 888 First Street, NE., Washington DC in the Commission Meeting Room.

Questions about this meeting should be directed to: Andrea Hilliard, Office of the General Counsel—Markets, Tariffs and Rates, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426; (202) 502–8288, *andrea.hilliard@ferc.gov*.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1639 Filed 7–21–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Environmental Report Preparation and Post-Certificate Environmental Compliance Training Seminars

July 15, 2004.

The Office of Energy Projects (OEP) staff will conduct seven sessions of its Environmental Report Preparation Seminar, as well as seven sessions of the Post-Certificate Environmental Compliance Seminar, throughout 2004 and 2005. The training seminars will be delivered by FERC staff and consultants with significant industry experience.

Details on the content of both seminars and the scheduled training locations are provided below. For more information about the courses visit the FERC Web site at *http://www.ferc.gov/industries/gas/enviro/seminars.asp* and to register for the courses, visit the training Web site at *http://www.ferc-envtraining.com* or call (650) 712–6610. The latter site will have details on the location of each session. Registration for each course will be limited; so, although there is no charge for the course, all participants must register in advance.

Environmental Report Preparation (1-Day Seminar)

This one-day seminar will discuss the environmental documentation required for certificate applications prepared under subpart A of 18 CFR part 157 and sections 7(a), 7(b), and 7(c) of the Natural Gas Act (NGA). The seminar will assist each trainee in preparing the environmental report required for filing applications with FERC for project construction or abandonment. The presentation will address the information necessary to meet the FERC's minimum filing requirements.

The seminar will also include a general background discussion of the FERC's environmental process as well as efforts to enhance landowner and other stakeholder involvement during the pre-filing process, which potentially includes beginning the National Environmental Policy Act process during the development stage of a project. Participants will receive a certificate of attendance at the end of the session and an updated copy of the Guidance Manual for Environmental Report Preparation.

The Environmental Report Preparation Seminars will be held at the locations and dates shown on the attached table. More detailed information on these courses will be posted on the registration Web site referenced above.

Post-Certificate Environmental Compliance (2-Day Seminar)

This two-day seminar will cover the FERC's post-certificate regulatory process and construction and restoration requirements. The seminar will provide each trainee with knowledge of the basic environmental requirements of most FERC certificates and the Upland Erosion Control, Revegetation, and Maintenance Plan (Plan) and the Wetland and Waterbody Construction and Mitigation Procedures (Procedures).

In the morning before each day of the seminar begins, we will also offer an Early Bird session on Pipeline Construction (Day 1) and Preparing for a FERC Site Visit (Day 2) for those participants who feel they would benefit. Participants must register for these Early Bird sessions when registering for the seminar. The Pipeline Construction session will be for those attendees who are inexperienced in basic pipeline construction practices. The session on Preparing for a FERC Site Visit will be of special interest to those individuals interested in knowing what to expect and tips for getting the most out of a FERC site visit.

Registered participants will receive a certificate of attendance at the end of the session and an updated copy of the Natural Gas Pipeline Environmental Compliance Workbook.

The Post-Certificate Environmental Compliance Seminars will be held at the locations and dates shown on the attached table. More detailed information on these courses will be posted on the registration Web site referenced above.

Magalie R. Salas,

Secretary.

Schedule of Training Seminars

(FY 2004)

Dates	Location	Seminar	
		(Day 1)	(Days 2 & 3)
August 17, 18–19	Houston	ER Preparation	Compliance.
September 28, 29–30	Denver	ER Preparation	Compliance.
October 27, 28–29	Houston	ER Preparation	Compliance.

(FY 2005)

Dates	Location	Seminar	
		(Day 1)	(Days 2 & 3)
January 25, 26–27	Las Vegas	ER Preparation	Compliance.
March 15, 16–17	Houston	ER Preparation	Compliance.
May 24, 25–26	Atlanta	ER Preparation	Compliance.
September 13, 14–15	St. Louis	ER Preparation	Compliance.

[FR Doc. E4–1629 Filed 7–21–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP03–398–000 and RP04–155–000 (Consolidated)]

Northern Natural Gas Company; Notice of Informal Settlement Conference

July 16, 2004.

Take notice that an informal settlement conference will be convened in this proceeding commencing at 10 a.m. on Thursday, August 5, 2004 (e.s.t.), and continuing if necessary at 9:30 a.m. on Friday, August 6, 2004 (e.s.t.), in a room to be announced later at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, for the purpose of exploring the possible settlement of the above-referenced dockets.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, please contact Kevin Frank (202) 502–8065 *kevin.frank@ferc.gov*, Gopal Swaminathan (202) 502–6132 *gopal.swaminathan@ferc.gov*, or William Collins (202) 502–8248 *william.collins@ferc.gov*.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1640 Filed 7–21–04; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OECA–2003–0138; FRL–7790–8]

Agency Information Collection Activities; Submission for OMB Review and Approval; Comment Request; NESHAP for Beryllium (40 CFR Part 61, Subpart C) (Renewal), ICR Number 0193.08, OMB Number 2060–0092

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act, this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR is scheduled to expire on September 30, 2004. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before August 23, 2004.

ADDRESSES: Submit your comments, referencing docket ID number OECA–2003–0138, to (1) EPA online using EDOCKET (our preferred method), by e-mail to *docket.oeca@epa.gov*, or by mail to: Environmental Protection Agency, EPA Docket Center (EPA/DC), Enforcement and Compliance Docket and Information Center EPA West, Mail Code 2201T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Learia Williams, Compliance Assessment and Media Programs Division (Mail Code 2223A), Office of Compliance, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone

number: (202) 564–4113; fax number: (202) 564–0050; e-mail address: *williams.learia@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On November 3, 2003 (68 *FR* 62289), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID Number OECA–2003–0138, which is available for public viewing at the Enforcement and Compliance Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket and Information Center Docket is: (202) 566–1752. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. When in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 *FR* 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket.*

Title: NESHAP for Beryllium (40 CFR part 61, subpart C) (Renewal).

Abstract: The National Emission Standards for Hazardous Air Pollutants (NESHAP), were proposed on December 7, 1971 (36 *FR* 23939) and promulgated on April 6, 1973 (38 *FR* 8826). This standard applies to all extraction plants, ceramic plants, foundries, incinerators, and propellant plants which process beryllium ore, beryllium, beryllium oxide, beryllium alloys, or beryllium-containing waste. The standard also applies to machine shops which process beryllium, beryllium oxides, or any alloy when such alloy contains more than five percent beryllium by weight. All sources known to have caused, or have the potential to cause, dangerous levels of beryllium in the ambient air are covered by the Beryllium NESHAP. This information is being collected to ensure compliance with 40 CFR part 61, subpart C.

There are approximately 236 existing sources subject to this rule. Of the total number of existing sources, we have assumed that approximately 10 sources (*i.e.*, respondents) have elected to comply with an alternative ambient air quality limit by operating a continuous monitor in the vicinity of the affected facility. The monitoring requirements for these facilities provide information on ambient air quality and ensure that locally, the airborne beryllium concentration does not exceed 0.01 micrograms/m^3. These sources that are meeting the rule requirements by means of ambient monitoring are required to submit a monthly report of all measured concentrations to the Administrator. The remaining 226 sources have elected to comply with the rule by conducting a one-time-only stack test to determine beryllium emission levels. We have assumed that 10 percent of the 226 sources (or 23 respondents) complying with the emission limit standard will engage in an operational change at their facilities that could potentially increase beryllium emissions, and would be required to repeat the stack test to determine the beryllium emission limits. Consequently these sources will have recordkeeping and reporting requirements associated with the stack test. The owners or operators subject to the provisions of this part are required to maintain a file of all measurements, and retain the file for at least two years following the date of such measurements and records. We have assumed that no additional sources are expected to become subject to the standard in the next three years. Therefore, there are 33 respondents for the purpose of determining the recordkeeping and reporting burden associated with this rule.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number. The OMB Control Numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 16 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Beryllium Plants.

Estimated Number of Respondents: 33.

Frequency of Response: Monthly and on occasion.

Estimated Total Annual Hour Burden: 2,627 hours.

Estimated Total Annual Costs: $201,160, which includes $35,000 annual O&M costs, $0 annualized capital/startup costs, and $166,160 annual labor costs.

Changes in the Estimates: There is an increase of 395 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. The reason for the change in burden is related to the omission of the burden associated with a program requirement in the active ICR which has been corrected in this renewal package.

Dated: July 14, 2004.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 04–16714 Filed 7–21–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OA–2003–0009; FRL–7791–1]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Obtaining Feedback on Public Involvement Activities and Processes, EPA ICR Number 2151.01

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request for a new collection. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before August 23, 2004.

ADDRESSES: Submit your comments, referencing docket ID number OA–2003–0009, to (1) EPA online using EDOCKET (our preferred method), by e-mail to *oei.docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Office of Environmental Information Docket, Mail Code 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Patricia Bonner, Office of Policy, Economics and Innovation, Mail Code 1807T, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202–566–2204; fax number: 202–566–2200; e-mail address: *bonner.patricia@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On February 13, 2004 (69 *FR* 7213) and April 20, 2004 (69 *FR* 21097) EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID No. OA–2003–0009, which is available for public viewing at the Office of Environmental Information Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Office of Environmental Information Docket is (202) 566–1752. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 *FR* 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket.*

Title: Obtaining Feedback on Public Involvement Activities and Processes.

Abstract: Evaluation, one of the key elements in the Agency's Public Involvement Policy, will make it possible for EPA to better understand: (1) If the Agency is taking the necessary steps to gather and consider public Input; (2) the quality of the Agency's public involvement activities and processes; (3) how to consistently and systematically learn and improve those activities and processes, and (4) how the Agency can be more accountable to the public. This ICR will enable EPA to gather feedback from participants to identify how they perceive they were treated during the activity, as well as the quality of pre-activity information, the activity itself and follow-up. By using sets of surveys addressing the quality of frequently used public involvement activities and processes (hearings, meetings, FACAs, citizen advisory groups, listening sessions and stakeholder negotiations) to perform formative evaluation, EPA can better determine the extent to which our public involvement activities meet their needs or need to be improved, and can make iterative improvements. The survey responses will be confidential and the questionnaires will not involve ''fact-finding'' for the purposes of regulatory development or enforcement.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9 and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 10 minutes per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Respondents will be participants in public involvement activities who range from well known scientific experts to representatives of various interest groups, to individual business or property owners, local officials, interested young students and residents of environmental justice neighborhoods and tribal members. The term ''the public'' is used in the Public Involvement Policy in the broadest sense to include anyone, including both individuals and organizations, who may have an interest in an Agency decision.

Estimated Number of Respondents: 18,190.

Frequency of Response: On occasion.

Estimated Total Annual Hour Burden: 2,871.

Estimated Total Annual Cost: $114,000, includes $0 annual capital/startup costs, $0 annual O&M costs, and $114,000 annual labor costs.

Changes in the Estimates: This is a new collection.

Dated: July 14, 2004.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 04–16716 Filed 7–21–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OECA–2003–0141; FRL–7791–2]

Agency Information Collection Activities; Submission for OMB Review and Approval; Comment Request; NSPS for Sewage Sludge Treatment Plants (40 CFR Part 60, Subpart O) (Renewal), ICR Number 1063.09, OMB Number 2060–0035

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act, this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR is scheduled to expire on September 30, 2004. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before August 23, 2004.

ADDRESSES: Submit your comments, referencing docket ID number OECA–2003–0141, to (1) EPA online using EDOCKET (our preferred method), by e-mail to *docket.oeca@epa.gov,* or by mail to: Environmental Protection Agency, EPA Docket Center (EPA/DC), Enforcement and Compliance Docket and Information Center, EPA West, Mail Code 2201T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Learia Williams, Compliance Assessment and Media Programs Division (Mail Code 2223A), Office of Compliance, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 564–4113; fax number: (202) 564–0050; e-mail address: *williams.learia@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On November 3, 2003 (68 *FR* 62289), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID Number OECA–2003–0141, which is available for public viewing at the Enforcement and Compliance Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket and Information Center Docket is: (202) 566–1752. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. When in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 *FR* 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket.*

Title: NSPS for Sewage Sludge Treatment Plants (40 CFR part 60, subpart O) (Renewal).

Abstract: This ICR contains recordkeeping and reporting requirements that are mandatory for compliance with 40 CFR part 60, subpart O, New Source Performance Standards (NSPS) for sewage sludge treatment plant incinerators.

The control of emissions of particulate matter from sewage treatment plant incinerators requires not only the installation of properly designed equipment, but also the operation and maintenance of that equipment. Particulate matter emissions from sewage treatment plant incinerators are the result of the physical and chemical characteristics of the sludge feed and fuel use, the excess air rate, the temperature profile within the incinerator, the pressure drop across the control device, and operating procedures. These standards rely on the reduction of particulate matter emissions by wet scrubbers.

In order to ensure compliance with these standards, adequate recordkeeping is necessary. In the absence of such information, enforcement personnel would be unable to determine whether the standards, that are protectively of public health, are being met on a continuous basis, as required by the Clean Air Act.

These standards require initial notification reports with respect to construction, modification, reconstruction, startups, shutdowns, and malfunctions. The standards also require reports on initial performance tests and semiannual reports of noncompliance.

Under the standard, the data collected by the affected industry is retained at the facility for a minimum of two (2) years and make it available for inspection by the Administrator.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number. The OMB Control Numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 55 hours per

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

Respondents/Affected Entities: Owners/operators of Sewage Sludge Treatment Plants.

Estimated Number of Respondents: 54.

Frequency of Response: Initially and semiannually.

Estimated Total Annual Hour Burden: 6,214 hours.

Estimated Total Annual Costs: $2,380,931, which includes $100,000 annualized capital/startup costs, $1,890,000 annual O&M costs, and $390,931 annual labor costs.

Changes in the Estimates: There is a decrease of 2,875 hours in the total estimated burden. This decrease in the burden from the most recently approved ICR is due to more accurate estimates of existing and anticipated new sources.

Dated: July 14, 2004.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 04–16717 Filed 7–21–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7791–5]

Issuance of Final NPDES General Permits for Wastewater Lagoon Systems Located in Indian Country in MT, ND, SD, UT, and WY

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA Region 8 is hereby giving notice of its issuance of five National Pollutant Discharge Elimination System (NPDES) general permits for wastewater lagoon systems that are located in Indian country in the States of Montana, North Dakota, South Dakota, Utah (except for those portions of the Navajo Nation, the Goshutes Indian Reservation, and the Ute Mountain Ute Indian Reservation located in the State of Utah), and Wyoming and that are treating primarily domestic wastewater.

The general permits are grouped geographically by state, with the permit coverage being for specified Indian reservations in the state; any land held in trust by the United States for an Indian tribe; and any other areas which are Indian country within the meaning of 18 U.S.C. 1151. These general permits replace the twenty-one general permits that were issued for a 5-year term in 1998 for Indian reservations in Montana, North Dakota, South Dakota, and Utah. The following nine communities in South Dakota have been excluded from coverage under the general permit for South Dakota: Batesland, Claire City, Martin, New Effington, Peever, Rosholt, Sisseton, Summit, and Veblen.

The use of wastewater lagoon systems is the most common method of treating municipal wastewater in Indian country in Montana, North Dakota, South Dakota, Utah and Wyoming. Wastewater lagoon systems are also used to treat domestic wastewater from isolated housing developments, schools, camps, missions, and similar sources of domestic wastewater that are not connected to a municipal sanitary sewer system and do not use septic tank systems.

Region 8 will use general permits instead of individual permits for permitting the discharges from such facilities in order to reduce the Region's administrative burden of issuing separate individual permits. The administrative burden for the regulated sources is expected to be about the same under the general permits as with individual permits, but it will be much quicker to obtain permit coverage with general permits than with individual permits. The discharge requirements would essentially be the same with an individual permit or under the general permit. Therefore, there should be no significant difference in the amount and types of pollutants discharged.

The deadlines for applying for coverage under the general permits are given in the permits and the fact sheet. Facilities that had coverage under the previous general permit which this permit replaces are required to submit a complete Notice Of Intent (NOI) within 90 days after the effective date of this permit if they want to maintain coverage under the general permit. Facilities that did not have coverage under the previous general permit which this permit replaces must submit a complete NOI at least thirty (30) days before either (1) the expected start of discharge from the wastewater lagoon system, or (2) the date when the operator wants authorization to begin. Authorization to discharge under this permit does not begin until the operator receives written authorization from the permit issuing authority.

DATES: The general permits become effective on August 16, 2004 and will expire on August 16, 2009. For appeal purposes, the 120-day time period for appeal to the U.S. Federal Courts will begin on the effective date of the permit.

ADDRESSES: The public record is located in the offices of EPA Region 8, and is available upon written request. Requests for copies of the public record, including a complete copy of response to comments, a list of changes made from the draft permit to the final permit, the general permit, and the fact sheet for the general permit, should be addressed to William Kennedy, Water Permits Unit (8P–W–P); U.S. EPA, Region 8; 999 18th Street, Suite 300; Denver, CO 80202–2466 or telephone (303) 312–6285. Copies of the general permit, fact sheet, response to comments, and a list of changes from the draft permit to the final permit may also be downloaded from the EPA Region 8 web page at: *http://www.epa.gov/region8/water/wastewater/npdeshome/lagoonpermit.html.* Please allow approximately one week after the date of this notice for documents to be posted on the web page.

FOR FURTHER INFORMATION CONTACT: Questions regarding the specific permit requirements may be directed to Mike Reed, (303) 312–6132 or E-mail at *reed.mike@epa.gov.*

SUPPLEMENTARY INFORMATION: Region 8 proposed and solicited comments on the general permits at 68 FR 62075 (October 31, 2003). In addition, notices and copies of the draft general permit and fact sheet were sent to the applicable tribes in Region 8. Notices were sent to the persons on the Region 8 mailing list for public notices for NPDES permits. Comments were received from the Confederated Salish and Kootenai Tribes of the Flathead Nation, the Fort Peck Tribes, the Wind River Environmental Quality Commission (WREQC), the South Dakota Department of Environment and Natural Resources (SDDENR), and an individual from Montana. The response to comments is included as part of the public record. Also, the public record includes a list of the changes made from the draft permit to the final permit.

Paperwork Reduction Act

The information collection requirements of these permits were previously approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act, 40 U.S.C. 3501, *et seq.* and assigned OMB control numbers 2040–0250 (General Permits) and 2040–0004 (Discharge Monitoring Reports).

Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993) the Agency must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities; create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. OMB has waived review of NPDES general permits under the terms of Executive Order 12866.

Regulatory Flexibility Act

Issuance of an NPDES general permit is not subject to rulemaking requirements, including the requirement for a general notice of proposed rulemaking, under section 535 of the Administrative Procedures Act (APA) or any other law, and is, thus, not subject to the Regulatory Flexibility Act (RFA) requirement to prepare an Initial Reg Flex Analysis (IRFA).

The APA defines two broad, mutually exclusive categories of agency action- ''rules'' and ''orders.'' Its definition of ''rule'' encompasses ''an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency * * *'' APA section 551(4). Its definition of ''order'' is residual: ''a final disposition * * * of an agency in a matter other than rulemaking but including licensing.'' APA section 551(6) (emphasis added). The APA defines ''license'' to ''include * * * an agency permit * * *'' APA section 551(8). The APA thus categorizes a permit as an order, which by the APA's definition is not a rule. Section 553 of the APA establishes ''rulemaking'' requirements. The APA defines ''rulemaking'' as ''the agency process for formulating, amending, or repealing a rule.'' (APA section 551(5)). By its terms, then, section 553 applies only to ''rules'' and not also to ''orders,'' which include permits.

Unfunded Mandates Reform Act

Section 201 of the Unfunded Mandates Reform Act (UMRA), Public Law 104–4, generally requires federal agencies to assess the effects of their ''regulatory actions'' on State, local, and tribal governments and the private sector. UMRA uses the term ''regulatory actions'' to refer to regulations. (See, *e.g.*, UMRA section 201, ''Each agency shall * * * assess the effects of Federal regulatory actions * * * (other than to the extent that such regulations incorporate requirements specifically set forth in law)'' (emphasis added)). UMRA section 102 defines ''regulation'' by reference to 2 U.S.C. 658 which in turn defines ''regulation'' and ''rule'' by reference to section 601(2) of the Regulatory Flexibility Act (RFA). That section of the RFA defines ''rule'' as ''any rule for which the agency publishes a notice of proposed rulemaking pursuant to section 553(b) of [the Administrative Procedure Act (APA)], or any other law. * * *''

As discussed in the RFA section of this notice, NPDES general permits are not ''rules'' under the APA and, thus, are not subject to the APA requirement to publish a notice of proposed rulemaking. NPDES general permits are also not subject to such a requirement under the CWA. While EPA publishes a notice to solicit public comment on draft general permits, it does so pursuant to the CWA section 402(a) requirement to provide ''an opportunity for a hearing.'' Thus, NPDES general permits are not ''rules'' for RFA or UMRA purposes.

Authority: Clean Water Act, 33 U.S.C. 1251 *et seq.*

Dated: July 15, 2004.

Stephen S. Tuber,

Assistant Regional Administrator, Office of Partnerships and Regulatory Assistance.

[FR Doc. 04–16712 Filed 7–21–04; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[CS Docket No. 00–78; DA 04–2117]

Media Bureau Implements Mandatory Electronic Filing of FCC Forms 320, 322, 324, and 325 via COALS

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this Notice the Media Bureau announces mandatory electronic filing via the Cable Operations and Licensing System (COALS) for FCC Forms 320 (Basic Signal Leakage), 322 (Cable Community Registration), 324 (Operator, Mail Address, and Operational Information Changes), and 325 (Annual Report of Cable Television Systems).

DATES: Effective February, 1, 2005.

FOR FURTHER INFORMATION CONTACT: Michael Lance at (202) 418–7000.

SUPPLEMENTARY INFORMATION: In this Notice the Media Bureau announces mandatory electronic filing via the Cable Operations and Licensing System (COALS) for FCC Forms 320 (Basic Signal Leakage), 322 (Cable Community Registration), 324 (Operator, Mail Address, and Operational Information Changes), and 325 (Annual Report of Cable Television Systems). Mandatory electronic filing will commence on February 1, 2005. Paper versions of these forms will not be accepted for filing after January 31, 2005, unless accompanied by a request for waiver of the electronic filing requirement. Users can access the electronic filing system for these forms via the Internet from the Commission's Web Site at *http://www.FCC.gov/coals.* Instructions for use of the COALS and assistance are available from *http://www.fcc.gov/coals* under ''download instructions.'' Internet access to the COALS public access system requires a user to have a browser such as Netscape version 3.04 or Internet Explorer version 3.51, or later. For technical assistance using the system or to report problems, please contact the Media Bureau, Engineering Division at (202) 418–7000 or *COALS_help@fcc.gov.*

Federal Communications Commission.

W. Kenneth Ferree,

Chief, Media Bureau.

[FR Doc. 04–16739 Filed 7–21–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 16, 2004.

A. Federal Reserve Bank of Cleveland (Cindy C. West, Banking Supervisor) 1455 East Sixth Street, Cleveland, Ohio 44101–2566:

1. F.N.B. Corporation, Hermitage, Pennsylvania; to merge with Slippery Rock Financial Corporation, Slippery Rock, Pennsylvania, and thereby indirectly acquire voting shares of First National Bank of Slippery Rock, Slippery Rock, Pennsylvania.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. Century Bancshares, Inc., Gainesville, Missouri; to acquire additional shares, for a total of approximately 24 percent, of Ozarks Heritage Financial Group, Inc., Gainesville, Missouri, and thereby retain ownership of Legacy Bank & Trust Company, Plato, Missouri.

2. Ozarks Heritage Financial Group, Inc., and Century Bancshares, Inc., both of Gainesville, Missouri; to acquire 100 percent of The Citizens Bank of Sparta, Sparta, Missouri.

3. Liberty Bancshares, Inc., Jonesboro, Arkansas; to acquire 80 percent of the voting shares of Arkansas State Bancshares, Inc., Siloam Springs, Arkansas, and thereby indirectly acquire voting shares of Arkansas State Bank, Siloam Springs, Arkansas.

4. Russellville Bancshares, Inc., Jonesboro, Arkansas; to acquire 20 percent of the voting shares of Arkansas State Bancshares, Inc., Siloam Springs, Arkansas, and thereby indirectly acquire voting shares of Arkansas State Bank, Siloam Springs, Arkansas.

5. Progress Acquisition, Inc., Sullivan, Missouri; to become a bank holding company by acquiring 100 percent of the voting shares of Progress Bancshares, Inc., Sullivan, Missouri, and thereby indirectly acquire Progress Bank of Missouri, Sullivan, Missouri, and Tritten Bancshares, Inc., Waynesville, Missouri, and its subsidiary of First State Bank of St. Robert, St. Robert, Missouri.

C. Federal Reserve Bank of Kansas City (Donna J. Ward, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

UCSB Financial Corporation, Fort Wayne, Indiana; to become a bank holding company by acquiring up to 79 percent of the voting shares of Uinta County State Bank, Mountain View, Wyoming.

Board of Governors of the Federal Reserve System, July 16, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–16685 Filed 7–21–04; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

[Program Announcement No. AoA–04–07]

Fiscal Year 2004 Program Announcement; Availability of Funds and Notice Regarding Applications

AGENCY: Administration on Aging, HHS.

ACTION: Announcement of availability of funds and request for applications for an Alzheimer's Disease Social Research Project.

SUMMARY: The Administration on Aging announces that under this program announcement it will hold a competition for a grant award for one (1) project at a federal share of $2,943,530.00 for a project period of one year. It is estimated that $2,943,530.00 will be available for this competition.

Legislative authority: The Older Americans Act, Public Law 106–501 (Catalog of Federal Domestic Assistance 93.048, Title IV and Title II, Discretionary Projects).

Purpose of grant award: The purpose of this project is to conduct social research into Alzheimer's disease care options, best practices and other Alzheimer's research priorities that include research into cause, cure, and care, as well as respite care, assisted living, the impact of intervention by social service agencies on persons with Alzheimer's disease, and related needs.

Eligibility for grant awards and other requirements: Eligibility for this grant award is limited to applicants designated by the Mayor of the municipality as officially representing a municipality with 1 million (1,000,000) or more persons 60 years of age and older. Preference will be given to the largest population. Priority will be given to applications that utilize and give discretion to Area Agencies on Aging and their nonprofit divisions. Applicants are encouraged to involve community-based organizations in the planning and implementation of their project. Applicants should include disadvantaged populations, including limited-English speaking populations, as a target population for their proposed intervention. Grantees are required to provide at least 25% percent of the total program costs from non-federal cash or in-kind resources in order to be considered for the award. Executive Order 12372 is not applicable to these grant applications.

Screening criteria: In order for an application to be reviewed it must meet the following screening requirements:

1. Postmark Requirements—Applications must be postmarked by midnight of the deadline date indicated below, or hand-delivered by 5:30 p.m. Eastern Time, on that date, or submitted electronically by midnight on that date.

2. Organizational Eligibility—Eligibility for grant award is limited to applications representing municipalities with aged populations (over the age of 60) of over 1,000,0000, with preference given to the largest population.

3. Project Narrative—It must be double-spaced on singled-sided 8.5'' by 11'' plain white paper with a 1'' margin on each side and a font size of not less than 11. Applicants may use smaller font sizes to fill in the standard forms and sample formats. AoA will not

accept applications with a project narrative that exceeds twenty pages, excluding the project work plan grid, letters of cooperation and vitae of key personnel.

Review of applications: Applications will be evaluated against the following criteria: Purpose and Need for Assistance (20 points); Approach/Method—Workplan and Activities (30 points); Outcomes/Evaluation/Dissemination (30 points); and Level of Effort (20 points).

DATES: The deadline date for the submission of applications is August 31, 2004.

ADDRESSES: Application kits are available by writing to the U.S. Department of Health and Human Services, Administration on Aging, Office of Community-Based Services, Washington, DC 20201, or by calling 202/357–3452, or online at *http://www.grants.gov* Applications may be mailed to the U.S. Department of Health and Human Services, Administration on Aging, Office of Grants Management, Washington, DC 20201, attn: Margaret Tolson (AoA–04–07).

Applications may be delivered to the U.S. Department of Health and Human Services, Administration on Aging, Office of Grants Management, One Massachusetts Avenue, NW., Room 4604, Washington, DC 20001, attn: Margaret Tolson (AoA–04–07).

If you elect to mail or hand deliver your application you must submit one original and two copies of the application; an acknowledgement card will be mailed to applicants.

Instructions for electronic mailing of grant applications are available at *http://www.grants.gov.*

SUPPLEMENTARY INFORMATION: All grant applicants are required to obtain a D–U–N–S number from Dun and Bradstreet. It is a nine-digit identification number, which provides unique identifiers of single business entities. The D–U–N–S number is free and easy to obtain from *https://eupdate.dnb.com/requestoptions.html.*

FOR FURTHER INFORMATION CONTACT: U.S. Department of Health and Human Services, Administration on Aging, Office of Grants Management, Washington, DC 20201, Telephone: (202) 357–3440.

Dated: July 19, 2004.

Josefina G. Carbonell,

Assistant Secretary for Aging.

[FR Doc. 04–16708 Filed 7–21–04; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Health Protection Research Initiative Investigator Initiated Research—R01—Panel 1, Request for Applications (RFA) CD–04–002

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): Health Protection Research Initiative Investigator Initiated Research—R01—Panel 1, Request for Applications (RFA) CD–04–002.

Times and Dates: 8 a.m.–8:30 a.m., August 9, 2004 (Open). 8:30 a.m.–5 p.m., August 9, 2004 (Closed). 8 a.m.–5 p.m., August 10, 2004 (Closed).

Place: Westin Peachtree Plaza Hotel, 210 Peachtree Street, NW, Atlanta, GA 30303, Telephone 404–659–1400.

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: Health Protection Research Initiative Investigator Initiated Research—R01—Panel 1, Request for Applications (RFA) CD–04–002.

For Further Information Contact: Joan F. Karr, Ph.D., Scientific Review Administrator, Public Health Practice Program Office, CDC, 4770 Buford Highway, MS–K38, Atlanta, GA 30314, 770–488–2597.

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 the CDC and the Agency for Toxic Substances and Disease Registry.

Dated: July 15, 2004.

Joseph E. Salter,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 04–16664 Filed 7–21–04; 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): Health Protection Research Initiative Mentored Research Scientist Development Award—K01—Panel 1, Request for Applications (RFA) CD–04–001

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): Health Protection Research Initiative Mentored Research Scientist Development Award—K01—Panel 1, Request for Applications (RFA) CD–04–001.

Times and Dates: 8 a.m.–8:30 a.m., August 9, 2004(Open). 8:30 a.m.–5 p.m., August 9, 2004(Closed). 8 a.m.–5 p.m., August 10, 2004(Closed).

Place: Westin Peachtree Plaza Hotel, 210 Peachtree Street, NW, Atlanta, GA 30303, Telephone (404) 659–1400.

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: Health Protection Research Initiative Mentored Research Scientist Development Award—K01—Panel 1, Request for Applications (RFA) CD–04–001.

For Further Information Contact: Elizabeth Skillen, PhD., Science Review Administrator, Public Health Practice program Office, CDC, 4770 Buford Highway, MS–K38, Atlanta, GA 30341, 770–488–2592.

The Director, Management Analysis and Services Office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: July 15, 2004.

Joseph E. Salter,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 04–16666 Filed 7–21–04; 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): Health Protection Research Initiative Centers of Excellence in Health Promotion Economics Center Core Grant—P30, Request for Applications (RFA) CD–04–004

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): Health Protection Research Initiative Centers of Excellence in Health Promotion Economics Center Core Grant—P30, Request for Applications (RFA) CD–04–004.

Times and Dates: 8 a.m.–8:30 a.m., August 13, 2004 (Open). 8:30 a.m.–5 p.m., August 13, 2004 (Closed).

Place: Westin Peachtree Plaza Hotel, 210 Peachtree Street, NW, Atlanta, GA 30303, Telephone 404–659–1400.

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: Health Protection Research Initiative Centers of Excellence in Health Promotion Economics Center Core Grant—P30, Request for Applications (RFA) CD–04–004.

For Further Information Contact: Maurine Goodman, M.A., M.P.H., Scientific Review Administrator, Public Health Practice Program Office, CDC, 4770 Buford Highway, MS–K38, Atlanta, GA 30341, (770) 488–8479.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: July 15, 2004.

Joseph E. Salter,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 04–16667 Filed 7–21–04; 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): Health Protection Research Initiative Mentored Research Scientist Development Award—K01—Panel 2, Request for Applications (RFA) CD–04–001

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): Health Protection Research Initiative Mentored Research Scientist Development Award—K01—Panel 2, Request for Applications (RFA) CD–04–001.

Times and Dates: 8 a.m.–8:30 a.m., August 11, 2004 (Open). 8:30 a.m.–5 p.m., August 11, 2004 (Closed). 8 a.m.–5 p.m., August 12, 2004 (Closed).

Place: Westin Peachtree Plaza Hotel, 210 Peachtree Street, NW., Atlanta, GA 30303, Telephone 404–659–1400.

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: Health Protection Research Initiative Mentored Research Scientist Development Award—K01—Panel 2, Request for Applications (RFA) CD–04–001.

Contact Person for More Information: Elizabeth Skillen, PhD., Scientific Review Administrator, Public Health Practice Program Office, CDC, 4770 Buford Highway, MS–K38, Atlanta, GA 30314, 770–488–2592.

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.

July 15, 2004.

Joseph E. Salter,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 04–16668 Filed 7–21–04; 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): Health Protection Research Initiative Investigator Initiated Research—R01—Panel 2, Request for Applications (RFA) CD–04–002

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): Health Protection Research Initiative Investigator Initiated Research—R01—Panel 2, Request for Applications (RFA) CD–04–002.

Times and Dates: 8 a.m.–8:30 a.m., August 11, 2004 (Open). 8:30 a.m.–5 p.m., August 11, 2004 (Closed). 8 a.m.–5 p.m., August 12, 2004 (Closed).

Place: Westin Peachtree Plaza Hotel, 210 Peachtree Street, NW., Atlanta, GA 30303, Telephone 404–659–1400.

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: Health Protection Research Initiative Investigator Initiated Research—R01—Panel 2, Request for Applications (RFA) CD–04–002.

Contact Person for More Information: Joan F. Karr, PhD., Scientific Review Administrator, Public Health Practice Program Office, CDC, 4770 Buford Highway, MS–K38, Atlanta, GA 30314, 770–488–2597.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: July 15, 2004.

Joseph E. Salter,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 04–16670 Filed 7–21–04; 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): Health Protection Research Initiative Institutional Research Training Grant, Request for Applications (RFA) CD–04–003

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): Health Protection Research Initiative Institutional Research Training Grant, Request for Applications (RFA) CD–04–003.

Times and Dates: 8 a.m.–8:30 a.m., August 13, 2004 (Open). 8:30 a.m.–5 p.m., August 13, 2004 (Closed).

Place: Westin Peachtree Plaza Hotel, 210 Peachtree Street, NW., Atlanta, GA 30303, Telephone 404–659–1400.

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: Health Protection Research Initiative Institutional Research Training Grant, Request for Applications (RFA) CD–04–003.

Contact Person for More Information: Elizabeth Skillen, PhD., Scientific Review Administrator, Public Health Practice Program Office, CDC, 4770 Buford Highway, MS–K38, Atlanta, GA 30314, 770–488–2592.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: July 15, 2004.

Joseph E. Salter,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 04–16671 Filed 7–21–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Study Team for the Los Alamos Historical Document Retrieval and Assessment (LAHDRA) Project

The Centers for Disease Control and Prevention(CDC) announces the following meeting.

Name: Public Meeting of The Study Team for the Los Alamos Historical Document Retrieval and Assessment Project.

Time and Date: 5 p.m.–7 p.m. (mountain time), July 27, 2004.

Place: Cities of Gold Hotel in Pojoaque (15 miles north of Santa Fe on U.S. 84/285), 10–B Cities of Gold Road, Santa Fe, New Mexico 87506, telephone 505–455–0515.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 100 people.

Background: Under a Memorandum of Understanding (MOU) signed in December 1990 with the Department of Energy (DOE) and replaced by MOUs signed in 1996 and 2000, the Department of Health and Human Services (HHS) was given the responsibility and resources for conducting analytic epidemiologic investigations of residents of communities in the vicinity of DOE facilities, workers at DOE facilities, and other persons potentially exposed to radiation or to potential hazards from non-nuclear energy production use. HHS delegated program responsibility to CDC.

In addition, a memo was signed in October 1990 and renewed in November 1992, 1996, and in 2000, between the Agency for Toxic Substances and Disease Registry (ATSDR) and DOE. The MOU delineates the responsibilities and procedures for ATSDR's public health activities at DOE sites required under sections 104, 105, 107, and 120 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or ''Superfund''). These activities include health consultations and public health assessments at DOE sites listed on, or proposed for, the Superfund National Priorities List and at sites that are the subject of petitions from the public; and other health-related activities such as epidemiologic studies, health surveillance, exposure and disease registries, health education, substance-specific applied research, emergency response, and preparation of toxicological profiles.

Purpose: This study group is charged with locating, evaluating, cataloguing, and copying documents that contain information about historical chemical or radionuclide releases from facilities at the Los Alamos National Laboratory since its inception. The purpose of this meeting is to review the goals, methods, and schedule of the project, discuss progress to date, provide a forum for community interaction, and serve as a vehicle for members of the public to express concerns and provide advice to CDC.

Matters To Be Discussed: Agenda items include: CDC release of the Final Interim Report of the LAHDRA Project; discussion of document access at Los Alamos and information gathering that remains to be done; and an update on the outlook for continuation of information gathering at Los Alamos. All agenda items are subject to change as priorities dictate.

Contact Person for Additional Information: Phillip R. Green, Public Health Advisor, Radiation Studies Branch, Division of Environmental Hazards and Health Effects, NCEH, CDC, 1600 Clifton Road, NE. (MS–E39), Atlanta, GA 30333, telephone 404/498–1717, fax 404/498–1811.

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 ATSDR.

Dated: July 16, 2004.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 04–16665 Filed 7–21–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice of Operations and Construction Meeting

The National Center for Environmental Health (NCEH) of the Centers for Disease Control and Prevention (CDC) announces the following meeting:

Name: Vessel Sanitation Program (VSP) Operations Manual and Construction Guidelines Review.

Time and Date: 9 a.m. to 4 p.m., August 23–26, 2004.

Place: Auditorium, Port Everglades Administration Building, 1850 Eller Drive, Fort Lauderdale, Florida 33316.

Status: Open to the public, limited by the space available. The meeting room accommodates approximately 100 people.

Purpose: From August 23–26, the Vessel Sanitation Program staff and cruise ship industry will review revisions to both the Vessel Sanitation Operations Manual 2000 (August 23–24) and the Recommended Ship Building Guidelines for Cruise Vessels Destined To Call on U.S. Ports (August 24–26).

Matters to be discussed:

- Revisions to the Vessel Sanitation Operations Manual 2000.
- Revisions to the Recommended Ship Building Guidelines for Cruise Vessels Destined To Call on U.S. Ports.

The official record of this meeting will remain open for a period of 15 days following the meeting (through September 10, 2004) so that additional materials or comments may be submitted to be made part of the record of the meeting.

Advanced registration is encouraged. Please provide the following information: Name, title, company name, mailing address, telephone number, facsimile number, and e-mail address to Lisa Beaumier at 770–488–7138, FAX 770–488–4127, or *lbeaumier@cdc.gov*.

If you need additional information, please contact Lisa Beaumier (contact information provided above).

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 ATSDR.

Dated: July 16, 2004.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 04–16672 Filed 7–21–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Citizens Advisory Committee on Public Health Service Activities and Research at Department of Energy (DOE) Sites: Idaho National Engineering and Environmental Laboratory Health Effects Subcommittee (INEELHES)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Agency for Toxic Substances and Disease Registry (ATSDR) and the Centers for Disease Control and Prevention (CDC) announce the following meeting.

Name: Citizens Advisory Committee on Public Health Service Activities and Research at Department of Energy (DOE) Sites: Idaho National Engineering and Environmental Laboratory Health Effects Subcommittee (INEELHES).

Times and Dates: 1:30 p.m.—4:45 p.m., August 10, 2004. 8:30 a.m.—2:45 p.m., August 11, 2004.

Place: The Shilo Inn, 780 Lindsay Boulevard, Idaho Falls, Idaho 83402, telephone 208–523–0088 Ext. 100, fax 208–522–7420.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

Background: Under a Memorandum of Understanding (MOU) signed in December 1990 with DOE, and replaced by MOUs signed in 1996 and 2000, the Department of Health and Human Services (HHS) was given the responsibility and resources for conducting analytic epidemiologic investigations of residents of communities in the vicinity of DOE facilities, workers at DOE facilities, and other persons potentially exposed to radiation or to potential hazards from non-nuclear energy production use. HHS delegated program responsibility to CDC.

In addition, a memo was signed in October 1990 and renewed in November 1992, 1996, and in 2000, between ATSDR and DOE. The MOU delineates the responsibilities and procedures for ATSDR's public health activities at DOE sites required under sections 104, 105, 107, and 120 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or ''Superfund''). These activities include health consultations and public health assessments at DOE sites listed on, or proposed for, the Superfund National Priorities List and at sites that are the subject of petitions from the public; and other health-related activities such as epidemiologic studies, health surveillance, exposure and disease registries, health education, substance-specific applied research, emergency response, and preparation of toxicological profiles.

Purpose: This subcommittee is charged with providing advice and recommendations to the Director of CDC and the Administrator of ATSDR pertaining to CDC's and ATSDR's public health activities and research at this DOE site. The purpose of this meeting is to provide a forum for community, American Indian Tribal, and labor interaction, and to serve as a vehicle for communities, American Indian Tribes, and labor to express concerns and provide advice and recommendations to CDC and ATSDR.

Matters To Be Discussed: Agenda items include a presentation of the Sanford Cohen & Associates Report; a report on the Final INEEL Public Health Assessment; the INEEL Worker Cohort Mortality Study; and a Historical Review of the INEEL Dose Reconstruction Project: CDC's Perspective. Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Ms. Natasha Friday, Executive Secretary, INEELHES, Radiation Studies Branch, Division of Environmental Hazards and Health Effects, National Center for Environmental Health, CDC, 1600 Clifton Road, NE. (E–39), Atlanta, Georgia 30333, telephone (404) 498–1800, fax (404) 498–1811.

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 ATSDR.

Dated: July 16, 2004.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 04–16669 Filed 7–21–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004N–0114]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Institutional Review Boards

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by August 23, 2004.

ADDRESSES: OMB is still experiencing significant delays in the regular mail, including first class and express mail, and messenger deliveries are not being accepted. To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: Fumie Yokota, Desk Officer for FDA, FAX: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Karen L. Nelson, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Institutional Review Boards—(OMB Control Number 0910–0130)—Extension

When reviewing clinical research studies regulated by FDA, institutional review boards (IRBs) are required to create and maintain records describing their operations, and make the records available for FDA inspection when requested. These records include: Written procedures describing the structure and membership of the IRB and the methods that the IRB will use in performing its functions; the research protocols, informed consent documents, progress reports, and reports of injuries to subjects submitted by investigators to the IRB; minutes of meetings showing attendance, votes and decisions made by the IRB, the number of votes on each decision for, against, and abstaining, the

basis for requiring changes in or disapproving research; records of continuing review activities; copies of all correspondence between investigators and the IRB; statement of significant new findings provided to subjects of the research; and a list of IRB members by name, showing each member's earned degrees, representative capacity, and experience in sufficient detail to describe each member's contributions to the IRB's deliberations, and any employment relationship between each member and the IRB's institution. This information is used by FDA in conducting audit inspections of IRBs to determine whether IRBs and clinical investigators are providing adequate protections to human subjects participating in clinical research.

In the **Federal Register** of March 17, 2004 (69 FR 12700), the agency requested comments on the proposed collection of information. FDA received one comment. The comment strongly disagreed with the estimate of the time required to transcribe and type the minutes of IRB meetings, to maintain records of continuing review activities, and to make copies of all correspondence between the IRB and investigative member records and of written IRB procedures. The comment explained that the burden estimate should include the time required to keep membership lists current, distribute educational materials to members, orient new members, instruct researchers and their staffs about IRB requirements, provide information to institutions, attend IRB meetings, transcribe discussions, incorporate all revisions into typed minutes and into the official IRB correspondence that is issued to investigators, collate materials, stamp, file, keypunch database entry, and other responsibilities. FDA has considered the comment and has revised the burden estimate to 100 hours.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency of Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
56.115	5,000	14.6	73,000	100	7,300,000
Total					7,300,000

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

The recordkeeping requirement burden is based on the following: The burden for each of the paragraphs under 21 CFR 56.115 has been considered as one estimated burden. FDA estimates that there are approximately 5,000 IRBs. The IRBs meet on an average of 14.6 times annually. The agency estimates that approximately 100 hours of person-time per meeting are required to meet requirements of the regulation.

Dated: July 15, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–16628 Filed 7–21–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004N–0296]

Agency Information Collection Activities; Proposed Collection; Comment Request; Good Laboratory Practice Regulations for Nonclinical Studies

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the good laboratory practice (GLP) for nonclinical laboratory studies regulations.

DATES: Submit written or electronic comments on the collection of information by September 20, 2004.

ADDRESSES: Submit electronic comments on the collection of information to: *http://www.fda.gov/dockets/ecomments*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Office of Management Programs, (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1472.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Good Laboratory Practice (GLP) Regulations for Nonclinical Studies—21 CFR Part 58 (OMB Control Number 0910–0119)—Extension

Sections 409, 505, 512, and 515 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 348, 355, 360(b), 360(e)) and related statues require manufacturers of food additives, human drugs and biological products, animal drugs, and medical devices to demonstrate the safety and utility of their product by submitting applications to FDA for research or marketing permits . Such applications contain, among other important items, full reports of all studies done to demonstrate product safety in man and/or other animals. In order to ensure adequate quality control for these studies and to provide an adequate degree of consumer protection, the agency issued the GLP regulations. The regulations specify minimum standards for the proper conduct of safety testing and contain sections on facilities, personnel, equipment, standard operating procedures (SOPs), test and control articles, quality assurance, protocol and conduct of a safety study, records and reports, and laboratory disqualification.

The GLP regulations contain requirements for the reporting of the results of quality assurance unit inspections, test and control article characterization, testing of mixtures of test and control articles with carriers, and an overall interpretation of nonclinical laboratory studies. The GLP regulations also contain recordkeeping requirements relating to the conduct of safety studies. Such records include: (1) Personnel job descriptions and summaries of training and experience; (2) master schedules, protocols and amendments thereto, inspection reports, and SOPs; (3) equipment inspection, maintenance, calibration, and testing records; (4) documentation of feed and water analyses and animal treatments; (5) test article accountability records; and (6) study documentation and raw data.

The information collected under GLP regulations is generally gathered by testing facilities routinely engaged in conducting toxicological studies and is used as part of an application for a research or marketing permit that is voluntarily submitted to FDA by persons desiring to market new products. The facilities that collect this information are typically operated by large entities, e.g., contract laboratories, sponsors of FDA-regulated products, universities, or Government agencies. Failure to include the information in a filing to FDA would mean that agency scientific experts could not make a valid determination of product safety. FDA receives, reviews, and approves hundreds of new product applications each year based on information received. The recordkeeping requirements are necessary to document the proper conduct of a safety study, to assure the quality and integrity of the resulting final report, and to provide adequate proof of the safety of regulated products. FDA conducts onsite audits of records and reports, during its inspections of testing laboratories, to verify reliability of results submitted in applications.

The likely respondents collecting this information are contract laboratories, sponsors of FDA-regulated products, universities, or Government agencies.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency of Response	Total Annual Responses	Hours per Response	Total Hours
58.35(b)(7)	300	60.25	18,075	1	18,075
58.185	300	60.25	18,075	27.65	499,774
Total					517,849

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 1.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
58.29(b)	300	20	6,000	.21	1,260
58.35(b)(1) through (b)(6) and (c)	300	270.76	81,228	3.36	279,926
58.63(b) and (c)	300	60	18,000	.09	1,620
58.81(a), (b), and (c)	300	301.8	90,540	.14	12,676
58.90(c) and (g)	300	62.7	18,810	.13	2,445
58.105(a) and (b)	300	5	1,500	11.8	17,700
58.107(d)	300	1	300	4.25	1,275
58.113(a)	300	15.33	4,599	6.8	31,273
58.120	300	15.38	4,614	32.7	150,878

TABLE 1.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]—Continued

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
58.195	300	251.5	75,450	3.9	294,255
Total					793,308

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: July 15, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–16629 Filed 7–21–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research 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 Human Genome Research Institute Special Emphasis Panel HapMap Genotyping Review.

Date: August 6, 2004.

Time: 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5635 Fishers Lane, Suite 4076, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Rudy O. Pozzatti, PhD, Scientific Review Administrator, Office of Scientific Review, National Human Genome Research Institute, National Institutes of Health, Bethesda, MD 20892, 301–401–0838.

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. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: July 15, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–16620 Filed 7–21–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of 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 a meeting of the National Advisory Council for Human Genome Research.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

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/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council for Human Genome Research.

Date: September 13–14, 2004.

Open: September 13, 2004, 8:30 a.m. to 1 p.m.

Agenda: To discuss matters of program relevance.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892.

Closed: September 13, 2004, 1 p.m. to adjournment on Tuesday, September 14, 2004.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892.

Contact Person: Mark S. Guyer, Director for Extramural Research, Assistant Director for Scientific Coordination, National Human Genome Research Institute, 31 Center Drive, MSC 2033, Building 31, Room B2B07, Bethesda, MD 20892, 301–435–5536, *guyerm@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *http://www.genome.gov/11509849,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: July 15, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–16621 Filed 7–21–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research 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 552(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 Human Genome Research Institute Special Emphasis Panel, Sequencing Technology.
Date: August 10–11, 2004.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Four Points Sheraton, Bethesda, MD 20814.
Contact Person: Ken D. Nakamura, PhD, Scientific Review Administrator, Office of Scientific Review, National Human Genome Research Institute, National Institutes of Health, Bethesda, MD 20892, 301–404–0838.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: July 15, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–16623 Filed 7–21–04; 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 Special Emphasis Panel HIV Training.
Date: August 5, 2004.
Time: 11 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: 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.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: July 15, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–16622 Filed 7–21–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel Stroke Rehabilitation Review.
Date: August 3, 2004.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: The Jefferson Hotel, 1200 Sixteenth Street, NW., Washington, DC 20036.
Contact Person: Richard D. Crosland, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–594–0635, *rc218u@nih.gov.*

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel, Developmental Neuroscience Program Review.
Date: August 10, 2004.
Time: 2 p.m. to 3 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: Richard D. Crosland, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–594–0635, *rc218u@nih.gov.*

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel SPORTRIAS.
Date: August 19–20, 2004.
Time: 8:30 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: Katherine Woodbury, PhD, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, (301) 496–5980, *kw47o@nih.gov.*

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel Tourette's Syndrome.
Date: August 30–31, 2004.
Time: 8:30 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: Katherine Woodbury, PhD, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, (301) 496–5980, *kw47o@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: July 15, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–16624 Filed 7–21–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the

provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; Translational Studies in Traumatic Brain Injury.

Date: July 22, 2004.

Time: 2 p.m. to 3 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: Andrea Sawczuk, DDS, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS, 6001 Executive Boulevard, Room #3208, Bethesda, MD 20892, 301–496–0660, *sawczuka@ninds.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; Studies in Neurovirology.

Date: August 10, 2004.

Time: 2 p.m. to 4 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: Andrea Sawczuk, DDS, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS, 6001 Executive Boulevard, Room #3208, Bethesda, MD 20892, 301–496–0660, *sawczuka@ninds.nih.gov.*

Name of Committee: National Institute Neurological Disorders and Stroke Special Emphasis Panel; NeuroAIDS Studies.

Date: August 12, 2004.

Time: 2 p.m. to 3 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: Andrea Sawczuk, DDS, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS, 6001 Executive Boulevard, Room #3208, Bethesda, MD 20892, 301–496–0660, *sawczuka@ninds.nih.gov.*

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel, Translational Studies in Epilepsy Research.

Date: August 17, 2004.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6101 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Andrea Sawczuk, DDS, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS, 6001 Executive Boulevard, Room #3208, Bethesda, MD 20892, 301–496–0660, *sawczuka@ninds.nih.gov.*

Name of Committee: National Institutional of Neurological Disorders and Stroke Special Emphasis Panel; NeuroAIDS Imaging Studies.

Date: August 20, 2004.

Time: 8 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: Andrea Sawczuk, DDS, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS, 6001 Executive Boulevard, Room #3208, Bethesda, MD 20892, 301–496–0660, *sawczuka@ninds.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: July 15, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–16625 Filed 7–21–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; 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 Neurological Disorders and Stroke Special Emphasis Panel University of Puerto Rico Neuroscience Review Meeting.

Date: July 20–21, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel EL Convento, 100 Cristo Street, Old San Juan, PR 00901.

Contact Person: Phillip F. Wiethorn, Scientific Review Administrator, DHHS/NIH/NINDS/DER/SRB, 6001 Executive Boulevard, MSC 9529, Neuroscience Center, Room 3203, Bethesda, MD 20892–9529, (301) 496–5388, *wiethorp@ninds.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. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: July 15, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–16626 Filed 7–21–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Center for Substance Abuse Treatment; Notice of a Teleconference Meeting

Pursuant to Public Law 92–463, notice is hereby given of a closed teleconference meeting of the Center for Substance Abuse Treatment (CSAT) National Advisory Council to be held in July 2004.

The meeting will include the review, discussion and evaluation of grant applications reviewed by the Internal Review Groups. Therefore, the meeting will be closed to the public as determined by the SAMHSA Administrator, in accordance with Title 5 U.S.C. 552b(c) and (6) and 5 U.S.C. App. 2, § 10(d).

Substantive program information, including a summary of the meeting, roster of Council members, and the transcript of the meeting, may be obtained by accessing the SAMHSA/CSAT Web site, *http://www.samhsa.gov/council/CSAT/csatnac.aspx,* or from the contact listed below.

Committee Name: Center for Substance Abuse Treatment National Advisory Council.

Meeting Date: July 22, 2004.

Place: Center for Substance Abuse Treatment, 5515 Security Lane, 6th Floor Conference Room, Suite 615, Rockville, MD 20852.

Type: Closed: July 22, 2004, 1:30–3:30 p.m.

Contact: Cynthia Graham, Executive Secretary, 5600 Fishers Lane, RW II, Ste 619, Rockville, MD 20857, Telephone: (301) 443–8923; FAX: (301) 480–6077, E-mail: *cgraham@samhsa.gov.*

Dated: July 19, 2004.

Toian Vaughn,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

[FR Doc. 04–16789 Filed 7–21–04; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2004–18626]

Towing Safety Advisory Committee

AGENCY: Coast Guard, DHS.

ACTION: Notice of meetings.

SUMMARY: The STCW Implementation and the Designated Examiner Record-Keeping Working Groups of the Towing Safety Advisory Committee (TSAC) will meet to discuss matters relating to these specific issues of towing safety. The meetings will be open to the public.

DATES: The STCW Working Group will meet on Tuesday, July 27, 2004, from 8 a.m. to 2 p.m. The Record-Keeping Working Group will meet on Wednesday, July 28, 2004 from 8:30 a.m. to 1 p.m. The meetings may close early if all business is finished. Written material and requests to make oral presentations should reach the Coast Guard on or before July 23, 2004. Requests to have a copy of your material distributed to each member of the Working Group should reach the Coast Guard on or before July 21, 2004.

ADDRESSES: The Working Groups will meet in the 7th Floor All-Hands Conference Room (#725), National Pollution Funds Center, 4200 Wilson Boulevard, Arlington, VA 22203. Please bring a government-issued ID with photo (*e.g.*, driver's license). Send written material and requests to make oral presentations to Mr. Gerald Miante, Commandant (G–MSO–1), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001. This notice and related documents are available on the Internet at *http://dms.dot.gov* under the docket number USCG–2004–18626.

FOR FURTHER INFORMATION CONTACT: Mr. Gerald Miante, Assistant Executive Director of TSAC, telephone 202–267–0214, fax 202–267–4570, or e-mail *gmiante@comdt.uscg.mil*.

SUPPLEMENTARY INFORMATION: Notice of these meetings is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2 (Pub. L. 92–463, 86 Stat. 770, as amended).

Agenda of Working Group Meetings

The agenda for the STCW Implementation Working Group tentatively includes the following items:

(1) Develop ways to provide training that will be accessible to the working towing vessel mariner and meet Coast Guard standards for course approval; consider the feasibility of distance learning, computer based training, and a modular approach to training and testing.

(2) Identify towing industry concerns about current STCW implementation.

The agenda for the Designated Examiner Working Group tentatively includes the following items:

(1) Consider the benefits and disadvantages of requiring Coast Guard approved Designated Examiners to maintain records of their assessment of towing vessel license candidates.

(2) Draft recommendations on the scope of records to be maintained, including the type of records to be kept, how long records should be maintained, and whether records should be submitted to the Coast Guard.

Procedural

The meetings are open to the public. Please note that the meetings may close early if all business is finished. At the Chair's discretion, members of the public may make oral presentations during the meeting. If you would like to make an oral presentation at the meeting, please notify the Assistant Executive Director (as provided above in **FOR FURTHER INFORMATION CONTACT**) no later than July 23, 2004. Written material for distribution at the meeting should reach the Coast Guard no later than July 21, 2004.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Mr. Miante at the number listed in **FOR FURTHER INFORMATION CONTACT** as soon as possible.

Dated: July 14, 2004.

Joseph J. Angelo,

Director of Standards, Marine Safety, Security and Environmental Protection.

[FR Doc. 04–16656 Filed 7–21–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4903–N–50]

Notice of Submission of Proposed Information Collection to OMB; Ginnie Mae Mortgage-Backed Securities Programs

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.

This is a request for approval for Ginnie Mae to continue to collect information currently approved under OMB control numbers: 2503–0001, 2502–0004, 2503–0009, 2503–0010, 2503–0015, 2503–0016, 2503–0017, 2503–0018, and 2503–0026. HUD is requesting these information collections be consolidated under a single OMB control number. The information is used to facilitate participation of issuers/customers in the Mortgage-Backed Securities programs and to monitor performance and compliance with established rules and regulations.

DATES: *Comments Due Date:* August 20, 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 (2503–Pending) 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.

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: Ginnie Mae Mortgage-Backed Securities Programs.

OMB Approval Number: 2503–Pending.

Form Numbers: 11700, 11702, 11704, 11707, 11710–A–E, 11714, 11714–SN, 11705, 11706, 11708, 11709, 11709–A, 11715, 11720, 11712–I, 11712–II, 11717, 11717–II, 11724, 11728, 11728–II, 11731, 11734, 11747, 11747–II, 11772–II, 11732, 11711–A, 11711–B, 11748–C, 11748–A.

Description of the Need for the Information and Its Proposed Use: This is a request for approval for Ginnie Mae to continue to collect information currently approved under OMB control numbers: 2503–0001, 2502–0004, 2503–0009, 2503–0010, 2503–0015, 2503–0016, 2503–017, 2503–0018, and 2503–0026. HUD is requesting these information collections be consolidated under a single OMB control number. The information is used to facilitate participation of issuers/customers in the Mortgage-Backed Securities programs and to monitor performance and compliance with established rules and regulations.

Frequency of Submission: On occasion, Quarterly, Monthly, and Annually

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	226	330,809		0.00063		47,203

Total Estimated Burden Hours: 47,203.

Status: Submitted as a New Collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: July 15, 2004.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 04–16630 Filed 7–21–04; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4910–N–17]

Notice of Proposed Information Collection for Public Comment; Periodical Estimate for Partial Payment and Related Schedules

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments due date:* September 20, 2004.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name/or OMB Control number and should be sent to: Sherry Fobear McCown, Reports Liaison Officer, Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4116, Washington, DC 20410–5000.

FOR FURTHER INFORMATION CONTACT: Sherry Fobear McCown, (202) 708–0713, extension 7651, for copies of the proposed forms and other available documents (This is not a toll-free number. The forms are also accessible through HUD's HUDCLIPS Web site at *http://www.hudclips.org/cgi/index.cgi*.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Periodical Estimate for Partial Payment and Related Schedules.

OMB Control Number: 2577–0025.

Description of the need for the information and proposed use: Housing Agencies are responsible for contract administration to ensure that the work for project development is done in accordance with State laws and HUD requirements. Contract/subcontractor reports provide details, and summaries of payments, change orders, and schedule of materials stored for the project.

Agency form number: HUD–51001, 51002, 51003, 51004.

Members of affected public: Public Housing Agencies, State, or local, or tribal governments.

Estimation of the total number of hours needed to prepare the information collection including number of respondents: 3,527 respondents, 14,075 responses average annually, 2.15 hours average response, 51,124 hours total reporting and recordkeeping burden hours.

Status of the proposed information collection: Extension of currently approved collection.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: July 16, 2004.

William O. Russell III,

Deputy Assistant Secretary for the Office of Public Housing Voucher Programs.

[FR Doc. 04–16631 Filed 7–21–04; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection Submitted to the Office of Management and Budget (OMB) for Approval under the Paperwork Reduction Act; Federal Fish and Wildlife Permit Application; Native Endangered and Threatened Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: The U.S. Fish and Wildlife Service has submitted the collection of information described below to OMB for approval under the provisions of the Paperwork Reduction Act of 1995. A description of the information collection requirement is included in this notice. If you wish to obtain copies of the proposed information collection requirement, related forms, or explanatory material, contact the Service Information Collection Clearance Officer at the address or telephone number listed below.

DATES: OMB has up to 60 days to approve or deny information collection but may respond after 30 days. Therefore, to ensure maximum consideration, you must submit comments on or before August 23, 2004.

ADDRESSES: Submit your comments on the information collection requirement to the Desk Officer for the Department of the Interior at OMB–OIRA via fax at (202) 395–6566; or via e-mail at *OIRA_DOCKET@omb.eop.gov*. Also, please submit a copy of your comments to the Fish and Wildlife Service's Information Collection Clearance Officer via mail at: Information Collection Clearance Officer, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Mail Stop 222–ARLSQ, Arlington, Virginia 22203; or via fax at (703) 358–2269; or via e-mail at *Anissa_Craghead@fws.gov*.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection requirement, explanatory information, or related forms, contact Anissa Craghead, Information Collection Clearance Officer by telephone at (703) 358–2445, or by e-mail at *Anissa_Craghead@fws.gov*. You may also contact Mary Klee, Endangered Species Program, by telephone at (703) 358–2061 or by e-mail at *Mary_Klee@fws.gov*.

SUPPLEMENTARY INFORMATION: The Endangered Species Act (ESA) provides for the protection of listed species through establishment of programs for their recovery and through prohibition of harmful activities. The ESA also provides for a number of exceptions to its prohibitions against ''take'' of listed species. Under sections 6 and 10 of the ESA, regulations have been promulgated at 50 CFR 17.22 (endangered wildlife species), 17.32 (threatened wildlife species), 17.62 (endangered plant species), and 17.72 (threatened plant species) to guide implementation of these exceptions to the ''take'' prohibitions through permitting programs. The U.S. Fish and Wildlife Service's general permit regulations can be found at 50 CFR 13. Take authorized under this permit program would otherwise be prohibited by the ESA. The permit issuance criteria are designed to ensure that the requirements of the ESA are met, *i.e.*, that conduct of the requested actions and issuance of the permit will enhance the survival of the species.

The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). The U.S. Fish and Wildlife Service (we) have submitted a request to OMB to renew its existing approval of the collection of information for Native Endangered and Threatened Species Permit Applications, OMB control number 1018–0094, which expires on July 31, 2004. We are requesting a 3-year term of approval for this information collection activity. We may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

A previous 60-day notice on this information collection requirement was published in the **Federal Register** on April 9, 2004 (69 FR 18924) inviting public comment. In addition to publishing a **Federal Register** notice, we sent surveys to 9 permittees and asked them to review the forms relating to the permits they hold and comment on the clarity and relevance of the information collection, the burden associated with the collection, and whether there is something the Service could do to minimize the burden. We received a total of 7 comments, 1 comment on the **Federal Register** notice and 6 comments on the survey. Three of the comments were from individuals and four of the comments were from organizations.

We received one comment on the previous **Federal Register** notice from an individual. The commenter opposed the information collection and suggested that we should eliminate the permit application forms. We will continue to use the permit application forms because the information collection in the forms is necessary in order to satisfy public requests for permits. Elimination of this information collection would result in the Service's inability to respond to permit requests.

Six of the 9 permittee surveys were completed and returned to us. The comments we received on the application forms were very favorable. Respondents believed the forms were easily available, and the instructions were clear. Their burden hour estimates for completing the permit application forms and annual reports were generally within the numerical range of estimates provided by our Regions, and within the Service's estimated national averages.

One respondent for form 3–200–54 (Enhancement of Survival) suggested we develop guidelines for permit applicants on determining the baseline conditions and habitat enhancement/restoration practices. They also suggested that these guidelines should be based on different groups of species because the baseline conditions for a large mammal is quite different than that of an amphibian. We will forward this suggestion to our permit staff.

One respondent for form 3–200–55 (Recovery and Interstate Commerce) suggested that we include an example of a completed permit application to show the level of detail desired. They also suggested that we send a reminder letter when a permit is going to expire. We already have such a letter that can be automatically generated from a query in our permit database. We will forward this suggestion to our permit staff and prompt them to send out the reminder letters.

The respondents' varying estimates for the burden hours for form 3–200–56 (Incidental Take) was due to the fact that their permitted activities had varying complexities. For example, one respondent may have two complex, multi-species Habitat Conservation Plans while another respondent may have a simple, low impact HCP. The information collection burden of the permit application for a complex action

will naturally be greater than the burden for a simple action due to the need to comply with additional permit application requirements such as preparing an Environmental Impact Statement under the National Environmental Policy Act. In addition, the annual report for a complex activity will need to contain more information than the annual report for a simple action. Another respondent commented that form 3–200–56 was unclear as to what type of map would be acceptable. As a result of this comment, the map requirements were clarified. Another comment on form 3–200–56 was that the frequency for annual reports was too high and that we should request only one annual report. Since form 3–200–56 currently authorizes many long-term activities (some activities for up to 100 years), in order to manage the permitted activities we need more than one annual report over the life of the permit. Another comment suggested that we provide guidance on the format of the annual report. Since the permitted activities vary greatly in both complexity and the number of species covered, there is no standardized format for annual reports. However, we will forward this suggestion for additional guidance to our permit staff.

One respondent commented that the permit application fee of $25 for form 3–200–56 was insignificant compared to the cost of preparing and submitting the information required in the application. They recommended that the fee should be eliminated. The Service as a whole is evaluating its permit application fees, and on August 26, 2003 (68 FR 51222), we published a proposed rule to increase our permit application fees. We are proposing to revise the standard permit application fee, designated under title 50 of the Code of Federal Regulations (CFR) at § 13.11(d)(4), which has not been revised since 1982, in order to recoup more of the costs associated with providing permitting services. The fee increase is being proposed under the Federal user fee policy in OMB Circular No. A–25, which requires Federal agencies to recoup the costs of special services that provide benefits to identifiable recipients.

The information provided in these three application forms (3–200–54, 3–200–55, 3–200–56) is used by the Regional Endangered Species Permit Offices to evaluate requests for permits. Part of the permit evaluation process includes soliciting comments from our Field Offices or other offices within the Service, from other Federal agencies, and/or State or governments. If the permit requested involves endangered wildlife, the completed permit application may be reviewed by the public as well. Our permit regulations at 50 CFR 17.22 require us to publish a **Federal Register** notice and allow the public 30 days to comment on permit applications for requested activities impacting endangered wildlife. The information collection requirements in this submission implement the regulatory requirements of the Endangered Species Act (16 U.S.C. 1539), the Migratory Bird Treaty Act (16 U.S.C. 704), and the Bald Eagle Protection Act (16 U.S.C. 668), and the Marine Mammal Protection Act (16 U.S.C. 1374) contained in Service regulations in Chapter I, Subchapter B of Title 50 of the CFR.

The information to be supplied on the application form and the attachments will be used to review the application and allow the Service to make decisions, according to criteria established in various Federal wildlife conservation statutes and regulations on the issuance, suspension, revocation, or denial of permits. The obligation to respond is required to obtain a benefit, in this instance to receive a permit. We have revised the following requirements, and they are included in this submission:

1. *Title:* Native Endangered and Threatened Species—Enhancement of Survival Permits associated with Safe Harbor Agreements, and Candidate Conservation Agreements with Assurances.

Approval Number: 1018–0094.

Service Form Number: 3–200–54.

Frequency of Collection: Annually.

Description of Respondents: Individuals, households, businesses, State agencies, private organizations.

Total Annual Burden Hours: The reporting burden is estimated to average 3 hours per respondent for the application and 8 hours per respondent for the annual report of permitted activities. The Total Annual Burden hour is 66 hours for the application and 424 hours for the annual report on the permitted activities.

Total Annual Responses: The number of respondents is estimated to average 22 respondents for the application and 53 for the annual report of the permitted activities.

Background Explanation: Regulations have been promulgated at 17.22(c) and (d) for endangered wildlife species and 17.32(c) and (d) for threatened wildlife species to guide implementation of these permitting programs for Enhancement of Survival permits associated with Safe Harbor Agreements and with Candidate Conservation Agreements with Assurances under section 10(a)(1)(A) of the ESA. Service form 3–200–54 was developed to facilitate collection of information required by these regulations.

An Enhancement of Survival permit authorizes incidental take that may occur under the Safe Harbor Agreement or Candidate Conservation Agreement with Assurances. Under the Safe Harbor policy, non-Federal property owners who voluntarily enter into a Safe Harbor Agreement for implementation of conservation measures for listed species will receive assurances from the Service that additional regulatory restrictions will not be imposed beyond those existing at the time of the Agreement. Under the Candidate Conservation Agreements with Assurances policy, non-Federal property owners who voluntarily enter into such an Agreement for implementation of conservation measures for species proposed for listing, species that are candidates for listing, or species that are likely to become candidates in the near future will receive assurances from the Service that additional conservation measures will not be required and additional regulatory restrictions will not be imposed should the species become listed in the future.

2. *Title:* Native Endangered and Threatened Species—Permits for Scientific Purposes, Enhancement of Propagation or Survival (i.e., Recovery Permits) and Interstate Commerce.

Approval Number: 1018–0094.

Service Form Number: 3–200–55.

Frequency of Collection: Annually.

Description of Respondents: Individuals, scientific and research institutions.

Total Annual Burden Hours: The reporting burden is estimated to average 4 hours per respondent for the application and 8 hours per respondent for the annual report on the permitted activities. The Total Annual Burden hours is 3,280 hours for the application and 11,680 hours for the annual report on the permitted activities.

Total Annual Responses: The number of respondents is estimated to average 820 respondents for the application and 1,460 respondents for the annual report of the permitted activities.

Background Explanation: Regulations have been promulgated at 17.22(a) for endangered wildlife species, 17.32(a) for threatened wildlife species, 17.62 for endangered plant species, and 17.72 for threatened plant species to guide implementation of these permitting programs for Recovery and Interstate Commerce permits under section 10(a)(1)(A) of the ESA. Service form 3–200–55 was developed to facilitate collection of information required by

these regulations. Recovery permits allow ''take'' of listed species as part of scientific research and management actions, enhancement of propagation or survival, zoological exhibition, educational purposes, or special purposes consistent with the ESA designed to benefit the species involved. Interstate Commerce permits allow transport and sale of listed species across State lines as part of breeding programs enhancing the survival of the species. Detailed descriptions of the proposed taking, its necessities for success of the proposed action, and benefits to the species resulting from the proposed action are required under the implementing regulations cited above.

3. *Title:* Native Endangered and Threatened Species—Incidental Take Permits Associated With a Habitat Conservation Plan.

Approval Number: 1018–0094.

Service Form Number: 3–200–56.

Frequency of Collection: Annually.

Description of Respondents: Individuals, households, businesses, local and State agencies.

Total Annual Burden Hours: The reporting burden is estimated to average 3 hours per respondent for the application and 20 hours per respondent for the annual report on the permitted activities. The Total Annual Burden hours is 288 hours for the application and 4,020 hours for the annual report on the permitted activities.

Total Annual Responses: The number of respondents is estimated to be 96 respondents for the application and 201 respondents for the annual report of the permitted activities.

Background Explanation: Regulations have been promulgated at 17.22(b) for endangered wildlife species and 17.32(b) for threatened wildlife species to guide implementation of these permitting programs for Incidental Take permits associated with a Habitat Conservation Plan under section 10(a)(1)(B) of the ESA. Form number 3–200–56 was developed to facilitate collection of information required by these regulations. These permits allow ''take'' of listed species that is incidental to otherwise lawful non-Federal actions. The Service's Incidental Take permit program provides a flexible process for addressing situations in which a property owner's otherwise lawful activities might result in incidental take of a listed species. The Incidental Take permit program's major strength is that it provides a process that readily allows the development of local solutions to wildlife conservation as an alternative to comprehensive Federal regulation. Local entities and private landowners are given assurances that they will not be required to make additional commitments of land, water, or money; or be subject to additional restrictions on the use of land, water, or other natural resources for species adequately covered by a properly implemented Habitat Conservation Plan.

We again invite comments concerning this information collection on: (1) Whether the collection of information is necessary for the proper performance of our native endangered and threatened species management functions, including whether the information will have practical utility; (2) the accuracy of our estimate of the burden of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and, (4) ways to minimize the burden of the collection of information on respondents. The information collections in this program are part of a system of records covered by the Privacy Act (5 U.S.C. 552(a)).

Dated: June 18, 2004.

Anissa Craghead,

Information Collection Clearance Officer.

[FR Doc. 04–16754 Filed 7–21–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Preparation of an Environmental Impact Statement for an Amendment to the Incidental Take Permit for the San Bruno Mountain Habitat Conservation Plan, San Mateo County, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA), the U.S. Fish and Wildlife Service (Service) advises the public that we intend to gather information necessary to prepare, in coordination with the County of San Mateo (County), City of Brisbane (Brisbane), City of Daly City (Daly City), and City of South San Francisco (South San Francisco) (hereafter collectively referred to as the Permittees), a joint Environmental Impact Statement/Environmental Impact Report (EIS/EIR) on an amendment to the San Bruno Mountain Habitat Conservation Plan (Plan). Consistent with a consent decree and final judgment, these jurisdictions have requested an amendment to add four species to their incidental take permit (PRT 2–9818) originally issued on March 4, 1983 for the Plan. The Plan is being amended under section 10(a)(1)(B) of the Federal Endangered Species Act of 1973, as amended.

The Service provides this notice to: (1) Describe the proposed action and possible alternatives; (2) advise other Federal and State agencies, affected Tribes, and the public of our intent to prepare an EIS/EIR; (3) announce the initiation of a public scoping period; and (4) obtain suggestions and information on the scope of issues and alternatives to be included in the EIS/EIR.

DATES: Public meetings will be held on: Thursday, July 29, 2004 from 2:30 p.m. to 4:30 p.m.; and 6:30 p.m. to 8:30 p.m. The meetings will held in an informational and workshop format. Only written comments will be accepted. Written comments should be received on or before August 23, 2004.

ADDRESSES: The public meetings will be held at: Mission Blue Community Center, 475 Mission Blue Drive, Brisbane, California from 2:30 p.m. to 4:30 p.m.; and Brisbane Community Center, 250 Visitacion Avenue, ground floor, Brisbane, California from 6:30 p.m. to 8:30 p.m. Information, written comments, or questions related to the preparation of the EIS/EIR and NEPA process should be submitted to Lori Rinek, Chief, Conservation Planning and Recovery Division, U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 2800 Cottage Way, W–2605, Sacramento, California 95825 (facsimile: 916–414–6713).

FOR FURTHER INFORMATION CONTACT: Craig Aubrey, Fish and Wildlife Biologist, or Lori Rinek, Chief, Conservation Planning and Recovery Division at the Sacramento Fish and Wildlife Office at (916) 414–6600.

SUPPLEMENTARY INFORMATION:

Reasonable Accommodation

Persons needing reasonable accommodations in order to attend and participate in the public meeting should contact Lori Rinek at (916) 414–6600 as soon as possible. In order to allow sufficient time to process requests, please call no later than 1 week before the public meeting. Information regarding this proposed action is available in alternative formats upon request.

Background

Section 9 of the Endangered Species Act (Act) (16 U.S.C. 1531 *et seq.*) and Federal regulations prohibit the ''take'' of a fish or wildlife species listed as endangered or threatened. Under the Act, the following activities are defined as take: harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or

collect listed animal species, or attempt to engage in such conduct (16 U.S.C. 1538). However, under section 10(a) of the Act, we may issue permits to authorize ''incidental take'' of listed species. ''Incidental take'' is defined by the Act as take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Regulations governing permits for threatened species and endangered species, respectively, are at 50 CFR 17.32 and 50 CFR 17.22.

Take of listed plant species is not prohibited under the Act and cannot be authorized under a section 10 permit. We propose to include plant species on the permit in recognition of the conservation benefits provided for them under the Plan. These species would also receive no surprises assurances under the Service's ''No Surprises'' regulation that are then in effect.

The Service originally issued an incidental take permit (Permit PRT 2–9818) to the Permittees for the Plan on March 4, 1983. The permit authorized the incidental take of three federally endangered species: the San Bruno elfin butterfly (*Callophrys mossii bayensis*), the mission blue butterfly (*Icaricia icarioides missionensis*), and the San Francisco garter snake (*Thamnophis sirtalis tetrataenia*) and has since been amended on four occasions (although the number of species listed on the permit has remained constant). The Permittees intend to request that the amended permit include those species covered in the original incidental take permit, as well as the endangered callippe silverspot butterfly (*Speyeria callippe callippe*) and San Francisco lessingia (*Lessingia germanorum germanorum*), the threatened bay checkerspot butterfly (*Euphydryas editha bayensis*), and unlisted San Bruno Mountain manzanita (*Arctostaphylos imbricata*). Species may be added or deleted during the course of Plan development based on further analysis, new information, agency consultation, and public comment. The amended permit is needed to authorize take of listed animal species that could occur as a result of implementation activities covered under the Plan.

The Plan is being amended, in part, to comply with a January 6, 2003, consent decree and final judgement, which the Service agreed to amend the Plan by July 2005. Specifically, the Service agreed to consult, pursuant to section 7(a)(2) of the Act, on: (1) The impacts of the Plan on the endangered callippe silverspot, mission blue, and San Bruno elfin butterflies, and on critical habitat of the threatened bay checkerspot butterfly; (2) the Permittees' application for an amendment to the Plan; (3) the adequacy of existing Plan funding; (4) the adequacy of the Plan's minimization and mitigation measures; (5) the extent to which non-native species invasion is affecting the callippe silverspot, mission blue, and San Bruno elfin butterflies on the mountain; and (6) the extent to which management and restoration of conserved habitat on the mountain are being conducted according to the Plan. The amendment will also update the Plan so that it is consistent with Service regulations and policy, to include such ''No Surprises'' regulations as may then be in effect.

The Plan area comprises approximately 3,600 acres of land in northern San Mateo County, California. Most of San Bruno Mountain is unincorporated land, surrounded on all sides by the cities of Brisbane, Daly City, Colma, and South San Francisco. Topographically, the Mountain is made up of two ridges. The larger, main ridge or southeast ridge, reaches an elevation of slightly over 1,300 feet. The smaller ridge on the northeastern side of the Mountain reaches an average elevation of 840 feet.

Implementation activities that may be covered under the amended Plan include activities associated with commercial and residential development on planned and unplanned parcels in the Plan area, maintenance activities, and vegetation management on conserved lands. Maintenance activities covered in the Plan amendment may include those conducted by: the Pacific Gas & Electric Company on existing transmission and gas lines, the San Francisco Water Department on existing water lines, the San Mateo County Department of Public Works and Department of Parks and Recreation for existing road and other facilities, and the California Department of Forestry for maintaining established fire breaks on the Mountain. Habitat maintenance and management activities covered under the amended Plan may include hand and mechanical removal of invasive plants, herbicide treatments, prescribed burning, and grazing. Under the amended Plan, the effects on covered species of the covered activities are expected to be minimized and mitigated through participation in a conservation program, which will be fully described in the amended Plan. This conservation program would focus on providing long-term protection of covered species by protecting biological communities in the Plan area.

Components of this conservation program are now under consideration by the Service and the Permittees. These components will likely include avoidance and minimization measures, monitoring, adaptive management, and mitigation measures consisting of preservation, restoration, and enhancement of habitat.

Environmental Impact Statement/ Environmental Impact Report

The Permittees, the Service, and the County of San Mateo have selected Jones & Stokes, Associates to prepare the Draft EIS/EIR. The joint document will be prepared in compliance with NEPA and the California Environmental Quality Act. Although Jones & Stokes will prepare the EIS/EIR, the Service will be responsible for the scope and content of the document for NEPA purposes, and the County of San Mateo will be responsible for the scope and content of the EIR.

The EIS/EIR will consider the proposed action (*i.e.*, the issuance of a section 10(a)(1)(B) permit under the Act), and a reasonable range of alternatives. A detailed description of the proposed action and alternatives will be included in the EIS/EIR. It is anticipated that several alternatives will be developed, which may vary by the level of conservation, impacts caused by the proposed activities, permit area, covered species, or a combination of these factors. Additionally, a No Action alternative will be considered. Under the No Action alternative, the Service would not issue a section 10(a)(1)(B) permit.

The EIS/EIR will also identify potentially significant impacts on biological resources, land use, air quality, water quality, mineral resources, water resources, economics, and other environmental issues that could occur directly or indirectly with implementation of the proposed action and alternatives. For all potentially significant impacts, the EIS/EIR will identify mitigation measures where feasible to reduce these impacts to a level below significance.

Environmental review of the EIS/EIR will be conducted in accordance with the requirements of NEPA (42 U.S.C. 4321 *et seq.*), its implementing regulations (40 CFR 1500–1508), other applicable regulations, and Service procedures for compliance with those regulations. This notice is being furnished in accordance with 40 CFR 1501.7 of NEPA to obtain suggestions and information from other agencies and the public on the scope of issues and alternatives to be addressed in the EIS/EIR. The primary purpose of the scoping process is to identify important issues raised by the public, related to the proposed action. Written comments from interested parties are invited to ensure that the full range of issues

related to the permit amendment request are identified. You may submit written comments by mail or facsimile transmission (*see* **ADDRESSES**). All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

Dated: July 16, 2004.

Vicki L. Campbell,

Acting Deputy Manager, California/Nevada Operations Office, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. 04–16663 Filed 7–21–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UTU80593]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease, Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: In accordance with Title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97–451), a petition for reinstatement of oil and gas lease UTU80593 for lands in Uintah County, Utah, was timely filed and required rentals accruing from April 1, 2004, the date of termination, have been paid.

FOR FURTHER INFORMATION CONTACT: Teresa Catlin, Acting Chief, Branch of Fluid Minerals at (801) 539–4122.

SUPPLEMENTARY INFORMATION: The lessee has agreed to new lease terms for rentals and royalties at rates of $10 per acre and 16⅔ percent, respectively. The $500 administrative fee for the lease has been paid and the lessee has reimbursed the Bureau of Land Management for the cost of publishing this notice.

Having met all the requirements for reinstatement of the lease as set out in section 31(d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate lease UTU78025, effective January 1, 2004, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Teresa Catlin,

Chief, Branch of Fluid Minerals.

[FR Doc. 04–16632 Filed 7–21–04; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–920–1310–01; WYW144594]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of proposed reinstatement of terminated oil and gas lease.

SUMMARY: Under the provision of 30 U.S.C 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), the Bureau of Land Management (BLM) received a petition for reinstatement of oil and gas lease WYW144594 for lands in Fremont County, Wyoming. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Pamela J. Lewis, Chief, Fluid Chief Minerals Adjudication, at (307) 775–6176.

SUPPLEMENTARY INFORMATION: The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee and $166 to reimburse the Department for the cost of the **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW144594 effective April 1, 2003, under the original terms and conditions of the lease and the increased rental and royalty rates cited above. BLM has not issued a valid lease affecting the lands.

Pamela J. Lewis,

Chief, Fluid Minerals Adjudication.

[FR Doc. 04–16633 Filed 7–21–04; 8:45 am]

BILLING CODE 4310–22–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–920–1310–01; WYW146406]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of proposed reinstatement of terminated oil and gas lease.

SUMMARY: Under the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), the Bureau of Land Management (BLM) received a petition for reinstatement of oil and gas lease WYW146406 for lands in Fremont County, Wyoming. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Pamela J. Lewis, Chief, Fluid Minerals Adjudication, at (307) 775–6176.

SUPPLEMENTARY INFORMATION: The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee and $166 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW146406 effective October 1, 2003, under the original terms and conditions of the lease and the increased rental and royalty rates cited above. BLM has not issued a valid lease affecting the lands.

Pamela J. Lewis,

Chief, Fluid Minerals Adjudication.

[FR Doc. 04–16634 Filed 7–21–04; 8:45 am]

BILLING CODE 4310–22–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

July 16, 2004.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the Department of Labor (DOL). To obtain documentation, contact Darrin King on 202–693–4129 (this is not a toll-free number) or e-mail: *king.darrin@dol.gov*.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Bureau of Labor Statistics (BLS), Office of

Management and Budget, Room 10235, Washington, DC 20503, 202–395–7316 (this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Bureau of Labor Statistics.

Type of Review: Revision of a currently approved collection.

Title: National Longitudinal Survey of Youth 1997.

OMB Number: 1220–0157.

Frequency: Annually.

Type of Response: Reporting.

Affected Public: Individuals or households and Not-for-profit institutions.

Number of Respondents: 7,900.

Number of Annual Responses: 8,800.

Estimated Time Per Response: 60 minutes to complete the survey and 6 minutes to complete the validation re-interview.

Total Burden Hours: 7,990.

Total Annualized capital/startup costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: The information obtained in this survey will be used by the Department of Labor, other government agencies, academic researchers, the news media, and the general public to understand the employment experiences and school-to-work transitions of young men and women born in the years 1980 to 1984.

Darrin A. King,

Acting Departmental Clearance Officer.

[FR Doc. 04–16686 Filed 7–21–04; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

July 16, 2004.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the Department of Labor (DOL). To obtain documentation, contact Darrin King on 202–693–4129 (this is not a toll-free number) or e-mail: *king.darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Bureau of Labor Statistics (BLS), Office of Management and Budget, Room 10235, Washington, DC 20503, 202–395–7316 (this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Bureau of Labor Statistics.

Type of Review: Extension of a currently approved collection.

Title: Annual Refiling Survey.

OMB Number: 1220–0032.

Frequency: Annually.

Type of Response: Reporting.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions; Farms; Federal Government; and State, local, or tribal government.

Number of Respondents: 2,488,105.

Form	Annual responses	Average response time (hours)	Annual burden hours
BLS–3023–NVS	2,286,757	0.083	189,801
BLS–3023–NVM	35,951	0.25	8,988
BLS–3023–NCA	165,397	0.167	27,621
FY 2005 Total	2,488,105	.....	226,409

Total Annualized capital/startup costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: The Annual Refiling Survey forms are used to verify and update existing 2002 North American Industry Classification System codes. They also are used to update employers' business names and addresses and other geographical information. In addition, the forms provide a source of multiple worksite information, which is critical to the development of the BLS Business Establishment List (BEL). The BEL serves as a sampling frame and a benchmark for many BLS surveys.

Darrin A. King,

Acting Departmental Clearance Officer.

[FR Doc. 04–16687 Filed 7–21–04; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

126th Plenary Meeting, Advisory Council on Employee Welfare and Pension Benefit Plans; Notice of Meeting

Pursuant to the authority contained in section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, the 126th open meeting of the full Advisory Council on Employee Welfare and Pension Benefit Plans will be held on Wednesday, August 4, 2004.

The session will take place in Room N3437 A–C, U.S. Department of Labor Building, 200 Constitution Avenue, NW., Washington, DC 20210. The purpose of the meeting, which will begin at 9 a.m. and end at approximately 10:30 a.m., is for the chairpersons of the Council's working groups to provide progress reports; for Council members to discuss suggestions for the next National Summit on Retirement Savings; and to receive an update on the activities of the Employee Benefits Security Administration.

Organizations or members of the public wishing to submit a written statement pertaining to any topics under consideration by the Advisory Council may do so by submitting 20 copies on or before July 23, 2004, to Debra Golding, ERISA Advisory Council, U.S. Department of Labor, Room N–5656, 200 Constitution Avenue, NW., Washington, DC 20210. Statements received on or before July 23, 2004, will be included in the record of the meeting. Individuals or representatives of organizations wishing to address the Advisory Council should forward their request to Debra Golding at the above address or via telephone at (202) 693–8664. Oral presentations will be limited to 10 minutes, time permitting, but an extended statement may be submitted for the record. Individuals with disabilities who need special accommodations should contact Debra Golding by July 23 at the address indicated in this notice.

Signed in Washington, DC, this 16th day of July, 2004.

Ann L. Combs,

Assistant Secretary, Employee Benefits Security Administration.

[FR Doc. 04–16690 Filed 7–21–04; 8:45 am]

BILLING CODE 4516–29–M

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Working Group on Plan Fees and Reporting on Form 5500, Advisory Council on Employee Welfare and Pension Benefit Plans; Notice of Meeting

Pursuant to the authority contained in section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting will be held on Wednesday, August 4, 2004, of the Advisory Council on Employee Welfare and Pension Benefit Plans Working Group assigned to study plan fees and reporting on the Form 5500. The working group will study plan fees as reported on the Form 5500 to assess plan sponsors' understanding of the fees they are paying and the reporting requirements.

The session will take place in Room N3437 A–C, U.S. Department of Labor Building, 200 Constitution Avenue, NW., Washington, DC 20210. The purpose of the meeting, which will begin at 11 a.m. and end at approximately 4 p.m. with a one-hour lunch break at 12:30 p.m., is for the working group to hear from select witnesses on the issue.

Organizations or members of the public wishing to submit a written statement pertaining to the topic may do so by submitting 20 copies on or before July 23, 2004, to Debra Golding, ERISA Advisory Council, U.S. Department of Labor, Room N–5656, 200 Constitution Avenue, NW., Washington, DC 20210. Statements received on or before July 23, 2004, will be included in the record of the meeting. Individuals or representatives of organizations wishing to address the Working Group should forward their request to Debra Golding at the above address or via telephone at (202) 693–8664. Oral presentations will be limited to 20 minutes, time permitting, but an extended statement may be submitted for the record. Individuals with disabilities who need special accommodations should contact Debra Golding by July 23 at the address indicated in this notice.

Signed in Washington, DC, this 16th day of July, 2004.

Ann L. Combs,

Assistant Secretary, Employee Benefits Security Administration.

[FR Doc. 04–16691 Filed 7–21–04; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Working Group on Health and Welfare Form 5500 Requirements; Advisory Council on Employee Welfare and Pension Benefit Plans; Notice of Meeting

Pursuant to the authority contained in section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting will be held on Tuesday, August 3, 2004, of the Advisory Council on Employee Welfare and Pension Benefit Plans Working Group assigned to study health and welfare Form 5500 requirements. The working group will study the Form 5500 requirements for health and welfare plans to assess the benefits of this reporting for these plans.

The session will take place in Room N3437 A–C, U.S. Department of Labor Building, 200 Constitution Avenue, NW., Washington, DC 20210. The purpose of the meeting, which will begin at 9 a.m. and end at approximately 3 p.m. with a one-hour lunch break at noon, is for the working group to hear from select witnesses on the issue.

Organizations or members of the public wishing to submit a written statement pertaining to the topic may do so by submitting 20 copies on or before July 23, 2004, to Debra Golding, ERISA Advisory Council, U.S. Department of Labor, Room N–5656, 200 Constitution Avenue, NW., Washington, DC 20210. Statements received on or before July 23, 2004, will be included in the record of the meeting. Individuals or representatives of organizations wishing to address the Working Group should forward their request to Debra Golding at the above address or via telephone at (202) 693–8664. Oral presentations will be limited to 20 minutes, time permitting, but an extended statement may be submitted for the record. Individuals with disabilities who need special accommodations should contact Debra Golding by July 23 at the address indicated in this notice.

Signed at Washington, DC, this 16th day of July, 2004.

Ann L. Combs,

Assistant Secretary, Employee Benefits Security Administration.

[FR Doc. 04–16692 Filed 7–21–04; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Working Group on Fee and Related Disclosures to Participants; Advisory Council on Employee Welfare and Pension Benefit Plans; Notice of Meeting

Pursuant to the authority contained in section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting will be held on Thursday, August 5, 2004, of the Advisory Council on Employee Welfare and Pension Benefit Plans Working Group assigned to study fee and related disclosures to plan participants. The working group will study fee and related disclosures to participants in defined contribution plans that relate to investment decisions and retirement savings in order to help participants manage their retirement savings more effectively.

The session will take place in Room N3437 A–C, U.S. Department of Labor Building, 200 Constitution Avenue, NW., Washington, DC 20210. The purpose of the meeting, which will begin at 9 a.m. and end at approximately 3:30 p.m. with a one-hour lunch break at noon, is for the working group to hear from select witnesses on the issue.

Organizations or members of the public wishing to submit a written statement pertaining to the topic may do so by submitting 20 copies on or before July 23, 2004, to Debra Golding, ERISA Advisory Council, U.S. Department of Labor, Room N–5656, 200 Constitution Avenue, NW., Washington, DC 20210. Statements received on or before July 23, 2004, will be included in the record of the meeting. Individuals or representatives of organizations wishing to address the Working Group should forward their request to Debra Golding at the above address or via telephone at (202) 693–8664. Oral presentations will be limited to 20 minutes, time permitting, but an extended statement may be submitted for the record. Individuals with disabilities who need special accommodations should contact Debra Golding by July 23 at the address indicated in this notice.

Signed at Washington, DC, this 16th day of July, 2004.

Ann L. Combs,

Assistant Secretary, Employee Benefits Security Administration.

[FR Doc. 04–16693 Filed 7–21–04; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF LABOR

Office of the Assistant Secretary for Veterans' Employment and Training; President's National Hire Veterans Committee; Notice of Open Meeting

The President's National Hire Veterans Committee was established under 38 U.S.C. 4100 note Pub. L. 107–288, Jobs for Veterans Act, to furnish information to employers with respect to the training and skills of veterans and disabled veterans, and the advantages afforded employers by hiring veterans with such training and skills and to facilitate employment of veterans and disabled veterans through participation in Career One Stop national labor exchange, and other means.

The President's National Hire Veterans Committee will meet on Tuesday, August 10, 2004, beginning at 1:30 p.m. at the Renaissance Conference Center in Detroit, Michigan.

The committee will discuss raising employers' awareness of the advantages of hiring veterans.

Signed at Washington, DC, this 9th day of July, 2004.

Frederico Juarbe Jr.,

Assistant Secretary of Labor for Veterans' Employment and Training.

[FR Doc. 04–16689 Filed 7–21–04; 8:45 am]

BILLING CODE 4510–79–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:
Rule 6h–1—SEC File No. 270–497—OMB Control No. 3235–0555.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995,[1] the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

The Securities Exchange Act of 1934 (''Act'') requires national securities exchanges and national securities associations that trade security futures products to establish listing standards that, among other things, require: (1) Trading in such products not be readily susceptible to price manipulation; and (2) the market trading a security futures product has in place procedures to coordinate trading halts with the listing market for the security or securities underlying the security futures product. Rule 6h–1 under the Act[2] implements these statutory requirements and requires national securities exchanges and national securities associations that trade security futures products to: (1) Require cash-settled security futures products to settle based on an opening price rather than a closing price; and (2) require the exchange or association to halt trading in a security futures product for as long as trading in the underlying security, or trading in 30% of the underlying securities, is halted on the listing market.

It is estimated that approximately seventeen respondents will incur an average burden of ten hours per year to comply with this rule, for a total burden of 170 hours. At an average cost per hour of approximately $197, the resultant total cost of compliance for the respondents is $33,490 per year (seventeen entities × ten hours/entity × $197/hour = $33,490).

Written 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. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Direct your written comments to R. Corey Booth, Director/Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

Dated: July 15, 2004.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–16744 Filed 7–21–04; 8:45 am]

BILLING CODE 8010–01–P

[1] 44 U.S.C. 3501 *et seq.*

[2] 17 CFR 240.6h–1.

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:
Rule 17a–1—SEC File No. 270–244—OMB Control No. 3235–0208.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 17a–1 under the Securities Exchange Act of 1934 (the ''Act'') requires that all national securities exchanges, national securities associations, registered clearing agencies, and the Municipal Securities Rulemaking Board keep on file for a period of five years, two years in an accessible place, all documents that they make or receive respecting their self-regulatory activities, and that such documents be available for examination by the Commission.

The Commission staff estimates that the average number of hours necessary for compliance with the requirements of Rule 17a–1 is 50 hours per year. There are 22 entities required to comply with the rule: 9 national securities exchanges, 1 national securities association, 11 registered clearing agencies, and the Municipal Securities Rulemaking Board. In addition, 3 national securities exchanges notice-registered pursuant to Section 6(g) of the Act are required to preserve records of determinations made under Rule 3a55–1, which the Commission staff estimates will take 1 hour per exchange, for a total of 3 hours. Accordingly, the Commission staff estimates that the total number of hours necessary to comply with the requirements of Rule 17a–1 is 1,103 hours. The average cost per hour is $50. Therefore, the total cost of compliance for the respondents is $55,150.

Written 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. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Direct your written comments to R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: July 15, 2004.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–16745 Filed 7–21–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–26496; 812–13061]

Cornerstone Strategic Value Fund, Inc., et al.; Notice of Application

July 16, 2004.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of application for an order under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from section 19(b) of the Act and rule 19b–1 under the Act.

Summary of Application: Cornerstone Strategic Value Fund, Inc. (''Cornerstone Value''), Cornerstone Total Return Fund, Inc. (''Cornerstone Return'') and Progressive Return Fund, Inc. (''Progressive'') (collectively, the ''Applicants'' or ''Funds'') request an order to permit them to make periodic distributions of long-term capital gains, as often as monthly, so long as they maintain in effect a distribution policy calling for periodic distributions with respect to their common stock of a fixed percentage per year of the net asset value or market price per share of the common stock or a fixed dollar amount each taxable year (''Distribution Policy'').

Filing Dates: The application was filed on January 20, 2004, and amended on July 13, 2004.

Hearing or Notification of Hearing: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on August 10, 2004 and should be accompanied by proof of service on 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 who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicant, c/o Ralph W. Bradshaw, Bear Stearns Funds Management Inc., 383 Madison Avenue, New York, New York 10179.

FOR FURTHER INFORMATION CONTACT: Marilyn Mann, Senior Counsel, at (202) 942–0582, or Mary Kay Frech, Branch Chief, at (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street NW., Washington, DC 20549–0102 (tel. 202–942–8090).

Applicants' Representations:

1. Cornerstone Value is organized as a Maryland corporation and is registered under the Act as a closed-end diversified management investment company. Cornerstone Return is organized as a New York corporation and is registered under the Act as a closed-end diversified management investment company. Progressive is organized as a Maryland corporation and is registered under the Act as a closed-end non-diversified management investment company. Cornerstone Value's investment objective is long-term capital appreciation primarily through investment in equity securities of companies listed in the United States. Cornerstone Value has one class of common stock that is listed and traded on the American Stock Exchange (''AMEX''). Cornerstone Return's investment objective is to seek total return consisting of capital appreciation and current income by investing primarily in equity securities of U.S. and non-U.S. issuers whose securities trade on a U.S. exchange, over-the-counter, or as American Depositary Receipts or other form of depositary receipts that trade in the U.S. Cornerstone Return has one class of common stock that is listed and traded on the AMEX. Progressive's investment objective is to seek total return

consisting of capital appreciation and current income by investing primarily in equity securities of U.S. and non-U.S. companies and U.S. dollar denominated debt securities. Progressive has one class of common stock that is listed and traded on the AMEX. Cornerstone Advisors, Inc. (''Cornerstone Advisors''), an investment adviser registered under the Investment Advisers Act of 1940, serves as the Funds' investment adviser.

2. On June 25, 2002, the board of directors (''Board'') of Cornerstone Value (''Cornerstone Value Board''), including all of the directors who are not ''interested persons,'' as defined in section 2(a)(19) of the Act (''Independent Directors''), of Cornerstone Value, adopted a Distribution Policy, pursuant to which Cornerstone Value would make monthly distributions equal to $0.0825 per share. On September 24, 2003, the Cornerstone Value Board established the amount per share for December 2003 and the 2004 monthly distributions at $0.087 per share. On December 27, 2001, the Board of Cornerstone Return (''Cornerstone Return Board''), including all of the Independent Directors, adopted a Distribution Policy, pursuant to which Cornerstone Return made regular monthly distributions equal to $0.165 per share. On September 24, 2003, the Cornerstone Return Board established the amount per share for the December 2003 and 2004 monthly distributions at $0.176 per share. On June 25, 2002, the Board of Progressive (''Progressive Board''), including all of the Independent Directors, adopted a Distribution Policy, pursuant to which Progressive made regular monthly distributions equal to $0.2675 per share. On September 24, 2003, the Progressive Board established the amount per share for the December 2003 and the 2004 monthly distributions at $0.282.

3. Applicants request relief to permit the Funds, so long as each maintains in effect a Distribution Policy, to make periodic long-term capital gains distributions, as often as monthly, on their outstanding common stock.

Applicants' Legal Analysis:

1. Section 19(b) of the Act provides that a registered investment company may not, in contravention of such rules, regulations, or orders as the Commission may prescribe, distribute long-term capital gains more often than once every twelve months. Rule 19b–1(a) under the Act permits a registered investment company, with respect to any one taxable year, to make one capital gains distribution, as defined in section 852(b)(3)(C) of the Internal Revenue Code of 1986, as amended (the ''Code''). Rule 19b–1(a) also permits a supplemental distribution to be made pursuant to section 855 of the Code not exceeding 10% of the total amount distributed for the year. Rule 19b–1(f) permits one additional long-term capital gains distribution to be made to avoid the excise tax under section 4982 of the Code.

2. Applicants assert that rule 19b–1 under the Act, by limiting the number of net long-term capital gains distributions that a Fund may make with respect to any one year, would prevent the normal and efficient operation of a Distribution Policy whenever the Fund's realized net long-term capital gains in any year exceed the total of the fixed regular periodic distributions that may include such capital gains under the rule. Applicants state that rule 19b–1 thus may force the fixed regular periodic distributions to be funded with returns of capital (to the extent net investment income and realized short-term capital gains are insufficient to fund the distribution), even though realized net long-term capital gains otherwise would be available. Applicants further assert that, to distribute all of a Fund's long-term capital gains within the limits in rule 19b–1, the Fund may be required to make total distributions in excess of the annual amount called for by the Distribution Policy or retain and pay taxes on the excess amount. Applicants assert that the application of rule 19b–1 to each Fund's Distribution Policy may create pressure to limit the realization of long-term capital gains based on considerations unrelated to investment goals.

3. Applicants submit that one of the concerns leading to the enactment of section 19(b) and the adoption of the rule was that shareholders might be unable to distinguish between frequent distributions of capital gains and dividends from investment income. Applicants state that the proposed Distribution Policies, including the fact that the distributions called for by the Distribution Policies will include returns of capital to the extent that the Funds' net investment income and net realized capital gains are insufficient to meet the minimum percentage dividend, will be fully described in each of the Funds' periodic reports to shareholders. Applicants state that, in accordance with rule 19a–1 under the Act, a statement showing the source of the distribution will accompany each distribution (or the confirmation of the reinvestment thereof under the Funds' dividend reinvestment plans). Applicants state that the amount and source of each distribution received during the calendar year will be included with the Funds' IRS Form 1099–DIV reports of distributions during the year, which will be sent to each shareholder who received distributions (including shareholders who have sold shares during the year). Applicants state that this information also will be included in each Fund's annual report to shareholders.

4. Another concern underlying section 19(b) and rule 19b-1 is that frequent capital gains distributions could facilitate improper distribution practices, including, in particular, the practice of urging an investor to purchase fund shares on the basis of an upcoming distribution (''selling the dividend''), where the dividend results in an immediate corresponding reduction in NAV and would be, in effect, a return of the investor's capital. Applicants submit that this concern does not apply to closed-end investment companies, such as the Funds, which do not continuously distribute their shares. In addition, Applicants state that any rights offering by a Fund will be timed so that shares issuable upon exercise of the rights will be issued only in the 15-day period immediately following the record date for the declaration of a monthly dividend, or in the six-week period immediately following the record date of a quarterly dividend. Thus, Applicants state that, in a rights offering, the abuse of selling the dividend could not occur as a matter of timing. Any rights offering also will comply with all relevant Commission and staff guidelines. In determining compliance with these guidelines, the Boards will consider, among other things, the brokerage commissions that would be paid in connection with the offering. Any offering by the Funds of transferable rights will comply with any applicable National Association of Securities Dealers, Inc. rules regarding the fairness of compensation.

5. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction or class or classes of any persons, securities or transactions from any provision of the Act, or from any rule thereunder, if such exemption is 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 Act. For the reasons stated above, the Applicants believe that the requested relief satisfies this standard.

Applicants' Condition:

Applicants agree that any order granting the requested relief shall terminate with respect to an Applicant upon the effective date of a registration statement under the Securities Act of

1933 for any future public offering by the Applicant of its common shares other than:

(i) A rights offering to holders of the Applicant's common stock, in which (a) shares are issued only within the 15-day period immediately following the record date of a monthly dividend, or within the six-week period following the record date of a quarterly dividend, (b) the prospectus for such rights offering makes it clear that shareholders exercising rights will not be entitled to receive such dividend with respect to shares issued pursuant to such rights offering, and (c) the Applicant has not engaged in more than one rights offering during any given calendar year; or

(ii) An offering in connection with a merger, consolidation, acquisition, spin-off or reorganization of the Applicant; unless the Applicant has received from the staff of the Commission written assurance that the order will remain in effect.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–16746 Filed 7–21–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Federal Register Citation of Previous Announcement:

[69 FR 42471, July 15, 2004].

STATUS: Closed Meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

DATE AND TIME OF PREVIOUSLY ANNOUNCED MEETING: Tuesday, July 20, 2004 at 2 p.m.

CHANGE IN THE MEETING: Cancellation of Meeting.

The Closed Meeting scheduled for Tuesday, July 20, 2004 has been cancelled. Items scheduled for this meeting will be heard at the July 22, 2004 Closed Meeting.

For further information please contact the Office of the Secretary at (202) 942–7070.

Dated: July 19, 2004.

Jonathan G. Katz,

Secretary.

[FR Doc. 04–16784 Filed 7–19–04; 4:20 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50029; File No. SR–DTC–2003–10]

Self-Regulatory Organizations; The Depository Trust Company; Order Granting Approval of Proposed Rule Change Relating to a New Messaging Service for Stock Loan Recalls

July 15, 2004.

On July 8, 2003, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change File No. SR–DTC–2003–10 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] On July 21, 2003, DTC filed an amendment to the proposed rule change.[2] Notice of the proposed rule change was published in the **Federal Register** on June 1, 2004.[3] No comment letters were received. For the reasons discussed below, the Commission is now granting approval of the proposed rule change.

I. Description

The purpose of the rule change is to allow DTC to activate its Universal Hub for Stock Loan Recalls (''Universal Hub''). Universal Hub is a new messaging service that will provide participants with an efficient means for transmitting the notification and acknowledgement and maintaining such information related to stock loan recalls.

Currently, industry participants utilize faxes and phone calls to recall securities on loan. Processing stock loan recalls is generally paper intensive, which increases the risk of transmission errors and delayed responses. The lack of formal, automated mechanisms for lenders and borrowers to communicate notifications and acknowledgements of loan recalls is extremely inefficient.

To remedy these issues and to support the Securities Industry Association's Straight-Through Processing Securities Lending Subcommittee's goals, DTC has developed a universal messaging hub that, among other things, will automate the labor-intensive stock loan recall process. The Universal Hub will provide a central point of access for DTC participants engaging in stock loan recall transactions where participants can send and receive recall notices, acknowledgements, cancellations, buy-in execution details, and corporate action notices. DTC participants utilizing either vendor-supplied Automated Stock Loan Recall Messaging Systems (''ARMS'') or their own stock loan recall capability will be able to connect directly to the Universal Hub. By providing a central point of access to all parties, the Universal Hub will provide interoperability between various ARMS users and DTC participants and will permit ARMS vendors and DTC participants to avoid the costs and inefficiencies of building multiple bilateral links.

The Universal Hub's message formats will be based on ISO 15022 standards and will be supported on MQ Series and DTC's standard file transfer capabilities. The Universal Hub will create an acknowledgement/receipt record for each message processed to notify the sender that the Universal Hub has received the message and that the message was forwarded to the receiver. In addition, the Universal Hub will create a receipt record for the sender indicating that the counterparty to the stock loan recall retrieved the message from the Universal Hub. Each message will be assigned an internal control number for audit trail purposes. If the Universal Hub cannot deliver a message, it will reject the message back to the sender for resolution. The Universal Hub will only edit the header of the message to ensure successful delivery of the message. The Universal Hub will not edit the data in the actual stock loan recall message. Participants remain responsible for the details provided in their recall messages.

II. Discussion

Section 17A(b)(3)(F)[4] of the Act requires that the rules of a clearing agency be designed to remove impediments to and perfect the mechanism of a national system for prompt and accurate clearance and settlement of securities transactions. Implementing the Universal Hub will enable DTC to further automate the processing of stock loan recalls and will further the industry's efforts to achieve straight-through processing. As a result, DTC will be able to facilitate the prompt and accurate processing of securities transactions. As such, the proposed rule change is consistent with DTC's statutory obligation to remove impediments to and perfect the mechanism of a national system for prompt and accurate clearance and settlement of securities transactions.

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[1] 15 U.S.C. 78s(b)(1).

[2] The amendment changed the proposed rule change from being filed under Section19(b)(3)(A) for immediate effectiveness to being filed under Section 19(b)(2) for noticeand comment.

[3] Securities Exchange Act Release No. 49764 (May 25, 2004), 69 FR 30969.

[4] 15 U.S.C. 78q–1(b)(3)(F).

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[5] that the proposed rule change (File No. SR–DTC–2003–10) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–16747 Filed 7–21–04; 8:45 am]

BILLING CODE 8010–01–P

[5] 15 U.S.C. 78s(b)(2).

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50032; File No. SR–DTC–2004–07]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Establishing Fees for DTC's TaxInfo Service

July 16, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on July 8, 2004, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to establish fees, effective July 9, 2004, for access to DTC's TaxInfo service through its Participant Browser Service (''PBS'') platform.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC 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. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to establish fees, effective July 9, 2004, applicable to DTC's TaxInfo service when it is accessed through DTC's PBS platform. TaxInfo service is a tax information database of documents containing information on tax withholding rates and tax relief opportunities relating to international securities. The fee for TaxInfo service accessed through PBS will be $3.00 per document access. Each document provides in PDF format the applicable tax information on securities with respect to securities of a particular country.

DTC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act[3] and the rules and regulations thereunder applicable to DTC because the proposed fees are consistent with DTC's policy to price its services commensurate with DTC's costs and to equitably allocate the cost among the users of the service.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC perceives no impact on competition by reason of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments from DTC participants or others have not been solicited or received on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act[4] and Rule 19b–4(f)(2)[5] thereunder because the proposed rule establishes or changes a due, fee, or other charge. At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–DTC–2004–07 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–DTC–2004–07. 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 DTC and on DTC's Web site at *www.dtc.org.* 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–DTC–

[2] The Commission has modified the text of the summaries prepared by DTC.

[3] 15 U.S.C. 78q–1.

[4] 15 U.S.C. 78s(b)(3)(A)(ii).

[5] 17 CFR 240.19b–4(f)(2).

2004–07 and should be submitted on or before August 12, 2004.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–16748 Filed 7–21–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50015; File No. SR–ISE–2003–22]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendment No. 1 by the International Securities Exchange, Inc. Relating to Permanent Approval of a Pilot Program for Quotation Spreads

July 14, 2004.

I. Introduction

On September 24, 2003, the International Securities Exchange, Inc. (''ISE'' 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 requesting permanent approval of a pilot program permitting the allowable market maker quotation spread for all options listed on the ISE to be $5, regardless of the price of the bid (''Pilot Program''). On May 20, 2004, the ISE filed Amendment No. 1 to the proposal.[3] Amendment No. 1 revised the proposal to expressly include in the Pilot Program all index options listed on the ISE as well as all equity options listed on the ISE.

The proposed rule change and Amendment No. 1 were published for comment in the **Federal Register** on May 27, 2004.[4] The Commission received no comments regarding the proposal. This order approves the proposed rule change, as amended.

II. Description

On March 19, 2003, the Commission approved an ISE proposal to establish the Pilot Program on a six-month pilot basis until September 19, 2003.[5] The Pilot Program, which initially included options on up to 50 equity securities listed on the ISE, was extended several times and expanded to include all options listed on the ISE.[6]

The Pilot Program permits an ISE market maker to quote any equity or index option listed on the ISE with a difference of no more than $5 between the bid and the offer following the opening rotation.[7] Prior to the opening rotation, the maximum bid/ask differentials range from $.25 to $1.00, depending on the price of the option.[8]

As required by the Pilot Program Approval Order, the ISE submitted a report providing information concerning the quotations in the 50 equity options initially included in the Pilot Program. In addition, following the expansion of the Pilot Program,[9] the ISE submitted a second Pilot Program report providing quotation information concerning all of the options included in the ISE's expanded Pilot Program.

III. 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.[10] In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act[11] in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

In the Pilot Program Approval Order,[12] the Commission noted that although the Commission believes generally that maximum quotation spread parameters in the options market could provide an important safeguard to ensure that market maker quotes in options are not unnecessarily wide, the Commission nevertheless believed that the ISE provided sufficiently strong incentives for market makers to disseminate competitive quotes without maximum quotation spread parameters. In this regard, the Pilot Program Approval Order noted that each ISE market maker uses an automatic quotation system to quote independently, customers and professional traders can enter limit orders on the ISE's book, and market makers are only allocated trades when they are quoting at the best price. Moreover, the larger the size of a market maker's quote, the larger portion of a trade it is allocated. The Commission believed that these attributes and rules of the ISE provided strong market incentives for market makers to maintain narrow and competitive quotation spreads.[13]

The Commission believes that the two Pilot Program reports submitted by the ISE indicate that market maker quotation spreads for options included in the Pilot Program have not widened significantly during the operation of the Pilot Program. Accordingly, the Commission believes that permanent approval of the Pilot Program is consistent with the Act.

IV. Conclusion

For the foregoing reasons, the Commission finds that the proposal, 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,[14] that the

[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 Michael J. Simon, Senior Vice President and General Counsel, ISE, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated May 19, 2004, and accompanying Form 19b–4 (''Amendment No. 1'').

[4] *See* Securities Exchange Act Release No. 49754 (May 21, 2004), 69 FR 30352.

[5] *See* Securities Exchange Act Release No. 47532 (March 19, 2003), 68 FR 55685 (March 26, 2003) (''Pilot Program Approval Order'').

[6] *See* Securities Exchange Act Release Nos. 48514 (September 22, 2003), 68 FR 55685 (September 26, 2003) (notice of filing and immediate effectiveness of File No. SR–ISE–2003–21) (extending the Pilot Program through January 31, 2004); 49149 (January 29, 2004), 69 FR 05627 (notice of filing and immediate effectiveness of File No. SR–ISE–2004–02) (extending the Pilot Program through March 31, 2004); 49509 (March 31, 2004), 69 FR 18411 (April 7, 2004) (notice of filing and immediate effectiveness of File No. SR–ISE–2004–10) (extending the Pilot Program through June 29, 2004, and expanding the Pilot Program to include all options listed on the ISE) (''Pilot Expansion Notice''); and 49918 (June 25, 2004), 69 FR 40427 (July 2, 2004) (notice of filing and immediate effectiveness of File No. SR–ISE–2004–23) (extending the Pilot Program through July 29, 2004).

[7] *See* ISE Rule 803(b)(4).

[8] Specifically, prior to the opening rotation, ISE Rule 803(b)(4) requires options market makers to bid and offer so as to create differences of no more than $.25 between the bid and offer for each options contract for which the bid is less than $2; no more than $.40 where the bid is at least $2 but does not exceed $5; no more than $.50 where the bid is more than $5 but does not exceed $10; no more than $.80 where the bid is more than $10 but does not exceed $20; and no more than $1 where the bid is $20 or greater. The bid/offer differentials do not apply to in-the-money options series when the spread in the underlying securities market is wider than the differentials set forth above. For such series, ISE Rule 803(b)(4) permits the bid/ask differential to be as wide as the quotation on the primary market of the underlying security.

[9] *See* Pilot Expansion Notice, *supra* note 6.

[10] 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).

[11] 15 U.S.C. 78f(b)(5).

[12] *See* note 5, *supra*.

[13] *See* Pilot Program Approval Order, *supra* note 5.

[14] 15 U.S.C. 78s(b)(2).

proposed rule change (SR–ISE–2003–22), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–16644 Filed 7–21–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50018; File No. SR–NASD–2004–058]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Relating to Partial Customer Account Transfers

July 14, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on April 1, 2004, the National Association of Securities Dealers, Inc. (''NASD'') 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 primarily by the NASD. The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is amending Rule 11870 to make the procedures for non-standard transfers of customer account assets though the Automated Customer Account Transfer Service (''ACATS'') consistent with the procedures for transferring security account assets in their entirety.

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 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. The NYSE has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to amend NASD Rule 11870 so that the procedures for making non-standard transfers of customer assets[3] through ACATS consistent with the procedures for standard transfers of customer assets through ACATS.[4] The proposed rule change also permits a customer to authorize the delivering member to transfer specifically designated account assets outside of ACATS. In addition, the proposed rule change permits a customer to authorize an account transfer, in whole or in part, using an electronic signature in a format recognized as valid under federal law to conduct interstate commerce. This modification contemplates legal alternatives to written notice, as currently required, on the condition that such methods otherwise comply with the requirements of Rule 11870. The proposed rule change conforms to recently adopted amendments to the New York Stock Exchange's (''NYSE'') Rule 412 and the Interpretations of Rule 412.[5]

Rule 11870(a) sets forth the procedures for members to use when transferring customer assets. The rule currently states that broker-dealers must utilize ACATS for non-standard as well as standard transfers; however, the current rule generally refers to the transfer of an entire securities account. As amended by this proposed rule change, Rule 11870 will generally apply the same procedures to both standard and non-standard transfers of customer account assets through ACATS.

Because customer and broker-dealer obligations resulting from the transfer of an entire account differ from the obligations arising from the transfer of specified assets within an account that will remain active at the delivering firm after the transfer, the proposed amendments to Rule 11870 will distinguish between the transfer of security account assets ''in whole'' (*i.e.*, entire accounts) and the transfer of security account assets ''in specifically designated part'' (*i.e.*, partial transfers). This distinction is necessary given the different obligations that arise depending on if a broker-dealer is transferring an entire account to a receiving firm or is only transferring specified assets to a receiving firm. For example, it would not be necessary for a customer to instruct the delivering firm as to the disposition of his or her assets that are non-transferable if the customer is not transferring the account in whole.

The proposed rule change also permits customers to authorize alternative instructions for the transfer of ''specifically designated assets'' from one broker-dealer to another. This proposed rule change therefore creates an exception to a member's obligation to transfer specifically designated assets (*i.e.*, partial transfers) through ACATS. The ability to authorize alternative instructions refers to partial transfers only and does not provide an exception to the members' obligation to otherwise accomplish transfers in accordance with the rules of the National Securities Clearing Corporation (''NSCC'').

Further, Rule 11870 currently states that a customer who wishes to transfer securities account assets to another member must give ''written notice of that fact to the receiving member'' and must ''sign'' a broker-to-broker transfer instruction form. The proposed rule change to Rule 11870 will provide that the customer may authorize an account transfer, in whole or in part, using either the customer's actual signature or an electronic signature ''in a format recognized as valid under federal law to conduct interstate commerce.''

Currently Rule 11870 requires that members use the transfer instructions and provide the reports prescribed by the NASD when accomplishing account transfers pursuant to the rule. The NASD is deleting this requirement in the proposed rule because it believes this provision is no longer necessary.

In order to allow members sufficient time to develop and implement necessary system changes to comply with amended Rule 11870, the NASD proposes to set an implementation date of September 13, 2004. The NASD will announce the implementation date in a Notice to Members to be published no later than thirty days following the Commission's notice of the proposed rule change.[6]

[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by the NASD.

[3] Non-standard transfers of customer assets include such things as partial transfers of account assets, fail reversals, reclaims, and mutual fund clean-ups.

[4] Standard transfers of customer assets is generally a transfer of all assets in a customer's account where none of the securities in the account are ''nontransferable assets'' as that term is defined in NASD Rule 11870.

[5] Exchange Act Release No. 49415 (March 12, 2004), 69 FR 13608 (March 23, 2004) [File No. SR–NYSE–2003–29].

[6] In its filing to the Commission, the NASD indicated an implementation date of September 30,

Continued

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[7] 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. The NASD believes that the proposed rule change is designed to accomplish these objectives by making the procedures for transferring designated parts of a customer account through ACATS consistent with the procedures for transferring the entire account, permitting customers to authorize a partial transfer of assets outside of ACATS, and permitting customers to authorize an account transfer, in whole or in part, using electronic signature in a format recognized as valid under federal law to conduct interstate commerce. The proposed amendments to Rule 11870 are designed to expedite the transfer of customer assets between broker-dealers and more easily allow investors to transfer their assets to the broker-dealer of their choice. The proposed rule change would also conform NASD requirements to those recently adopted by the NYSE's Rule 412 and their interpretation under Rule 412.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will have an impact on or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments relating to the proposed rule change have been solicited or received. The NASD will notify the Commission of any written comments it receives.

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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. SR–NASD–2004–058. 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, comments should be sent in hardcopy or by e-mail but not by both methods. 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 NASD. All submissions should refer to File No. SR–NASD–2004–058 and should be submitted by August 12, 2004.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

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 association.[8] In particular, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of Section 15A(b)(6) of the Act,[9] which requires that the rules of the NASD be designed to remove impediments to and protect the mechanism of a free an open market and a national market system, and in general, to protect investors and the public interest. The Commission finds the approval of the NASD's rule change is consistent with this section because the amendments are designed to make the transfer of customer securities account assets easier, more efficient, and faster process for investors to move their securities to their broker-dealer of choice. The proposed rule change also makes the NASD and NYSE Rule 412 governing the transfer of customer accounts between broker-dealers consistent, which should eliminate confusion and differing treatment of customer account transfers.

The NASD has requested that the Commission approve the proposed rule change prior to thirtieth day after publication of the notice of the filing. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the publication of notice because the rule is substantially the same as the NYSE rule, which was recently approved by the Commission,[10] and because by so approving the NASD can implement its revised rule concurrently with the NYSE's implementation of its rule.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–NASD–2004–058) be, and hereby is, approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–16643 Filed 7–21–04; 8:45 am]

BILLING CODE 8010–01–P

2004. However, in order to conform to the NYSE's implementation date of September 12, 2004, the NASD requested to change their implementation date to September 13, 2004. Telephone conversation between Shirley H. Weiss, Office of General Counsel, NASD, and Susan Petersen, Division of Market Regulation, Commission, (June 25, 2004).

[7] 15 U.S.C. 78o–3(b)(6).

[8] 15 U.S.C. 78o–3(b). In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78o–3(b)(6).

[10] *Supra* note 5. The Commission received no comment letters opposing the NYSE rule.

[11] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice: 4773]

30-Day Notice of Proposed Information Collection: DS–156, Nonimmigrant Visa Application; OMB Control Number 1405–0018

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995.

- Title of Information Collection: Nonimmigrant Visa Application
- OMB Control Number: #1405–0018
- Type of Request: Extension of a Currently Approved Collection
- Originating Office: Visa Office, Bureau of Consular Affairs (CA/VO)
- Form Number: DS–156
- Respondents: Nonimmigrant visa applicants
- Estimated Number of Respondents: 12,300,000 per year

• Estimated Number of Responses: 12,300,000 per year
• Average Hours Per Response: 1 hour
• Total Estimated Burden: 12,300,000 hours per year
• Frequency: Once per respondent
• Obligation to Respond: Required to Obtain or Retain a Benefit

DATES: Comments may be submitted to the Office of Management and Budget (OMB) for up to 30 days from July 22, 2004.

ADDRESSES: Comments and questions should be directed to Alex Hunt, the State Department Desk Officer in Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB), who may be reached on 202–395–7860. You may submit comments by any of the following methods:
• E-mail: *ahunt@omb.eop.gov.* You must include the DS form number (if applicable), information collection title, and OMB control number in the subject line of your message.
• Hand Delivery or Courier: OIRA State Department Desk Officer, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503
• Fax: 202–395–6974

FOR FURTHER INFORMATION CONTACT: Copies of the proposed information collection and supporting documents may be obtained from Brendan Mullarkey of the Office of Visa Services, U.S. Department of State, 2401 E St. NW., L–703, Washington, DC 20522, who may be reached at 202–663–1166 or *mullarkeybp@state.gov.*

SUPPLEMENTARY INFORMATION: We are soliciting public comments to permit the Department to:
• Evaluate whether the proposed information collection is necessary for the proper performance of our functions.
• Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
• Enhance the quality, utility, and clarity of the information to be collected.
• Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of technology.

Abstract of proposed collection:

The form collects information from aliens applying for nonimmigrant visas to enable consular officers to determine efficiently the applicant's eligibility for a visa.

Methodology:

Form DS–156 will be directly submitted to visa-processing posts worldwide.

Dated: June 30, 2004.

Janice L. Jacobs,

Deputy Assistant Secretary of State for Visa Services, Bureau of Consular Affairs, Department of State.

[FR Doc. 04–16732 Filed 7–21–04; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice 4772]

Determination Under the Arms Export Control Act

AGENCY: Bureau of Nonproliferation, Department of State.

ACTION: Notice.

Pursuant to Section 654(c) of the Foreign Assistance Act of 1961, as amended, notice is hereby given that the Under Secretary of State for Arms Control and International Security has made a determination pursuant to Section 73 of the Arms Export Control Act and has concluded that publication of the determination would be harmful to the national security of the United States.

Dated: July 16, 2004.

Susan F. Burk,

Acting Assistant Secretary of State for Nonproliferation, Department of State.

[FR Doc. 04–16731 Filed 7–21–04; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF STATE

[Public Notice 4770]

Culturally Significant Objects Imported for Exhibition Determinations: ''From Fra Angelico to Bonnard: Masterpieces From the Rau Collection''

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition ''From Fra Angelico to Bonnard: Masterpieces from the Rau Collection,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners. I also determine that the exhibition or display of the exhibit objects at the Portland Art Museum, Portland, Oregon, from on or about July 28, 2004 until on or about August 22, 2004, at the Dayton Art Institute, Dayton, Ohio, from on or about September 4, 2004 until on or about January 11, 2005, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact the Office of the Legal Adviser, U.S. Department of State, (telephone: 202/619–6982). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 04–16729 Filed 7–21–04; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 4771]

Imposition of Missile Proliferation Sanctions Against a Russian Entity

AGENCY: Bureau of Nonproliferation, Department of State.

ACTION: Notice.

SUMMARY: A determination has been made that a Russian entity has engaged in missile technology proliferation activities that require the imposition of sanctions pursuant to the Arms Export Control Act, as amended, and the Export Administration Act of 1979, as amended (as carried out under Executive Order 13222 of August 17, 2001).

EFFECTIVE DATE: July 22, 2004.

FOR FURTHER INFORMATION CONTACT: Vann H. Van Diepen, Office of Chemical, Biological and Missile Nonproliferation, Bureau of Nonproliferation, Department of State (202–647–1142).

SUPPLEMENTARY INFORMATION: Pursuant to Section 73(a)(1) of the Arms Export Control Act (22 U.S.C. 2797b(a)(1)); Section 11B(b)(1) of the Export Administration Act of 1979 (50 U.S.C. app. 2410b(b)(1)), as carried out under Executive Order 13222 of August 17, 2001 (hereinafter cited as the ''Export Administration Act of 1979''); and Executive Order 12851 of June 11, 1993; a determination was made on June 15,

2004, that the following foreign person has engaged in missile technology proliferation activities that require the imposition of the sanctions described in Section 73(a)(2)(A) of the Arms Export Control Act (22 U.S.C. 2797b(a)(2)(A)) and Section 11B(b)(1)(B)(i) of the Export Administration Act of 1979 (50 U.S.C. app. 2410b(b)(1)(B)(i)) on the following entity and its subunits and successors:

Federal Research and Production Complex Altay (Russia)

Accordingly, the following sanctions are being imposed on this entity:

(A) New individual licenses for exports to the entity described above of MTCR Annex equipment or technology controlled pursuant to the Export Administration Act of 1979 will be denied for two years;

(B) New licenses for export to the entity described above of MTCR Annex equipment or technology controlled pursuant to the Arms Export Control Act will be denied for two years; and

(C) No new United States Government contracts relating to MTCR Annex equipment or technology involving the entity described above will be entered into for two years.

With respect to items controlled pursuant to the Export Administration Act of 1979, the export sanction only applies to exports made pursuant to individual export licenses.

These measures shall be implemented by the responsible agencies as provided in Executive Order 12851 of June 11, 1993.

Dated: July 16, 2004.

Susan F. Burk,

Acting Assistant Secretary of State for Nonproliferation, Department of State.

[FR Doc. 04–16730 Filed 7–21–04; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF STATE

[Public Notice 4774]

Determination by the Department of State Regarding Shrimp Imports From the Queensland East Coast Trawl Fishery, the Torres Strait Prawn Fishery, and the Exmouth Gulf Prawn Managed Fishery

SUMMARY: The Department of State has determined that shrimp harvested in Australia's Queensland East Coast Trawl Fishery, the Torres Strait Prawn Fishery, and the Exmouth Gulf Prawn Managed Fishery are harvested in a manner that does not pose a threat of the incidental taking of sea turtles. Accordingly, the prohibitions on the importation of shrimp set forth in Section 609 of Public Law 101–162 do not apply to shrimp harvested in these three fisheries.

EFFECTIVE DATE: Upon publication.

FOR FURTHER INFORMATION CONTACT: Mr. James Story, Office of Marine Conservation, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State, Washington DC, telephone number (202) 647–2335.

SUPPLEMENTARY INFORMATION: Section 609 of Public Law 101–162 (''Section 609'') prohibits the importation of shrimp and products of shrimp harvested with commercial fishing technology that may adversely affect species of sea turtles protected under U.S. laws and regulations.

The President delegated authority for implementing Section 609 to the Department of State. On April 19, 1996, in the exercise of this authority, the Department of State determined that the import prohibitions of Section 609 do not apply to shrimp harvested under certain conditions, since such harvesting does not adversely affect sea turtle species. The Department of State published a notice in the **Federal Register** on July 8, 1999 (Public Notice 3086, 64 FR 36946), which revised the guidelines used by the Department in implementing Section 609 to elaborate these conditions.

The relevant provisions of those guidelines follow:

''B. Shrimp Harvested in a Manner Not Harmful to Sea Turtles.

The Department of State has determined that the import prohibitions imposed pursuant to Section 609 do not apply to shrimp or products of shrimp harvested under the following conditions, since such harvesting does not adversely affect sea turtles:

a. Shrimp harvested in an aquaculture facility in which the shrimp spend at least 30 days in a pond prior to being harvested.

b. *Shrimp harvested by commercial shrimp trawl vessels using TEDs comparable in effectiveness to those required in the United States.* (emphasis added.)

c. Shrimp harvested exclusively by means that do not involve the retrieval of fishing nets by mechanical devices, such as winches, pulleys, power blocks or other devices providing mechanical advantage, or by vessels using gear that, in accordance with the U.S. program described above, would not require TEDs.

d. Shrimp harvested in any other manner or under any other circumstances that the Department of State may determine, following consultation with the National Marine Fisheries Service, does not pose a threat of the incidental taking of sea turtles. The Department of State shall publish any such determinations in the **Federal Register** and shall notify affected foreign governments and other interested parties directly.''

The revision of the Department of State's guidelines also included a decision to undertake regular examinations of the procedures that governments of uncertified nations have put in place for verifying the accurate completion of the DS–2031 forms. TED-caught shrimp harvested in a nation without such procedures will not be permitted to enter the United States.

The Government of Australia passed a law effective on April 15, 2000, requiring the use of TEDs by all commercial shrimp trawl vessels operating in the Northern Prawn Fishery of Australia (''NPF''). Based on extensive information provided by the Government of Australia concerning this law and its implementation, and in consultation with the National Marine Fisheries Service, the Department has since determined that shrimp harvested in the NPF after April 15, 2000, meet the requirements for the exception relating to ''TED-caught'' shrimp. This exemption still remains.

Recently in Australia, the states of Western Australia and Queensland have joined with the Australian Government to mandate the use of TEDs in three additional discreet fisheries: Exmouth Gulf Prawn Managed Fishery, Queensland East Coast Trawl Fishery, and the Torres Strait Prawn Fishery. Based on the information provided by the Government of Australia concerning these regulations, and in consultation with the National Marine Fisheries Service which conducted a verification visit to these fisheries in April 2004, the Department has determined that shrimp harvested in these three additional fisheries meet the requirements for the exception relating to ''TED-caught'' shrimp. Consequently, shipments of TED-caught shrimp from these three additional Australia fisheries harvested after June 3 should be allowed to enter the United States if accompanied by a properly completed DS–2031 form which includes the signature of an official of the harvesting country with direct knowledge of the method of harvest.

Dated: July 13, 2004.

David A. Balton,

Deputy Assistant Secretary for Oceans and Fisheries, Department of State.

[FR Doc. 04–16733 Filed 7–21–04; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed the Week Ending July 2, 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–2004–18518.
Date Filed: June 28, 2004.
Parties: Members of the International Air Transport Association.
Subject: PTC3 0762 dated 28 June 2004, Mail Vote 395—Resolution 010m, TC3 Special Passenger Amending Resolution between Korea (Rep. of) and China (excluding Hong Kong SAR and Macao SAR) r1–r2, Intended effective date: 5 July 2004.

Docket Number: OST–2004–18529.
Date Filed: June 29, 2004.
Parties: Members of the International Air Transport Association.
Subject: PTC12 USA–EUR 0171 dated 22 June 2004, Mail Vote 392, TC12 North Atlantic USA–Europe (between USA and Austria, Belgium, Czech Republic, Finland, France, Germany, Italy, Netherlands, Scandinavia, Switzerland), PTC12 USA–EUR 0172 dated 25 June 2004, Mail Vote 391, TC12 North Atlantic USA–Europe (except between USA and Austria, Belgium, Czech Republic, Finland, France, Germany, Iceland, Italy, Netherlands, Scandinavia, Switzerland) r1–r34, Minutes—PTC12 USA–EUR 0173 dated 25 June 2004, Tables—PTC12 USA–EUR Fares 0090 dated 29 June 2004, Intended effective date: 1 November 2004.

Docket Number: OST–2004–18531.
Date Filed: June 29, 2004.
Parties: Members of the International Air Transport Association.
Subject: MV/PSC/080—AMENDED VERSION, RP 1724c / Resolution 724c—Notice of Liability Limitations, Air Carrier Liability for Passengers and Their Baggage—EC, Regulation 889/2002 r1, Intended effective date: 5 July 2004.

Docket Number: OST–2004–18532.
Date Filed: June 29, 2004.
Parties: Members of the International Air Transport Association.
Subject: PTC12 CAN–EUR 0104 dated 25 June 2004, Mail Vote 390, TC12 North Atlantic Canada–Europe r1–r16, Minutes: PTC12 CAN–EUR 0105 dated 25 June 2004, Tables: PTC12 CAN–EUR Fares 0039 dated 29 June 2004, Intended effective date: 1 November 2004.

Docket Number: OST–2004–18537.
Date Filed: June 30, 2004.
Parties: Members of the International Air Transport Association.
Subject: PTC2 ME 0136 dated 2 July 2004, TC2 Within Middle East Expedited Resolution 002m, Intended effective date: 15 August 2004.

Docket Number: OST–2004–18539.
Date Filed: June 30, 2004.
Parties: Members of the International Air Transport Association.
Subject: PTC2 EUR–ME 0186 dated 2 July 2004, TC2 Europe-Middle East Expedited Resolution 002gg r1–r9, Intended effective date: 15 August 2004.

Andrea M. Jenkins,
Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. 04–16722 Filed 7–21–04; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending July 2, 2004

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (*See* 14 CFR 301.201 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–2004–18468.
Date Filed: June 28, 2004.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: July 19, 2004.
Description: Application of Arrow Air, Inc., requesting a certificate of Public Convenience and Necessity to engage in scheduled foreign air transportation of property and mail between any point or points in the U.S. via intermediate points to a point or points in the People's Republic of China and to points beyond with full traffic rights. Arrow requests designation as the third U.S.–China scheduled all-cargo airline and allocation of seven (7) weekly frequencies commencing August 1, 2004 and an additional six (6) weekly frequencies commencing March 25, 2005.

Docket Number: OST–2004–18468.
Date Filed: June 28, 2004.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: July 19, 2004.
Description: Application of Evergreen International Airlines, Inc., requesting a certificate of public convenience and necessity authorizing Evergreen to engage in scheduled foreign air transportation of property and mail between a point or points in the U.S., via intermediate points, and the co-terminal points of Beijing and Shanghai, China. Evergreen also requests authority to integrate this authority with its existing Certificate and exemption authority and to commingle traffic consistent with applicable aviation agreements. Further, Evergreen requests the new all-cargo designation to China available August 1, 2004 along with an allocation of seven weekly round trip frequencies available beginning on August 1, 2004.

Docket Number: OST–2004–18468.
Date Filed: June 28, 2004.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: July 19, 2004.
Description: Application of Gemini Air Cargo, Inc., requesting a certificate of public convenience and necessity to engage in scheduled foreign air transportation of property and mail from points in the U.S.; via intermediate points; to points in the People's Republic of China open to scheduled international operations; and beyond. Gemini Air Cargo seeks designation as the third scheduled all-cargo carrier to China and allocation of six (6) all-cargo frequencies in 2004 and six (6) additional frequencies in March 2005.

Docket Number: OST–2004–18468.
Date Filed: June 28, 2004.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: July 19, 2004.
Description: Application of Polar Air Cargo, Inc., requesting: (1) issuance of a certificate of public convenience and necessity authorizing it to engage in scheduled foreign air transportation of property and mail between a point or points in the U.S. and a point or points in the People's Republic of China, via intermediate points, and beyond China to any point or points; (2) designation as the additional U.S. flag all cargo carrier permitted by the Protocol effective August 1, 2004; (3) allocation of six (6) of the 21 weekly frequencies that become available August 1, 2004; and (4) the additional allocation of three (3)

of the 18 weekly frequencies that become available March 25, 2005.

Docket Number: OST–2004–18574.

Date Filed: July 2, 2004.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: July 23, 2004.

Description: Application of Sunworld International Airlines, Inc., requesting to resume operations, and requests that the 45-day advance filing requirement be waived in light of the difficulty and expense of maintaining an aircraft and paying salaries and rent without being able to conduct revenue operations.

Andrea M. Jenkins,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. 04–16721 Filed 7–21–04; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

Qualification of Drivers; Exemption Applications; Diabetes

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of denials.

SUMMARY: The FMCSA announces its denial of 39 applications from individuals who requested an exemption from the Federal diabetes standard applicable to interstate truck drivers and the reasons for the denials. The FMCSA has statutory authority to exempt individuals from the diabetes standard if the exemptions granted will not compromise safety. The agency has concluded that granting these exemptions does not provide a level of safety that will equal or exceed the level of safety maintained without the exemptions for these commercial motor vehicle drivers.

FOR FURTHER INFORMATION CONTACT: Ms. W. Teresa Doggett, Office of Bus and Truck Standards and Operations (MC–PSD), (202) 366–2990, Department of Transportation, FMCSA, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31315 and 31136(e), FMCSA may grant an exemption from the Federal diabetes standard for commercial drivers with insulin-treated diabetes mellitus for a renewable 2-year period if it finds such an exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such an exemption (49 CFR 381.305(a)).

Accordingly, FMCSA evaluated 39 individual exemption requests on their merits and made a determination that these applicants do not satisfy the criteria established to demonstrate that granting an exemption is likely to achieve an equal or greater level of safety than exists without the exemption. Each applicant has, prior to this notice, received a letter of final disposition on his/her individual exemption request. Those decision letters fully outline the basis for the denial and constitute final agency action. The list published today summarizes the agency's recent denials as required under 49 U.S.C. 31315(b)(4) by periodically publishing names and reasons for denials.

The following 22 applicants lacked sufficient recent driving experience under normal highway operating conditions over the previous three years that would serve as an adequate predictor of future safe performance:

Broderick, James A., Christensen, Gary C., Clemens, Stephen R., Curtis, James T., Eudy, Charles K., Ewen, Rex C., Fernald, Frank L., Goodman, Timothy L., Hankel, Jr., Charles T., Hansen, Gerald P., Kingston, Franklin P., Koenig-Warren, Linda L., Kruse, Edward V., Leisgang, Gregory A., Monroe, Tommie A., McClaflin, David E., Nelson, Ronald W., Pflugler, Jr., Robert L., Ruhmann, Wayne, Schooler, Michael D., Stock, Anthony E., Wright, Darryl L.

One applicant, Mr. Ken Greer, does not have any experience operating a commercial motor vehicle (CMV) and therefore presented no evidence from which FMCSA can conclude that granting the exemption is likely to achieve a level of safety equal to that existing without the exemption.

The following 5 applicants do not have 3 years of experience driving a CMV on public highways with insulin-treated diabetes mellitus: Choy, Jorge L., Sewell, Dean A., Thiel, Samuel G., Walters, Leonard D., Zoller, Steven R.

Three applicants, Mr. Ronald G. Gross, Mr. Israel Hernandez, and Mr. Thomas E. Richards, do not have recent experience driving a CMV. Applicants must have driven for at least the three years preceding their filing of an application for an exemption.

One applicant, Mr. John C. Nickles, does not have insulin-treated diabetes mellitus and does not need the exemption.

One applicant, Mr. Lowell T. Tucker, contributed to a crash while operating a CMV, which is a disqualifying offense.

Two applicants, Mr. Joseph C. McMasters and Mr. Nicholas C. Stanley, did not hold a license that allowed operation of vehicles over 10,000 pounds for all or part of the 3-year period.

One applicant, Mr. Brian F. Beebe was denied for multiple reasons.

Two applicants, Mr. Alfred Gjaltema and Mr. Cory L. Swanson, provided false documentation during the application process.

The commercial driver's license of one applicant, Mr. James G. Arnoldussen, was suspended during the 3-year period because of a moving violation. Applicants do not qualify for an exemption with a suspension during the 3-year period.

Issued on: July 14, 2004.

Pamela M. Pelcovits,

Director of Policy, Plans and Regulations.

[FR Doc. 04–16688 Filed 7–21–04; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Applications for Modification of Exemption

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications for modification of exemption.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Material Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Request of modifications of exemptions (*e.g.* to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix ''M'' demote a modification request. There applications have been separated from the new application for exemption to facilitate processing.

DATES: Comments must be received on or before August 9, 2004.

Address Comments to: Record Center, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption number.

FOR FURTHER INFORMATION: Copies of the applications are available for inspection in the Records Center, Nassif Building, 400 7th Street, SW., Washington, DC or at *http://dms.dot.gov.*

This notice of receipt of applications for modification of exemption is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on July 15, 2004.

R. Ryan Posten,

Exemptions Program Officer, Office of Hazardous Materials Exemptions & Approvals.

Application No.	Docket No.	Applicant	Regulation(s) affected	Modification of exemption	Nature of exemption thereof
MODIFICATION EXEMPTIONS					
11537–M	.....	American Development Corporation, Fayetteville, TN.	49 CFR 177.834(h) ...	11537	To modify the exemption to authorize discharge of a Division 5.1 material from a UN Standard UN31H2 or UN31HA1 Intermediate Bulk Container (IBC) securely mounted to a flatbed trailer, unloaded while on a motor vehicle.
13027–M	RSPA–02–12451.	Hernco Fabrication & Services, Midland, TX.	49 CFR 173.241; 173.242.	13027	To modify the exemption to authorize the filling overflow line shutoff valve on top of manifolded non-DOT specification tanks to remain open during transportation.
13321–M	RSPA–03–16598.	Quest Diagnostics, Inc., Collegeville, PA.	49 CFR 173.28(b)(3)	13321	To modify the exemption to authorize the transportation of Diagnostic Specimens in specially designed UN5L3 reusable textile bags.
13568–M	RSPA–04–17985.	Spectrum Astro, Inc., Gilbert, AZ.	49 CFR 173.301(a)(1) & 173.301(f).	13568	To reissue the exemption originally issued on an emergency basis for the transportation in commerce of non-DOT propellant tanks fully pressurized for use in a space vehicle flow system.

[FR Doc. 04–16653 Filed 7–21–04; 8:45 am]

BILLING CODE 4909–60–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration Office of Hazardous Materials Safety; Notice of Application for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications for exemption.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Material Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before August 23, 2004.

ADDRESSES COMMENTS TO: Record Center, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If Confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Records Center, Nassif Building, 400 7th Street SW., Washington, DC or at *http://dms.dot.gov.*

This notice of receipt of applications for modification of exemption is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, on July 15, 2004.

R. Ryan Posten,

Exemptions Program Officer, Office of Hazardous Materials Safety Exemptions & Approvals.

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of exemption thereof
NEW EXEMPTION				
13576–N	.....	Scott Specialty Gases, Inc. Plumsteadville, PA.	49 CFR 173.302a(a)(1)	To authorize the transportation in commerce of certain compressed gases in DOT specification 2Q containers. (modes 1, 2, 3, 4).
13577–N	.....	Scott Specialty Gases, Inc. Plumsteadville, PA.	49 CFR 173.306(a)(3)(ii)	To authorize the transportation in commerce of refrigerant 134a to be shipped as a limited quantity compressed gas. (modes 1, 2, 3, 4).

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of exemption thereof
13578–N		Scott Specialty Gases, Inc. Plumsteadville, PA.	49 CFR 173.304(d)(3)(ii)	To authorize the transportation in commerce of certain non-DOT specification inside metal containers similar to a DOT specification 2Q for use in transporting certain Division 2.1 material. (modes 1, 2, 3, 4).
13579–N		Scott Specialty Gases, Inc. Plumsteadville, PA.	49 CFR 173.302a(a)(1)	To authorize the transportation in commerce of certain Division 2.2 compressed gases in DOT specification 2Q containers. (modes 1, 2, 3, 4).
13598–N		Jadoo Power Systems Inc. Folsom, CA.	49 CFR 173.301(a)(1), (d) and (f).	To authorize the manufacture, mark, sale and use of a specially designed device for use in transporting certain Division 2.1 hazardous materials. (modes 1, 2, 3, 4).
13599–N		Air Products and Chemicals, Inc. Allentown, PA.	49 CFR 173.304a(a)(2)	To authorize the transportation in commerce of certain DOT-specification cylinders with alternative filling densities/ratios. (modes 1, 2, 3).
13601–N		DS Containers, Inc. Lemont, IL.	49 CFR 173.306(b)(1); 175.3	To authorize the transportation in commerce of certain aerosol cans with alternative filling criteria. (modes 1, 2, 3, 4, 5).
13636–N		Timberline Environmental Services Cold Springs, CA.	49 CFR 173.62	To authorize the transportation in commerce of certain Division 1.3S waste hazardous materials for disposal. (mode 1).

[FR Doc. 04–16654 Filed 7–21–04; 8:45 am]
BILLING CODE 4909–60–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. RSPA–04–18607; Notice 1]

Pipeline Safety: Petition for Waiver; Alyeska Pipeline Service Company

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice; petition for waiver.

SUMMARY: Alyeska Pipeline Service Company (Alyeska) has petitioned the Research and Special Programs Administration's (RSPA) Office of Pipeline Safety (OPS) for a waiver of the pipeline safety regulation that requires an operator to reduce the pressure of a pipeline to not more than 50 percent of the maximum operating pressure whenever the line pipe is moved.

DATES: Persons interested in submitting written comments on the waiver proposed in this notice must do so by August 23, 2004. Late-filed comments will be considered so far as practicable.

ADDRESSES: You may submit written comments by mailing or delivering an original and two copies to the Dockets Facility, U.S. Department of Transportation, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. The Dockets Facility is open from 10 a.m. to 5 p.m., Monday through Friday, except on Federal holidays when the facility is closed. Alternatively, you may submit written comments to the docket electronically at the following Web address: *http://dms.dot.gov.*

All written comments should identify the docket and notice numbers stated in the heading of this notice. Anyone who wants confirmation of mailed comments must include a self-addressed stamped postcard. To file written comments electronically, after logging on to *http://dms.dot.gov,* click on ''Comment/Submissions.'' You can also read comments and other material in the docket at *http://dms.dot.gov.* General information about our pipeline safety program is available at *http://ops.dot.gov.*

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: James Reynolds by phone at 202–366–2786, by fax at 202–366–4566, by mail at DOT, RSPA, OPS, 400 Seventh Street, SW., Room 2103, Washington, DC 20590, or by e-mail at *james.reynolds@rspa.dot.gov.*

SUPPLEMENTARY INFORMATION: Alyeska has petitioned RSPA/OPS for a waiver from compliance with the requirements of 49 CFR 195.424(a) for 420 miles of aboveground line pipe in the Trans Alaska Pipeline System (TAPS). Section 195.424(a) does not allow a pipeline operator to move any line pipe unless the pressure in the pipeline section is reduced to not more than 50 percent of the maximum operating pressure (MOP). Alyeska argues that lowering the pressure on the aboveground portion of TAPS is not necessary and is disruptive and burdensome to its pipeline operations. The requested waiver would apply whenever routine maintenance requires that the aboveground line pipe be moved laterally, longitudinally, or vertically to relieve pipe stresses and restore it to its intended position.

TAPS was designed and constructed between 1973 and 1977 to transport oil 800 miles from Prudhoe Bay, Alaska, to Alyeska's marine terminal at Valdez, Alaska. Over half of the TAPS pipeline, 420 miles, was constructed aboveground. Alyeska states that because of TAPS' unique design and construction, the aboveground portions of the pipeline behave in a structurally predictable manner. According to Alyeska, the aboveground structures were designed to accommodate line pipe movement while operating at MOP under a full range of operating and environmental conditions without overstressing the line pipe. Alyeska notes that the unique design and construction of TAPS allows pipeline movement caused by thermal expansion, seismic or hydraulic events, fault movements, support structure settlement, or frost jacking, as well as complete loss of two adjacent support structures. Moreover, Alyeska further states that TAPS was designed and constructed to anticipate line pipe movements, including routine lifting to replace sliding pads, reposition shoes, and adjust out-of-level crossbeams without reducing the pressure in the pipeline or overstressing the pipe.

Alyeska describes the TAPS support system in its waiver request. The aboveground portion of TAPS was designed and constructed with two types of supports: intermediate sliding supports and anchor supports. The intermediate sliding supports are spaced every 60 feet on the aboveground portion of the pipeline. Anchor supports are spaced every 600 to 1,800 feet to control line pipe displacement arising from thermal expansion and seismic movement. According to Alyeska, the stresses imposed on the pipeline during operations and maintenance can be accurately predicted based on monitoring data using well-established engineering methods. Other important aspects of the design and construction of the aboveground portion of TAPS are illustrated in Alyeska's waiver request, which is available in the docket.

RSPA/OPS may waive compliance with any part of a pipeline safety regulation if the waiver is not inconsistent with pipeline safety. Alyeska contends that because 49 CFR § 195.424(a) was adopted prior to the construction of TAPS, this regulation was only intended for movement of conventionally constructed, buried line pipe. Alyeska believes that a waiver from § 195.424(a) for the 420 miles of aboveground line pipe in TAPS would not be inconsistent with pipeline safety because the design and construction of TAPS allows for safe movement and adjustment of aboveground line pipe.

Routine maintenance on the aboveground portion of TAPS requires the pipeline to be lifted or moved laterally, longitudinally, or vertically to restore it to its intended position. Alyeska defines routine maintenance to include:

- Out-of-plumb vertical support members (VSM).
- Out-of level crossbeams.
- Tripped anchors.
- Intermediate shoes positioned too close to crossbeam edge.
- Intermediate shoes positioned too close to left or right VSM.
- Damaged Teflon pads.
- Non-uniform support of the pipeline.

Alyeska provided the following justification in support of its waiver request:

- Aboveground portion of TAPS behave differently from conventionally buried pipeline for which the regulations were originally promulgated;
- Maintenance is routinely and regularly required to keep the aboveground portion of the TAPS operating safely;
- Lowering operating pressure while making regular and routine adjustments will be unnecessarily disruptive and burdensome on the TAPS operation;
- Disruptions of TAPS operation could adversely affect the flow of crude oil to U.S. domestic markets, harming the national economy, and threatening national security;
- Established procedures are followed to ensure the safety of the aboveground portion of this pipeline while performing pipeline maintenance; and
- Lowering the pressure of the TAPS aboveground pipeline is not necessary for pipeline safety because the TAPS pipeline is designed to accommodate pipeline movement during maintenance while operating at full pressure.

Alyeska seeks a permanent waiver of compliance from § 195.424(a) for the 420 miles of aboveground portion of TAPS. The waiver will relieve Alyeska of the requirement to reduce the pressure of its pipeline to not more than 50 percent of MOP when making routine adjustments and performing regular maintenance on the aboveground portion of TAPS.

RSPA/OPS requests comments on the requested waiver, including each of Alyeska's justifications. At the conclusion of the comment period, RSPA/OPS will consider Alyeska's application and all comments and publish its decision to grant or deny the waiver in the **Federal Register**.

Authority: 49 U.S.C. 60118(c) and 49 CFR 1.53.

Issued in Washington, DC on July 16, 2004.

Chris Hoidal,

Acting Deputy Associate Administrator.

[FR Doc. 04–16641 Filed 7–21–04; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Pipeline Safety: Semi-Annual Reporting of Performance Measures for Gas Transmission Pipeline Integrity Management

AGENCY: Office of Pipeline Safety (OPS), Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice; issuance of advisory bulletin.

SUMMARY: This document provides guidance to operators of gas transmission pipelines regarding semi-annual reporting of performance measures for integrity management. Operators of gas transmission pipelines subject to Subpart O, ''Pipeline Integrity Management,'' must submit four overall measures of their integrity management performance on a semi-annual basis. That regulation specifies that the first such report must be submitted by August 31, 2004. This document provides additional guidance for operators regarding the first required report and on-line reporting that will be available for the initial performance measure submittals.

FOR FURTHER INFORMATION CONTACT: Shauna Turnbull by phone at (202) 366–3731, by fax at (202) 366–4566, or by e-mail at *shauna.turnbull@rspa.dot.gov,* regarding the subject matter of this guidance. General information about the Research and Special Programs Administration, Office of Pipeline Safety (RSPA/OPS) programs may be obtained by accessing OPS's home page at *http://ops.dot.gov.*

SUPPLEMENTARY INFORMATION:

Background

By notice dated December 15, 2003, (68 FR 69778) RSPA/OPS published a new Subpart O to the regulations governing safety of gas pipelines in 49 CFR part 192. Subpart O establishes requirements governing integrity management programs for gas transmission pipelines. Included among these requirements (49 CFR 192.945) are requirements for each transmission pipeline operator to maintain quantitative measures of its integrity management performance, including at least four overall performance measures specified in ASME/ANSI B31.8S, ''Managing System Integrity of Gas Pipelines,'' Section 9.4. The same regulation requires that each operator submit the four overall performance measures to RSPA/OPS on a semi-annual frequency. Subpart O was modified by a technical corrections rule published April 6, 2004, (69 FR 18228) which, among other changes, specified that the first semi-annual report be submitted by August 31, 2004.

49 CFR 192.951 specifies the acceptable means for submitting reports required by Subpart O. That regulation specifies an address for submission by mail, includes a facsimile number, and provides that submissions can be made through the online reporting system provided by RSPA/OPS for electronic reporting. The electronic system is available at the OPS Home page at *http://ops.dot.gov.* The electronic submission form for integrity management performance measures is scheduled to be posted on the OPS Home Page no later than August 1, 2004.

This advisory bulletin informs natural gas transmission pipeline operators that

the required initial performance measures submission will be abbreviated, in recognition of the developmental state of operator integrity management programs. This advisory bulletin also informs pipeline operators that an on-line submission form will be available in time to make the first submission required by the rule (*i.e.*, on or before August 1, 2004).

Advisory Bulletin (ADB–04–02)

To: Operators of gas transmission pipelines.

Subject: First Semi-annual Report of Integrity Management Performance Measures.

Purpose: To provide guidance to operators for making the first required semi-annual submission of performance measures for integrity management.

Advisory: Operators are required by 49 CFR 192.945 to make their first semi-annual submission of integrity management performance measures by August 31, 2004. RSPA/OPS is developing an electronic form to facilitate submission of the required measures. This form will be available on the OPS Home Page (*http://ops.dot.gov*), no later than August 1, 2004. RSPA/OPS strongly encourages operators to submit data using the electronic form, since this minimizes future transcription and handling, with the attendant chance for error. Operators may, of course, submit the information by mail or facsimile, addressed to OPS, 400 7th Street, SW., Room 2103, Washington, DC 20590. The fax number is (202) 366–4566. Please clearly notate your correspondence with ''Gas IMP Reporting''.

The four overall performance measures that gas transmission pipeline operators are required to submit are:

1. Number of pipeline miles inspected versus program requirements.
2. Number of immediate repairs completed as a result of the integrity management inspection program.
3. Number of scheduled repairs completed as a result of the integrity management program.
4. Number of leaks, failures, and incidents (classified by cause).

With respect to the first performance measure, the phrase ''versus program requirements'' refers to the number of miles of the operator's pipeline system that require assessment in accordance with Subpart O, (*i.e.*, the number of miles in high consequence areas). Operators are not required to have developed their integrity management programs and baseline inspection plans until December 17, 2004, and thus may not know at this time the total number of miles that will require assessment. Similarly, operators may not know what repairs are reportable, since they may not know which were made in high consequence areas.

The Pipeline Safety Improvement Act of 2002 (codified at 49 U.S.C. 60109(c)) requires that pipeline operators begin baseline assessment of gas transmission pipeline in high consequence areas by June 17, 2004. On November 17, 2003, RSPA/OPS published Advisory Bulletin ADB–03–07 (68 FR 64948), ''Pipeline Safety: Guidance on When the Baseline Integrity Assessment Begins,'' which provides guidance on what steps RSPA/OPS considers acceptable to begin the baseline assessment process to meet the intent of the statute. As described in more detail in the Advisory Bulletin, RSPA/OPS advises that operators must have begun efforts to perform inspections, including, for example, contracting with inspection agencies, but those operators need not have completed any inspections by that date.

The electronic report form for the August 2004 report will ask operators to verify that they began integrity management assessments, consistent with Advisory Bulletin ADB–03–07, by June 17, 2004. Operators who submit by mail or facsimile should similarly indicate that they began assessment activities by the required date.

RSPA/OPS has concluded that reporting numerical results for the four overall performance measures would be premature for the initial submission of performance measures required by August 31, 2004. Since integrity management plans, including identification of high consequence area mileage, are not required to be completed until December 2004, much of the data that might be reported in August would be preliminary and subject to change. Use of that data for comparison to later reports, (*e.g.*, to identify trends), could be seriously misleading. RSPA/OPS expects that the electronic submission form to be created for the August 2004 submissions will indicate the form in which data will be collected for future intervals, but that those data fields will be inoperable for this reporting cycle. Operators reporting by mail or facsimile need not include numerical data related to the four overall performance measures. RSPA/OPS will provide additional advice regarding reporting for specific performance measures at a later date, if needed.

Issued in Washington, DC, on July 16, 2004.

Stacey L. Gerard,

Associate Administrator for Pipeline Safety.

[FR Doc. 04–16642 Filed 7–21–04; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Joint Committee of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Joint Committee of the Taxpayer Advocacy Panel will be conducted via teleconference. 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, August 17, 2004, at 1:30 p.m., eastern daylight time.

FOR FURTHER INFORMATION CONTACT: Barbara Toy at 1–888–912–1227, or 414–297–1611.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Joint Committee of the Taxpayer Advocacy Panel (TAP) will be held Tuesday, August 17, 2004, from 1:30 to 3 p.m. eastern daylight time via a telephone conference call. If you would like to have the Joint Committee of TAP consider a written statement, please call 1–888–912–1227 or 414–297–1611, or write Barbara Toy, TAP Office, MS–1006–MIL, 310 West Wisconsin Avenue, Milwaukee, WI 53203–2221, or FAX to 414–297–1623, or you can contact us at *http://www.improveirs.org.* Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Barbara Toy. Ms. Toy can be reached at 1–888–912–1227 or 414–297–1611, or FAX 414–297–1623.

The agenda will include the following: monthly committee summary report, discussion of issues brought to the joint committee, office report, and discussion of next meeting.

Dated: July 17, 2004.

Bernard Coston,

Director, Taxpayer Advocacy Panel.

[FR Doc. 04–16749 Filed 7–21–04; 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 (via teleconference). 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 Wednesday, August 18, 2004, at 8 a.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 Wednesday, August 18, 2004, at 8 a.m., central daylight time via a telephone conference call. You can submit written comments to the panel by faxing the comments to (414) 297–1623, or by mail to Taxpayer Advocacy Panel, Stop 1006MIL, 310 West Wisconsin Avenue, Milwaukee, WI 53203–2221, or you can contact us at *http://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 dial-in information.

The agenda will include the following: Various IRS issues.

Dated: July 18, 2004.

Bernard Coston,

Director, Taxpayer Advocacy Panel.

[FR Doc. 04–16750 Filed 7–21–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Issue Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Issue Committee will be conducted in New Orleans, Louisiana. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Monday, August 16, 2004 and Tuesday, August 17, 2004.

FOR FURTHER INFORMATION CONTACT: Audrey Y. Jenkins at 1–888–912–1227 (toll-free), or 718–488–2085 (non toll-free).

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 Taxpayer Advocacy Panel Earned Income Tax Credit Issue Committee will be held Monday, August 16, 2004 from 8:30 a.m. et to 5 p.m. et and Tuesday, August 17, 2004 from 8 a.m. et to 12 noon et in New Orleans, Louisiana at the InterContinental New Orleans Hotel located at 444 St. Charles Avenue, New Orleans, Louisiana 70130. Individual comments will be limited to 5 minutes per person. For information or to confirm attendance, notification of intent to attend the meeting must be made with Audrey Y. Jenkins. Ms. Jenkins may be reached at 1–888–912–1227 or (718) 488–2085, or write Audrey Y. Jenkins, TAP Office, 10 MetroTech Center, 625 Fulton Street, Brooklyn, NY 11201, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include: Various IRS issues.

Dated: July 19, 2004.

Tersheia Carter,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 04–16751 Filed 7–21–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0593]

Agency Information Collection Activities Under OMB Review

AGENCY: Office of Acquisition and Materiel Management, 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 Office of Acquisition and Materiel Management, 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 August 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 or FAX (202) 273–5981 or e-mail to: *denise.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900–0593'' 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) 395–7316. Please refer to ''OMB Control No. 2900–0593'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Veterans Affairs Acquisition Regulation (VAAR) Provision 852.214–70, Caution to Bidders—Bid Envelopes.

OMB Control Number: 2900–0593.

Type of Review: Extension of a currently approved collection.

Abstract: VAAR provision 852.214–70, Caution to Bidders—Bid Envelopes, advises bidders that it is their responsibility to ensure that their bid price cannot be ascertained by anyone prior to bid opening. It also advises bidders to identify their bids by showing the invitation number and bid opening date on the outside of the bid envelope. The Government often furnishes a blank bid envelope or a label for use by bidders/offers to identify their bids. The bidder is advised to fill in the required information. This information requested from bidders is needed by the Government to identify bid envelopes from other mail or packages received without having to open the envelopes or packages and possibly exposing bid prices before bid opening. The information will be used to identify which parcels or envelopes are bids and which are other routine mail. The information is also needed to help ensure that bids are delivered to the proper bid opening room on time and prior to bid opening.

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 April 6, 2004, at page 18155.

Affected Public: Business or other for profit, individuals or households, and not-for-profit profit institutions.

Estimated Annual Burden: 960 hours.

Estimated Average Burden Per Respondent: 10 seconds.

Frequency of Response: On occasion.

Estimated Number of Respondents: 346,000.

Dated: July 13, 2004.

By direction of the Secretary.

Loise Russell,

Director, Records Management Service.

[FR Doc. 04–16695 Filed 7–21–04; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0587]

Agency Information Collection Activities Under OMB Review

AGENCY: Office of Acquisition and Materiel Management, 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 Office of Acquisition and Materiel Management, 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 August 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 or FAX (202) 273–5981 or e-mail to: *denise.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900–0587'' 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) 395–7316. Please refer to ''OMB Control No. 2900–0587'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Veterans Affairs Acquisition Regulation (VAAR) Clause 852.211–70, Service Data Manual (previously 852.210–70).

OMB Control Number: 2900–0587.

Type of Review: Extension of a currently approved collection.

Abstract: VAAR clause 852.211–70, Service Data Manual, is used when VA purchases technical medical equipment and devices, or mechanical equipment. The clause requires the contractor to furnish both operator's manuals and maintenance/repair manuals with the equipment provided to the Government. This clause sets forth those requirements and sets forth the minimum standards those manuals must meet to be acceptable. Generally, this is the same operator's manual furnished with each piece of equipment sold to the general public and the same repair manual used by company technicians in repairing the company's equipment. The cost of the manuals is included in the contract price or listed as separately priced line items on the purchase order. The operator's manual will be used by the individual actually operating the equipment to ensure proper operation and cleaning. The repair manual will be used by VA equipment repair staff to repair equipment.

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 April 6, 2004, at page 18161.

Affected Public: Business or other for profit, individuals or households, and not-for-profit institutions.

Estimated Annual Burden: 2,500 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 15,000

Dated: July 13, 2004.

By direction of the Secretary.

Loise Russell,

Director, Records Management Service.

[FR Doc. 04–16696 Filed 7–21–04; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0585]

Agency Information Collection Activities Under OMB Review

AGENCY: Office of Acquisition and Materiel Management, 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 Office of Acquisition and Materiel Management, 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 August 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 or FAX (202) 273–5981 or e-mail to: *denise.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900–0585'' 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) 395–7316. Please refer to ''OMB Control No. 2900–0585'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Veterans Affairs Acquisition Regulation (VAAR) Clause 852.211–77, Brand Name or Equal (was 852.210–77).

OMB Control Number: 2900–0585.

Type of Review: Extension of a currently approved collection.

Abstract: VAAR clause 852.211–77, Brand Name or Equal, advises bidders or offerors who are proposing to offer an item that is alleged to be equal to the brand name item stated in the bid, that it is the bidder's or offeror's responsibility to show that the item offered is in fact, equal to the brand name item. This evidence may be in the form of descriptive literature or material, such as cuts, illustrations, drawings, or other information. While submission of the information is voluntary, failure to provide the information may result in rejection of the firm's bid or offer if the Government cannot otherwise determine that the item offered is equal. The contracting officer will use the information to evaluate whether or not the item offered meets the specification requirements.

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 April 6, 2004, at pages 18159–18160.

Affected Public: Business or other for profit, individuals or households, and not-for-profit institutions.

Estimated Annual Burden: 833 hours.

Estimated Average Burden Per Respondent: 5 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 10,000.

Dated: July 13, 2004.

By direction of the Secretary.

Loise Russell,

Director, Records Management Service.

[FR Doc. 04–16697 Filed 7–21–04; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0005]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits 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 Veterans Benefits Administration (VBA), 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 August 23, 2004.

FOR FURTHER INFORMATION 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. 2900–0005.'' 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) 395–7316. Please refer to ''OMB Control No. 2900–0005'' in any correspondence

SUPPLEMENTARY INFORMATION:

Titles: Application for Dependency and Indemnity Compensation by Parent(s), (Including Accrued Benefits and Death Compensation, When Applicable), VA Form 21–535.

OMB Control Number: 2900–0005.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 21–535 is completed by surviving parents of veterans whose death were service connected, to apply for dependency and indemnity compensation, death compensation, and/or accrued benefits. The information collected is used to determine the claimant's eligibility for death benefits sought.

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 April 6, 2004, at page 18156.

Affected Public: Individuals or households.

Estimated Annual Burden: 4,320 hours.

Estimated Average Burden Per Respondent: 1 hour 12 minutes.

Frequency of Response: One-time.

Estimated Number of Respondents: 3,600.

Dated: July 12, 2004.

By direction of the Secretary.

Loise Russell,

Director, Records Management Service.

[FR Doc. 04–16698 Filed 7–21–04; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0342]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits 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 Veterans Benefits Administration (VBA), 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 August 23, 2004.

FOR FURTHER INFORMATION 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. 2900–0342.'' 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) 395–7316. Please refer to ''OMB Control No. 2900–0342'' in any correspondence

SUPPLEMENTARY INFORMATION:

Titles: a. Other On-the-Job Training and Apprenticeship Training Agreement and Standards, VA Form 22–8864. b. Employer's Application to Provide Training, VA Form 22–8865.

OMB Control Number: 2900–0342.

Type of Review: Extension of a currently approved collection.

Abstract: VA uses the information on VA Form 22–8864 to ensure that a trainee is entering an approved training program. VA Form 22–8865 is used to ensure training programs and agreements meet statutory requirements for approval of an employer's job training 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 April 6, 2004, at pages 18154 and 18155.

Affected Public: Business or other for-profit, Not for profit institutions, Farms, Federal Government, and State, local or tribal government.

Estimated Annual Burden: a. VA Form 22–8864—75 hours. b. VA Form 22–8865—225 hours.

Estimated Average Burden Per Respondent: a. VA Form 22–8864—30 minutes. b. VA Form 22–8865—90 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: a. VA Form 22–8864–150. b. VA Form 22–8865–150.

Dated: July 13, 2004.

By direction of the Secretary.

Loise Russell,

Director, Records Management Service.

[FR Doc. 04–16699 Filed 7–21–04; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0143]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–21), this notice announces that the Veterans Benefits Administration (VBA), 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 and includes the actual data collection instrument.

DATES: Comments must be submitted on or before August 23, 2004.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., or e-mail *denise.mclamb@mail.va.gov*. Please refer to ''OMB Control No. 2900–0143.'' 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) 395–7316. Please refer to ''OMB Control No. 2900–0143'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Offer to Rent on Month-To-Month Basis and Credit Statement of Prospective Tenant, VA Form 26–6725.

OMB Control Number: 2900–0143.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 26–6725 is used to establish the landlord-tenant relationship when properties acquired by VA, through operation of the guaranteed and direct home loan programs, are rented. The form serves as a credit statement and rental offer executed by prospective tenants of properties owned by VA. VA may rent properties acquired through guaranteed and direct home loan programs when there is little likelihood, because of market conditions, or an early sale and/or prolonged vacancy may encourage vandalism. VA Form 26–6725 states the responsibilities of the parties, evidence of tender and acceptance of rental payments, and provides credit information for evaluating the prospective tenant's ability to meet rental payments.

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 April 06, 2004, at pages 18156–18157.

Affected Public: Individuals or households, Business or other for-profit.

Estimated Annual Burden: 33 hours.

Estimated Average Burden Per Respondent: 20 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 100.

Dated: July 12, 2004.

By direction of the Secretary.

Loise Russell,

Director, Records Management Service.

[FR Doc. 04–16700 Filed 7–21–04; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0046]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits 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 Veterans Benefits Administration (VBA), 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 August 23, 2004.

FOR FURTHER INFORMATION 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. 2900–0046.'' Send comments and recommendations concerning any aspect of the information collection to VA's Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–7316. Please refer to ''OMB Control No. 2900–0046'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Statement of Heirs for Payment of Credits Due Estate of Deceased Veteran (NSLI), VA Form Letter 29–596.

OMB Control Number: 2900–0046.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 29–596 is use by administrator, executor, or next of kin to support a claim for money in the form of unearned or unapplied insurance premiums due to a deceased veteran's estate.

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 April 6, 2004 at page 18157.

Affected Public: Individuals or households.

Estimated Annual Burden: 78 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 312.

Dated: July 13, 2004.

By direction of the Secretary.

Loise Russell,

Director, Records Management Service.

[FR Doc. 04–16701 Filed 7–21–04; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0099]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits 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 Veterans Benefits Administration (VBA), 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 August 23, 2004.

FOR FURTHER INFORMATION 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. 2900–0099.'' 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) 395–7316. Please refer to ''OMB Control No. 2900–0099'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Titles: Request for Change of Program or Place of Training, Survivors' and Dependents' Educational Assistance (Under Provisions of Chapter 35, Title 38, U.S.C.), VA Form 22–5495.

OMB Control Number: 2900–0099.

Type of Review: Extension of a currently approved collection.

Abstract: Spouses, surviving spouses, or children of veterans who are eligible for Dependent's Educational Assistance, complete VA Form 22–5495 to change their program of education and/or place of training. VA uses the information to determine if the new program selected is suitable to their abilities, aptitudes, and interests and to verify that the new place of training is approved for benefits.

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 April 6, 2004, at page 18157 and 18158.

Affected Public: Individuals or households.

Estimated Annual Burden: 4,400 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 17,600.

Dated: July 13, 2004.

By direction of the Secretary.

Loise Russell,

Director, Records Management Service.

[FR Doc. 04–16702 Filed 7–21–04; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–New]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits 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 Veterans Benefits Administration (VBA), 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 August 23, 2004.

FOR FURTHER INFORMATION 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-New.'' 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) 395–7316. Please refer to ''OMB Control No. 2900–New'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Request for Nursing Home Information in Connection with Claim for Aid and Attendance, VA Form 21–0779.

OMB Control Number: 2900–New.

Type of Review: New collection.

Abstract: VA Form 21–0779 is used to gather the necessary information to determine eligibility and proper payment for improved pension and/ or aid and attendance for veterans who are patients in nursing homes. Parents and surviving spouses entitled to service-connected death benefits and spouses of living veterans receiving service connected compensation at 30 percent or higher are also entitled to aid and attendance based on status as nursing home patients.

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 May 5, 2004, at page 25172.

Affected Public: Business or other for-profit.

Estimated Annual Burden: 8,333 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 50,000.

Dated: July 13, 2004.

By direction of the Secretary.

Loise Russell,

Director, Records Management Service.

[FR Doc. 04–16703 Filed 7–21–04; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0586]

Agency Information Collection Activities Under OMB Review

AGENCY: Office of Acquisition and Materiel Management, 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 Office of Acquisition and Materiel Management, 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 August 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 or FAX (202) 273–5981 or e-mail to: *denise.mclamb@mail.va.gov*. Please refer to ''OMB Control No. 2900–0586'' 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) 395–7316. Please refer to ''OMB Control No. 2900–0586'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Veterans Affairs Acquisition Regulation (VAAR) Provision 852.211–75, Technical Industry Standards.

OMB Control Number: 2900–0586.

Type of Review: Extension of a currently approved collection.

Abstract: VAAR provision 852.211–75, Technical Industry Standards, requires that items offered for sale to VA under the solicitation conform to certain technical industry standards, such as Underwriters Laboratory (UL) or the National Fire Protection Association, and that the contractor furnish evidence to VA that the items meet that requirement. The evidence is normally in the form of a tag or seal affixed to the item, such as the UL tag on an electrical cord or a tag on a fire-rated door. This requires no additional effort on the part of the contractor, as the items come from the factory with the tags already in place, as part of the manufacturer's standard manufacturing operation. Occasionally, for items not already meeting standards or for items not previously tested, a contractor will have to furnish a certificate from an acceptable laboratory certifying that the items furnished have been tested in accordance with, and conform to, the specified standards. Only firms whose products have not previously been tested to ensure the products meet the industry standards required under the solicitation will be required to submit a separate certificate. The information will be used to ensure that the items being purchased meet minimum safety standards and to protect VA employees, VA beneficiaries, and the public.

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 April 6, 2004, at page 18160.

Affected Public: Business or other for profit, individuals or households, and not-for-profit institutions.

Estimated Annual Burden: 50 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 100.

Dated: July 13, 2004.

By direction of the Secretary.

Loise Russell,

Director, Records Management Service.

[FR Doc. 04–16704 Filed 7–21–04; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0588]

Agency Information Collection Activities Under OMB Review

AGENCY: Office of Acquisition and Materiel Management, 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 Office of Acquisition and Materiel Management, 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 August 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 or FAX (202) 273–5981 or e-mail to: *denise.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900–0588'' 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) 395–7316. Please refer to ''OMB Control No. 2900–0588'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Veterans Affairs Acquisition Regulation (VAAR) Provision 852.211–74, Special Notice (previously 852.210–74).

OMB Control Number: 2900–0588.

Type of Review: Extension of a currently approved collection.

Abstract: VAAR provision 852.211–74, Special Notice, is used only in VA's telephone system acquisition solicitations and requires the contractor, after award of the contract, to submit descriptive literature on the equipment the contractor intends to furnish to show how that equipment meets specification requirements of the solicitation. The information is needed to ensure that equipment proposed by the contractor meets specification requirements. Failure to require the information could result in the installation of equipment that does not meet contract requirements, with significant loss to the contractor if the contractor subsequently had to remove the equipment and furnish equipment that did meet the specification requirements.

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 April 6, 2004, at pages 18161–18162.

Affected Public: Business or other for profit, individuals or households, and not-for-profit.

Estimated Annual Burden: 150 hours.

Estimated Average Burden Per Respondent: 5 hours.

Frequency of Response: On occasion.

Estimated Number of Respondents: 30.

Dated: July 13, 2004.

By direction of the Secretary.

Loise Russell,

Director, Records Management Service.

[FR Doc. 04–16705 Filed 7–21–04; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0589]

Agency Information Collection Activities Under OMB Review

AGENCY: Office of Acquisition and Materiel Management, 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 Office of Acquisition and Materiel Management, 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 August 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 or FAX (202) 273–5981 or e-mail to: *denise.mclamb@mail.va.gov*. Please

refer to ''OMB Control No. 2900–0589'' 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) 395–7316. Please refer to ''OMB Control No. 2900–0589'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Veterans Affairs Acquisition Regulation (VAAR) Provision 852.270–3, Shellfish.

OMB Control Number: 2900–0589.

Type of Review: Extension of a currently approved collection.

Abstract: VAAR clause 852.270–3, Shellfish, requires that a firm furnishing shellfish to VA must ensure that the shellfish is packaged in a container that is marked with the packer's State certificate number and State abbreviation. In addition, the firm must ensure that the container is tagged or labeled to show the name and address of the approved producer or shipper, the name of the State of origin, and the certificate number of the approved producer or shipper. This information normally accompanies the shellfish from the packer and is not information that must be separately obtained by the seller. The information is needed to ensure that shellfish purchased by VA comes from a State- and Federal-approved and inspected source. The information is used to help ensure that VA purchases healthful shellfish.

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 April 6, 2004, at page 18162.

Affected Public: Business or other for profit, individuals or households, and not-for-profit profit institutions.

Estimated Annual Burden: 17 hours.

Estimated Average Burden Per Respondent: 1 minute.

Frequency of Response: On occasion.

Estimated Number of Respondents: 1,000.

Dated: July 13, 2004.

By direction of the Secretary.

Loise Russell,

Director, Records Management Service.

[FR Doc. 04–16706 Filed 7–21–04; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Office of Research and Development

Government Owned Invention Available for Licensing

AGENCY: Office of Research and Development, Veterans.

ACTION: Notice of Government owned invention available for licensing.

SUMMARY: The invention listed below is owned by the U.S. Government as represented by the Department of Veterans Affairs, and is available for licensing in accordance with 35 U.S.C. 207 and 37 CFR part 404 and/or CRADA Collaboration under 15 U.S.C. 3710a to achieve expeditious commercialization of results of federally funded research and development. Foreign patents are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

FOR FURTHER INFORMATION CONTACT: Technical and licensing information on the invention may be obtained by writing to: Robert W. Potts, Department of Veterans Affairs, Director, Technology Transfer Program, Office of Research and Development, 810 Vermont Avenue, NW., Washington, DC 20420; fax: 202–254–0473; e-mail at *bob.potts@hq.med.va.gov.* Any request for information should include the Number and Title for the relevant invention as indicated below. Issued patents may be obtained from the Commissioner of Patents, U.S. Patent and Trademark Office, Washington, DC 20231.

SUPPLEMENTARY INFORMATION: The invention available for licensing is: U.S. Provisional Patent Application No. 60/518,035 ''Method for Identifying Agents with Fibroblast Growth Factor-Like Activity.''

Dated: July 15, 2004.

Anthony J. Principi,

Secretary, Department of Veterans Affairs.

[FR Doc. 04–16694 Filed 7–21–04; 8:45 am]

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