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Presidential Documents

Title 3—

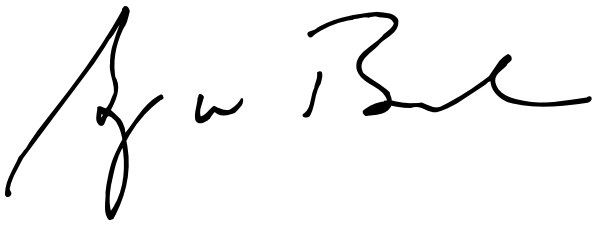
The President

Notice of November 4, 2004

Continuation of Emergency Regarding Weapons of Mass Destruction

On November 14, 1994, by Executive Order 12938, President Clinton declared a national emergency with respect to the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States posed by the proliferation of nuclear, biological, and chemical weapons (weapons of mass destruction) and the means of delivering such weapons. On July 28, 1998, the President issued Executive Order 13094 to amend Executive Order 12938 to respond more effectively to the worldwide threat of proliferation of weapons of mass destruction and the means of delivering such weapons. Because the proliferation of weapons of mass destruction and the means of delivering them continues to pose an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States, the national emergency first declared on November 14, 1994, must continue in effect beyond November 14, 2004. In accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency declared in Executive Order 12938, as amended.

This notice shall be published in the **Federal Register** and transmitted to the Congress.



THE WHITE HOUSE,
November 4, 2004.

[FR Doc. 04–24951
Filed 11–5–04; 8:45 am]
Billing code 3195–01–P

Rules and Regulations

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

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 04–093–1]

Golden Nematode; Regulated Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the golden nematode regulations by adding a field in Cayuga County, NY, to the list of generally infested regulated areas. This action is necessary to prevent the artificial spread of golden nematode to noninfested areas of the United States.

DATES: This interim rule is effective November 8, 2004. We will consider all comments that we receive on or before January 7, 2005.

ADDRESSES: You may submit comments by any of the following methods:

- EDOCKET: Go to *http://www.epa.gov/feddocket* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once you have entered EDOCKET, click on the ''View Open APHIS Dockets'' link to locate this document.
- Postal Mail/Commercial Delivery: Please send four copies of your comment (an original and three copies) to Docket No. 04–093–1, 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. 04–093–1.
- 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. 04–093–1'' 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.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov* and follow the instructions for locating this docket and submitting comments.

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: Dr. Vedpal Malik, Agriculturalist, Invasive Species and Pest Management, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301) 734–6774.

SUPPLEMENTARY INFORMATION:

Background

The golden nematode (*Globodera rostochiensis*) is a destructive pest of potatoes and other solanaceous plants. Potatoes cannot be economically grown on land which contains large numbers of the nematode. The golden nematode has been determined to occur in the United States only in parts of New York.

The golden nematode regulations (contained in 7 CFR 301.85 through 301.85–10 and referred to below as the regulations) list two entire counties and portions of seven other counties in the State of New York as regulated areas and restrict the interstate movement of regulated articles from those areas. Such restrictions are necessary to prevent the artificial spread of the golden nematode to noninfested areas of the United States.

Regulated areas are those areas in which the golden nematode has been found or in which there is reason to believe that the golden nematode is present, or those areas which it is deemed necessary to regulate because of their proximity to infestation or their inseparability for quarantine enforcement purposes from infested localities. The regulations provide that less than an entire State may be designated as a regulated area only if the Deputy Administrator determines that the State has adopted and is enforcing a quarantine or regulation that imposes restrictions on the intrastate movement of the regulated articles that are substantially the same as those that are imposed with respect to the interstate movement of the articles and the designation of less than the entire State as a regulated area will otherwise be adequate to prevent the artificial interstate spread of the golden nematode.

Regulated areas are divided into suppressive areas and generally infested areas. Suppressive areas are regulated areas where eradication of the golden nematode is undertaken as an objective. Generally infested areas are regulated areas not designated as suppressive areas. Restrictions are imposed on the interstate movement of regulated articles from generally infested areas and suppressive areas in order to prevent the infestation of areas where the golden nematode does not occur.

Recent surveys conducted by inspectors of the Animal and Plant Health Inspection Service (APHIS) have revealed that an infestation of golden nematode has occurred in one field outside the regulated area in Cayuga County, NY. New York has quarantined the infested area and is restricting the intrastate movement of regulated articles from that area to prevent the further spread of golden nematode. However, Federal regulations are necessary to restrict the interstate movement of regulated articles from the regulated areas to prevent the spread of golden nematode to other States and other countries.

In accordance with the criteria for listing regulated areas, we are amending the list of regulated areas in § 301.85–2a to include an additional part of Cayuga County, NY, in response to the recent golden nematode findings described above. The regulated area is described

in the rule portion of this document. Maps of the regulated area are available by writing to the person listed under **FOR FURTHER INFORMATION CONTACT** or from local offices of Plant Protection and Quarantine.

Emergency Action

This rulemaking is necessary on an emergency basis to prevent the artificial spread of golden nematode to noninfested areas of the United States. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this rule effective less than 30 days after publication in the **Federal Register**.

We will consider comments we receive during the comment period for this interim rule (*see* **DATES** above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review under Executive Order 12866.

We are amending the golden nematode regulations by adding a field in Cayuga County, NY, to the list of generally infested regulated areas. This action is necessary to prevent the artificial spread of golden nematode to noninfested areas of the United States.

The Regulatory Flexibility Act requires that agencies consider the economic impact of their rules on small entities and to use flexibility to provide regulatory relief when regulations create economic disparities between different sized entities. According to the Small Business Administration's (SBA's) Office of Advocacy, regulations create economic disparities based on size when they have significant economic impact on a substantial number of small entities.

Potato farms are classified as small businesses if they receive less than $750,000 in annual sales receipts. The U.S. Department of Agriculture's National Agricultural Statistics Service does not publish data on farm size for New York potato farms. However, it is likely that the regulated farm in Cayuga County qualifies as a small business as defined by the SBA.

In the United States, the potato is the leading vegetable in terms of acreage and farm value. About 1.3 million acres are grown for a total production yield of 31.4 billion pounds, worth $2.5 billion in farm receipts. Over 60 percent of U.S. potato production is processed. Growth in the chip market alone has averaged about 11 percent per year over the past 8 years, resulting in a $4 billion industry. The market for exported, processed potatoes is a rapidly growing one.

Golden nematode infestation of potatoes and other solanaceous plants (*e.g.*, tomatoes, eggplants) poses a threat to New York's agricultural economy. New York State is the twelfth largest potato producer nationwide. According to the New York Agricultural Statistics Service, in 2002 New York State had approximately 22,200 planted acres of potatoes with a production value totaling $65 million. About 55 percent of New York State's potato production is destined for the fresh market, 40 percent for processing (*i.e.*, potato chips), and 5 percent for seed and livestock feed. New York State potatoes and potato products are primarily consumed locally and within the northeastern portion of the United States. In 2001, the production value of major solanaceous plants in New York was $92.4 million.

The additional costs associated with our designation of the new regulated area in Cayuga County are very small relative to the benefits gained from agricultural sales. For example, the treatment costs for the infected fields are borne by APHIS and not the farmer. The only inconvenience to the farm operator might be that potatoes or any other solanaceous plants may be planted only every other year until the infestation is determined to be over. In the event that the farm operator needs to move farm equipment outside the farm, that equipment must first be treated, either chemically or with steam. The costs of treatment are borne by APHIS. It takes one 8-hour day for a Plant Protection and Quarantine officer and a technician to steam treat farm equipment, including the time required to set up and tear down the treatment site. Since the farm operator does not have to pay for any aspect of this treatment, this rule will not have any adverse economic impact on this farm.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (*See* 7 CFR part 3015, subpart V.)

Executive Order 12988

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

Paperwork Reduction Act

This interim rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

■ Accordingly, we are amending 7 CFR part 301 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

■ 1. The authority citation for part 301 continues to read as follows:

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

Section 301.75–15 also issued under Sec. 204, Title II, Pub. L. 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 also issued under Sec. 203, Title II, Pub. L. 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

■ 2. In § 301.85–2a, under the heading ''New York'', the entry for Cayuga County is revised to read as follows:

§ 301.85–2a Regulated areas; suppressive and generally infested areas.

* * * * *

New York

(1) *Generally infested area:*

Cayuga County. (A) The Town of Montezuma;

(B) That portion of land within the Town of Mentz owned or operated by Martens Farm which lies in an area bounded as follows: Beginning at the intersection of Tow Path Road and Maiden Lane; then west along Tow Path Road to its intersection with the Town of Mentz boundary; then north along the Town of Mentz boundary to its intersection with Maiden Lane; then east along Maiden Lane to the point of beginning.

* * * * *

Done in Washington, DC, this 2nd day of November 2004.

Elizabeth E. Gaston,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 04–24827 Filed 11–5–04; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 905

[Docket No. FV04–905–2 FIR]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Exemption for Shipments of Tree Run Citrus

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture is adopting, as a final rule, without change, an interim final rule that established an exemption for shipments of small quantities of tree run citrus from the rules and regulations under the Florida citrus marketing order(order). The order regulates the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida and is administered locally by the Citrus Administrative Committee (Committee). Under rule, shipments of tree run citrus continue to be exempt from grade, size, and assessment requirements under the order. Producers can ship 150 1⅗ bushel boxes, per variety, per shipment of their own citrus free from order regulations, not to exceed 3,000 boxes per variety season. The Committee believes this action may be a way to increase fresh market shipments, develop new markets, and improve grower returns.

EFFECTIVE DATE: December 8, 2004.

FOR FURTHER INFORMATION CONTACT: Cathy Harding, SoutheastMarketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 799 Overlook Drive, Suite A, Winter Haven,Florida 33884–1671; telephone: (863) 324–3375. Fax:(863) 325–8793; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237 Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

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

SUPPLEMENTARY INFORMATION: This rule is issued underMarketing Agreement No. 84 and Marketing Order No. 905, both as amended (7 CFR part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, hereinafter referred to as the ''order.''The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

USDA is issuing this rule in conformance with Executive Order 12866.

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

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

This rule continues in effect an exemption for shipments of small quantities of tree run citrus from the grade, size, and assessment requirements under the order. Tree run fruit is quality citrus picked and boxed in the field and taken directly to market without being graded or sized. By providing this exemption, producers can ship 150 1⅗ bushel boxes per variety, per shipment, of their own citrus free from order regulations. Total shipments cannot exceed 3,000 boxes per variety, per season. The Committee believes this action may be a way to increase fresh market shipments, develop new markets, and improve grower returns. This action was recommended unanimously by the Committee at its meeting on June 15, 2004.

Section 905.80 of the order provides authority for the Committee to exempt certain types of shipments from regulation. Exemptions can be implemented for types of shipments of any variety in such minimum quantities, or for such purposes as the Committee, with the approval of USDA, may specify. No assessment is levied on fruit so shipped. The Committee shall, with the approval of USDA, prescribe such rules, regulations, or safeguards as it deems necessary to prevent varieties handled under the provisions of this section from entering channels of trade for other than the purposes authorized by this section.

Section 905.149 of the order's rules and regulations defines grower tree run citrus and outlines the procedures to be used for growers to apply to the Committee to ship their own tree run citrus exempt from grade, size, and assessment requirements. The provisions were originally established just for the 2002–03 season, then extended for the 2003–04 season. During the 2003–04 season, growers were allowed to ship a maximum of 150 1⅗ bushel boxes per variety, per shipment, up to a seasonal total of 3,000 boxes per variety of their tree run fruit free from order requirements.

For the past two seasons, the Committee has utilized the provisions of § 905.149 on an annual basis. Rather than making this recommendation each year, the Committee recommended that the provisions of § 905.149 be established on a continuous basis. However, growers must receive approval from the Committee before they can utilize this exemption.

According to Florida Department of Citrus (FDOC) regulation 20–35.006, ''Tree run grade is that grade of naturally occurring sound and wholesome citrus fruit which has not been separated either as to grade or size after severance from the tree.'' Also, (FDOC) regulation 20–62.002 defines wholesomeness as fruit free from rot, decay sponginess, unsoundness, leakage, staleness, or other conditions showing physical defects of the fruit. By definition, this fruit is handled by the grower and bypasses normal handler operations. Prior to implementation of the exemption, all tree run citrus had to meet all requirements of the marketing order, as well as State of Florida Statutes and Florida Department of Citrus regulations. Even with this rule, tree run citrus must continue to meet applicable State of Florida Statutes and Florida Department of Citrus

regulations, including inspection and any container marking requirements. However, growers will be able to pick, box, ship directly to buyers, and avoid the costs incurred when citrus is handled by packinghouses.

During the season prior to the utilization of§ 905.149, small producers of Florida citrus expressed concerns about problems incurred when trying to sell their citrus. costs, These concerns included increasing production costs, limited returns, and the availability of markets. For some growers, there is limited demand for the variety of citrus they produce or they do not produce much volume. Consequently, they have difficulty getting packinghouses to pack their fruit. These problems, along with market conditions, have driven a fair number of small citrus growers out of the citrus industry.

According to the Florida Agricultural Statistics Service, from 1998–99 to 2002–03, fresh grapefruit sales have dropped 22 percent and fresh orange shipments are down 11 percent. This means fewer cartons are being packed. This can cause problems for varieties that may be out of favor with handlers and consumers, or for a particular variety of fruit where there may be a glut on the market. As a result, packinghouses do not wish to become over stocked with fruit which is difficult to market and therefore, will not pack less popular minor varieties of fruit or fruit that is in oversupply. Packinghouses do not want to pack what they cannot sell. These factors have caused wholesome fruit to be shipped to processing plants or left on the tree.

When citrus cannot be sold into the fresh market, it can be sold to the processing plants. However, the prices received are considerably lower. During the last seven seasons, only the 1999–2000 season produced on-tree returns for processed grapefruit that exceeded one dollar per box. Over the period from 1998–99 through 2002–03, the differential between fresh prices and processed prices has averaged $4.43 per box for grapefruit and $2.20 per box for oranges. Hence, many growers would prefer to ship to the fresh market.

In addition, the costs associated with growing for the fresh market are greater than the costs for growing for processed market. While the costs of growing for the fresh market have been increasing, in many cases the returns to the grower have been decreasing. The cost of picking, packing, hauling, and associated handling costs for fresh fruit is sometimes greater than the grower's return on the fruit. In some cases, where the cost of harvesting exceeds the returns to the grower or the grower cannot find a buyer for the fruit, economic abandonment can occur. According to information from the National Agricultural Statistics Service, the seasons of 1995–96, 1996–97, 1997–98, and 2000–01 had an average economic abandonment of two million boxes or more of red seedless grapefruit alone.

As a result, growers are looking for other outlets for their fruit in an effort to increase returns. Some growers believe secondary markets exist which are not currently being supplied that would provide additional outlets for their citrus. They think niche markets exist that could be profitable and want the opportunity to continue servicing them. They believe they can ship quality fruit directly to out-of-state markets and that it would be well received.

These growers contend tree run citrus does not need a minimum grade and size to be marketable, and that they can supply quality fruit to secondary markets not served by packed fruit. However, they believe they need to bypass normal handler operations and the associated costs for it to be profitable.

To address these concerns, the Committee recommended for the past two seasons that producers be allowed to ship small quantities of their own production directly to the market exempt from order requirements. The exemption was established on an annual basis for the 2002–03 season [68 FR 4361, January 29, 2003] and for the 2003–04 season [68 FR 68717, December 10, 2003]. The exemption for the 2003–04 season expired July 31, 2004.

The Committee recommended this exemption on a yearly basis for the past two seasons to determine its affect and how fruit shipped under the exemption was received on market. The Committee was interested in whether markets existed that packed fruit was not supplying. They also wanted an indication of the number of growers interested in utilizing the exemption and the volume of citrus shipped under the exemption. In addition, the Committee wanted information regarding any compliance issues or any impact on competitive outlets.

During the 2003–04 season, 101 growers were approved to ship under the exemption. Approximately 40 growers actually used the exemption, shipping a total of nearly 16,000 1⅗ bushel boxes of oranges, grapefruit, tangerines, and tangelos. This is an increase from 23 growers shipping approximately 4,500 boxes during the 2002–03 season. Those producers who took advantage of the exemption believe that the program was successful. They were able to sell their fruit and supply markets not already supplied by traditional packers. Growers also believe more markets exist. They think with time, they can identify additional markets. Thus, growers want to continue to have the opportunity to supply these markets.

The Committee had agreed that following the 2003–04 season, it would review the information provided by growers who applied for and used the tree run exemption to determine if the exemption should be continued. In the June 15, 2004, meeting, the Committee discussed this issue, and considered the impact and benefits of the exemption.

The Committee also reviewed a letter in support of the exemption from Florida Citrus Mutual, a large grower organization. The Committee believes that markets have been developed and that tree run fruit will continue to be sold primarily to non-competitive, niche markets, such as farmers' markets, flea markets, roadside stands, and similar outlets and will not compete with non-exempt fruit shipped under the order. Fruit is sold in similar markets within the State, and such markets have been successful. Continuing this exemption allows growers to sell directly to similar markets outside of the State, supplying markets that might not otherwise be supplied. The Committee believes this action will allow the industry to service more non-traditional markets and may be a way to increase fresh market shipments and to develop new markets. Consequently, the Committee voted unanimously to extend the tree run exemption on a continuous basis.

Growers will continue to be required to apply to the Committee, on the ''Grower Tree Run Certificate Application'' form provided by the Committee, for an exemption to ship tree run citrus fruit to interstate markets. On this form, the grower must provide their name; address; phone number; legal description of the grove; variety of citrus to be shipped; and the approximate number of boxes produced in the specified grove. The grower must also certify that fruit to be shipped comes from the grove owned by the grower applicant. The application form will be submitted to the Committee manager and reviewed for completeness and accuracy. The manager will also verify the information provided. After the application has been reviewed, the manager will notify the grower applicant in writing whether the application is approved or denied.

Once the grower has received approval for their application for

exemption and begins shipping fruit, a ''Report of Shipments Under Grower Tree Run Certificate'' form, also provided by the Committee, must be completed for each shipment. On this form, the grower will provide location of the grove, the amount of fruit shipped, the shipping date, and the type of transportation used to ship the fruit, along with the vehicle license number. The grower must supply the Road Guard Station with a copy of the grower certificate report for each shipment, and provide a copy of the report to the Committee. This report will enable the Committee to maintain compliance. Failure to comply with these requirements may result in the cancellation of a grower's certificate.

This rule does not affect the provision that handlers may ship up to 15 standard packed cartons (12 bushels) of fruit per day exempt from regulatory requirements. Fruit shipped in gift packages that are individually addressed and not for resale, and fruit shipped for animal feed are also exempt from handling requirements under specific conditions. Also, fruit shipped to commercial processors for conversion into canned or frozen products or into a beverage base are not subject to the handling requirements under the order.

Section 8e of the Act requires that whenever grade, quality, or maturity requirements are in effect for certain commodities under a domestic marketing order, including citrus, imports of that commodity must meet the same or comparable requirements. This rule does not change the minimum grade and size requirements under the order. Therefore, no change is necessary in the citrus import regulations as a result of this action.

Final Regulatory Flexibility Analysis

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

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

There are approximately 11,000 producers of Florida citrus in the production area and approximately 75 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (SBA) as those having annual receipts of less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000 (13 CFR 121.201).

Based on industry and Committee data, the average annual f.o.b. price for fresh Florida oranges, grapefruit, tangerines, and tangelos during the 2003–04 season was approximately $8.69 per 4/5 bushel carton, and total fresh shipments for the 2003–04 season were around 52 million cartons of oranges, grapefruit, tangerines, and tangelos. Twenty handlers handled approximately 66 percent of Florida's citrus shipments in 2003–04. Considering the average f.o.b. price, at least 55 percent of the orange grapefruit, tangerine, and tangelo handlers could be considered small businesses under SBA's definition. Therefore, the majority of Florida citrus handlers may be classified as small entities. The majority of Florida citrus producers may also be classified as small entities.

This rule establishes the provisions of § 905.149 of the rules and regulations on a continuous basis. This rule continues in effect an exemption for shipments of small quantities of tree run citrus from the grade, size, assessment requirements under the order. Growers must receive approval from the Committee before they can use this exemption. The Committee believes this action may be a way to increase fresh market shipments, develop new markets, and improve grower returns. Authority for this action is provided in § 905.80(e).

According to a study by the University of Florida—Institute of Food and Agricultural Sciences, production costs for the 2001–02 season ranged from $1.71 per box for processed oranges to $2.41 per box for grapefruit grown for the fresh market. The average packing charge for oranges is approximately $6.50 per box, for grapefruit the charge is approximately $5.75 per box, and for tangerines the charge can be as high as $9 per box. Sending fruit to a packinghouse can be cost prohibitive, especially for the small grower. This rule may provide an additional outlet for fruit that might otherwise be forced into the processing market or left on the tree altogether. For the 2003–04 season, this exemption accounted for additional fresh shipments totaling over 32,000 cartons.

This rule will not impose any additional costs on the grower. It will have the opposite effect of providing growers the opportunity to reduce the costs associated with having fruit handled by a packinghouse. This action will continue to allow growers to ship small quantities of their tree run citrus directly into interstate commerce exempt from the order's grade, size, and assessment requirements and their related costs. With this action, growers will be able to reduce handling costs and use those savings toward developing additional markets not serviced by the traditional packinghouses. This regulation will help growers by providing another outlet for their fruit. This will benefit all growers regardless of size, but it is expected to have a particular benefit for small growers who need additional revenue to meet operating costs.

The Committee considered one alternative to this action. The possible alternative was to not continue the exemption. However, the Committee believes the exemption provides other possible outlets for fruit and may help increase returns to growers. Therefore, this alternative was rejected.

In accordance with the Paperwork Reduction Act of 1995 44 U.S.C. Chapter 35), the information collection requirements contained in this rule have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0189. USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Committee's meeting was widely publicized throughout the citrus industry and all interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the June 15, 2004, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue.

An interim final rule concerning this action was published in the **Federal Register** on August 16, 2004. Copies of the rule were mailed, e-mailed or faxed by the Committee staff to all Committee members and tree run citrus growers. In addition, the rule was made available through the Internet by the Office of the Federal Register and USDA. That rule provided for a 60-day comment period that ended October 15, 2004. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html.* Any questions about the

compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the Committee's recommendation, and other available information, it is hereby found that finalizing the interim final rule, without change, as published in the **Federal Register** (69 FR 50265, August 16, 2004) will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 905

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements, Tangelos, Tangerines.

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

■ Accordingly, the interim final rule amending 7 CFR part 905 which was published at 69 FR 50265 on August 16, 2004, is adopted as a final rule without change.

Dated: November 2, 2004.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 04–24825 Filed 11–5–04; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 71, 77, 78, 79, 80, 85, and 93

[Docket No. 04–052–1]

Livestock Identification; Use of Alternative Numbering Systems

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the regulations to recognize additional numbering systems for the identification of animals in interstate commerce and State/Federal/industry cooperative disease control and eradication programs. Additionally, we are amending the regulations to authorize the use of a numbering system to identify premises where animals are managed or held. These new numbering systems will be a key element in a national animal identification system that is being implemented by the U.S. Department of Agriculture, at present on a voluntary basis. The changes we are making to the regulations are necessary to allow the use of these new numbering systems for official purposes. Use of the new numbering systems will not, however, be required as a result of this rulemaking. Finally, we are amending the regulations to prohibit the removal of official identification devices and to eliminate potential regulatory obstacles to the recognition of emerging technologies that could offer viable alternatives to existing animal identification devices and methods.

DATES: This interim rule is effective November 8, 2004. We will consider all comments that we receive on or before January 7, 2005.

ADDRESSES: You may submit comments by any of the following methods:

- *EDOCKET (Preferred Method):* Go to *http://www.epa.gov/feddocket* to submit or view public comments on this docket. Once you have entered EDOCKET, click on the ''View Open APHIS Dockets'' link to locate this document.
- *Postal Mail/Commercial Delivery:* Please send four copies of your comment (an original and three copies) to Docket No. 04–052–1, 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. 04–052–1.
- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the instructions for locating this docket and submitting comments.

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: Mr. Neil Hammerschmidt, Animal Identification Coordinator, National Center for Animal Health Programs, VS, APHIS, 4700 River Road, Unit 39, Riverdale, MD 20737–1231; (301) 734–5571.

SUPPLEMENTARY INFORMATION:

Background

The Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture (USDA) regulates the interstate movement of certain animals to prevent the spread of livestock and poultry diseases within the United States. The interstate movement regulations are contained in 9 CFR chapter I, subchapter C (parts 70 through 89). APHIS also has regulations providing for the payment of indemnity for certain animals that are destroyed to prevent the spread of various diseases. The indemnity regulations are contained in 9 CFR chapter I, subchapter B (parts 49 through 55). Among other things, the interstate movement regulations, as well as some of the indemnity regulations, contain requirements for the official identification of animals.

The official numbering systems recognized under the regulations prior to this interim rule, such as the National Uniform Eartagging System, have been vital to disease control and eradication programs, but may not be well suited for uses outside of those programs. For example, many producers use separate identification numbers or methods for on-farm production purposes, animal data recording, genetic evaluation, and breed registration. Assigning multiple identification numbers to an animal may necessitate attaching multiple identification tags or devices to the animal, and some identification devices are inevitably lost over time. The ability to access information about a particular animal may also be impaired when data about that animal are stored in various databases under various numbering systems. Furthermore, as diseases such as tuberculosis, brucellosis, and pseudorabies are eradicated from the United States, fewer animals are required to be officially identified under the regulations. As a result, our ability to trace diseased animals back to their herds of origin and to trace other potentially exposed animals forward is being compromised.

To address these considerations, USDA has identified the need for a national animal identification system (NAIS) and defined several key objectives for such a system. These include: (1) Allowing producers, to the extent possible, the flexibility to use current systems or adopt new ones; (2) having a system that is technology neutral, so that all existing effective technologies and new technologies that may be developed in the future may be utilized; (3) having a system that builds upon national data standards to ensure that a uniform and compatible system

evolves; (4) having a system that does not preclude producers from being able to use it with production management systems that respond to market incentives; and (5) designing the architecture so that the system does not unduly increase the role and size of the Government.

Design and implementation of such a system are well under way (see *http://www.aphis.usda.gov/lpa/issues/nais/nais.html).* USDA is moving forward, first on a voluntary basis, to integrate the various types of animal identification programs that currently exist in the United States, and then will scale up to the national level, to include those producers and animals that are not currently in an animal identification program. The goal is to create an effective, uniform, consistent, and efficient national system.

Key to the NAIS is the use of standardized data elements to identify animals and to record their movements. These data elements include numbering systems for individual animals, groups or lots of animals, and premises (locations where animals are managed or held), as well as for individuals or entities, such as State animal health officials, producer organizations, breed associations, identification companies, service providers, etc., that do not own or manage livestock but participate in the system in a variety of ways, such as allocating animal identification numbers to producers, tracking animal movement, and recording animal health data. These participants are referred to as non-producer participants.

The NAIS will allow us to trace back and trace forward animals potentially infected with or exposed to a disease of concern. Traceback refers to the ability to track an animal's location over its lifespan and the ability to determine which animals may have been in contact with a diseased animal or shared a contaminated feed supply. Trace forward data provide locations of animals moved from a premises of concern that may have been exposed to a disease. When fully implemented, the NAIS calls for a trace to be completed within 48 hours of detecting a disease, enhancing our ability to contain an outbreak.

APHIS will initially fund cooperative agreements to help State and Tribal governments establish premises identification systems and to evaluate additional identification pilot projects that could also become a part of the overall national animal identification system. Associations and other segments of the livestock industry may participate in State and Tribal projects. APHIS posted a request for proposals for these cooperative agreements in June 2004. Applications were reviewed and selections made in early August, and cooperative agreements were initiated in September 2004.

This interim rule amends the regulations in order to provide the flexibility needed to facilitate the development and implementation of the NAIS. By adding or amending certain definitions and adding, removing, or amending certain regulatory provisions, this interim rule allows the use of additional numbering systems and devices for official purposes under the regulations. We are also adding provisions prohibiting the removal of official identification devices except at the time of slaughter. These actions are necessary to meet the livestock industry's various identification needs and to ensure our future ability to trace animals to and from their herds of origin. In keeping with the objectives of the NAIS, the use of the new numbering systems will be voluntary. This interim rule merely provides for the use of these numbering systems in instances when official identification is required. Other animal and premises numbering systems that are already recognized by the regulations, such as the National Uniform Eartagging System, will still be recognized by APHIS for purposes of official identification.

Animal Identification

Individual animal identification is needed for tracking animals that, while moving through the production chain, are destined to be commingled with animals outside the production system in which they were born. The animal identification number (AIN) is a number that may be used for the official identification of individual animals in State/Federal/industry cooperative disease control and eradication programs. In order to provide for the use of the AIN for official purposes, we are adding the following definition of *animal identification number (AIN)* to §§ 71.1, 77.2, 78.1, and 80.1: ''A numbering system for the official identification of individual animals in the United States. The AIN consists of 15 digits, with the first 3 being the country code (840 for the United States), the alpha characters USA, or the numeric code assigned to the manufacturer of the identification device by the International Committee on Animal Recording.''

As we have already noted, the AIN is not a mandatory system of livestock identification but an approved alternative to other officially recognized numbering systems in use today.

Since eartags and backtags are two of the most commonly used methods of animal identification, we determined that, in order to provide for the use of AINs on such tags, we needed to amend the definition of *official eartag* in §§ 71.1, 77.2, 78.1, and 80.1 and the definition of *United States Department of Agriculture backtag* in §§ 71.1 and 78.1. The previous definition of *official eartag* only allowed for the use of the National Uniform Eartagging System or a premises identification number used in conjunction with the producer's livestock production numbering system. Similarly, the previous definition of *United States Department of Agriculture backtag* only allowed for the use of the eight-character alpha-numeric National Backtagging System.

The new definition of *official eartag* is as follows: ''An identification tag providing unique identification for individual animals. An official eartag must bear the U.S. shield. The design, size, shape, color, and other characteristics of the official eartag will depend on the needs of the users. The official eartag must be tamper-resistant and have a high retention rate in the animal. Official eartags must adhere to one of the following numbering systems:

- National Uniform Eartagging System.
- Animal identification number (AIN).
- Premises-based number system. The premises-based number system combines an official premises identification number (PIN), as defined in this section, with a producer's livestock production numbering system to provide a unique identification number. The PIN and the production number must both appear on the official tag.
- Any other numbering system approved by the Administrator for the identification of animals in commerce.''

The new definition of *United States Department of Agriculture backtag* is ''a backtag issued by APHIS that provides unique identification for each animal.'' This definition is sufficiently flexible to allow for the use of the AIN or other numbering systems in addition to the National Backtagging System.

We are also adding a new definition of *official identification device or method* to the domestic animal movement regulations in § 71.1, the brucellosis regulations in § 78.1, the scrapie regulations in § 79.1, and the animal import regulations in §§ 93.400 and 93.500. We define *official identification device or method* as ''a means of officially identifying an animal or group of animals using devices or methods approved by the

Administrator, including, but not limited to, official tags, tattoos, and registered brands when accompanied by a certificate of inspection from a recognized brand inspection authority.'' The addition of this new definition to the animal import regulations is necessary because we are adding certain provisions, which are discussed in greater detail below, concerning the removal of official identification devices to the regulations in 9 CFR part 93, as well as to part 71. In parts 71, 78, and 79, the new definition complements other new provisions, discussed in more detail below, that we are adding to the regulations.

These new provisions are contained in a new paragraph (b) in § 71.18, a new paragraph (b)(8) in § 79.19, and a new paragraph (a)(2)(iii) in § 79.2, as well as in an amendment to paragraph (a)(2) in § 78.14. These new provisions indicate that, in addition to the identification devices and methods specifically referred to in those sections, other animal identification devices or methods may also be employed for official purposes if approved by the Administrator. Combined with the new definition of *official identification device or method,* these changes to the regulations are intended to allow for the use of both currently available and emerging animal identification technologies.

We are also removing § 71.19(g), which contains procedures for requesting approval by the Administrator of swine identification devices and markings other than those already listed in § 71.19(b) and states that if the Administrator determines that the devices and markings will provide a means of tracing swine in interstate commerce, a proposal will be published in the **Federal Register** to add the devices and markings to the list of approved means of swine identification. With new animal identification technologies currently being pilot tested, we determined that the procedures in paragraph (g), particularly the requirement for a proposal to be published in the **Federal Register** for each new device, were unnecessarily slow and cumbersome. In removing this paragraph, we are removing a potential regulatory obstacle to the approval and use of new technologies. Newly approved devices or markings will still be added to the list in § 71.19(b), however. Because we are removing paragraph (g), we are redesignating paragraphs (h) and (i) as paragraphs (g) and (h), respectively. Because of this redesignation, references to ''§ 71.19(h)'' in § 85.7(b)(3)(i), (b)(3)(ii), and (c)(1) and in § 85.8(a)(4) have been amended to refer to ''§ 71.19(g).''

Group/Lot Identification

Group/lot identification can be used in species where groups of animals are assembled from within the same production system and tracked through records of group movements maintained at the local level by the producer. In order to provide for use of the group/lot identification number for official identification purposes, we are adding a definition of *group/lot identification number (GIN)* to § 71.1. We define the GIN as ''the identification number used to uniquely identify a unit of animals of the same species that is managed together as one group throughout the preharvest production chain. The GIN consists of a seven-character PIN, as defined in § 71.1, and a six-digit representation of the date on which the group or lot of animals was assembled (MM/DD/YY).'' If more than one group of animals is assembled on a particular day at a given premises, the animals will still be considered a single group for the purpose of assigning a GIN. Multiple animal groups assembled on the same premises on the same day are not considered to be epidemiologically distinct and should be treated as a single entity for purposes of health management. As is the case with the AIN, use of the GIN is not mandatory.

Premises Identification

Another key element of the NAIS is premises identification. If the goal of a 48-hour traceback capability is to become a reality, it must be possible to record an animal's movements from its farm of origin to other locations throughout its entire life. Identifying premises that manage or hold livestock with a single and unique number is, therefore, essential. In order to provide in the regulations for premises identification under the NAIS, we are replacing the definition of *premises identification number* in §§ 71.1 and 80.1 with a new definition of *premises identification number (PIN).* Because existing definitions of *premises of origin identification* and *premises identification* in §§ 77.2 and 79.1, respectively, both contain references to PINs, we are also adding a new definition of *premises identification number (PIN)* to those sections. Prior to this interim rule, *premises identification number* was defined in §§ 71.1 and 80.1 as a State's two-letter postal abbreviation followed by a number assigned by the State animal health official to a livestock production unit that is, in the judgment of the State animal health official or area veterinarian in charge, epidemiologically distinct from other livestock production units.

In § 71.1, the new definition, which allows for the continued use of this type of PIN but also recognizes the new premises numbering system developed for the NAIS, reads as follows: ''A unique number assigned by a State or Federal animal health authority to a premises that is, in the judgment of the State or Federal animal health authority, a geographically distinct location from other livestock production units. The premises identification number is associated with an address or legal land description and may be used in conjunction with a producer's own livestock production numbering system to provide a unique identification number for an animal. It may also be used as a component of a group/lot identification number (GIN). The premises identification number may consist of:

- The State's two-letter postal abbreviation followed by the premises' assigned number; or
- A seven-character alphanumeric code, with the right-most character being a check digit. The check digit number is based upon the ISO 7064 Mod 36/37 check digit algorithm.''

The new definition of *premises identification number (PIN)* used in §§ 77.2, 79.1, and 80.1 is almost identical to that of § 71.1, omitting only the reference to the GIN. Group/lot identification is mainly used for interstate movement of swine, which is regulated under part 71. Specifically, § 71.19 contains regulations for the identification of swine in interstate commerce. Thus, the reference to the GIN in the definition of PIN is much more applicable to part 71 than to parts 77, 79, and 80, which contain, respectively, regulations pertaining to tuberculosis in cattle, bison, and captive cervids; to scrapie in sheep and goats; and to Johne's disease, which primarily affects cattle, sheep, goats, and other ruminants.

The new definition of *premises identification number (PIN)* differs from the definition it is replacing not only in recognizing the new numbering system but also in recognizing a premises based on a State or Federal animal health authority's determination that it is a geographically, rather than epidemiologically, distinct animal production unit. Identifying a premises as an epidemiologically distinct animal production unit can be problematic because a unit that may be considered epidemiologically distinct for one animal disease may not be for another. We view geographical distinctness as a

more reliable measure by which to determine what constitutes a premises.

In addition to the new definition of *premises identification number (PIN),* we are also amending the definitions referred to earlier of *premises of origin identification* in § 77.2 and *premises identification* in § 79.1. Prior to this interim rule, both of these definitions recognized only the type of PIN beginning with the State's two-letter postal code. The amended definitions refer to the new definition of *premises identification number (PIN)* and thus recognize the new PIN format as well as the old.

Removal or Loss of Official Identification Devices

The AIN or any other animal numbering system can only be effective if the official eartag or backtag or other approved device bearing the animal's identification number remains affixed to the animal throughout its lifetime, from birth to slaughter. Therefore, we are adding a new § 71.22 that prohibits the removal of official identification devices except at the time of slaughter and further states that if an official identification device is lost and it is necessary to retag an animal with a new official number, every effort should be made to correlate the new official number with the previous official number of the animal. To ensure that there will be the same traceback capability for imported animals as for animals moving interstate, we are adding identical requirements regarding removal and replacement of official devices to §§ 93.401 and 93.501, which contain conditions for imported ruminants and swine, respectively. In each of those sections, the new provisions are contained in a new paragraph (c). As we have already noted, adding these requirements to the animal import regulations also necessitates adding a definition of *official identification device or method* to §§ 93.400 and 93.500.

Immediate Action

Immediate action is necessary to allow the use, on a voluntary basis, of newly developed numbering systems for the identification of animals in interstate commerce and State/Federal/industry cooperative disease control and eradication programs and for the identification of premises where animals are managed or held. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this action effective less than 30 days after publication in the **Federal Register**.

We will consider comments we receive during the comment period for this interim rule (see **DATES** above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

This interim rule amends the regulations to recognize additional numbering systems for the identification of individual animals, groups of animals, and premises where animals are managed or held. These new numbering systems are intended for use in the NAIS that is being implemented by the USDA, at present on a voluntary basis.

Entities that may be affected by this interim rule include U.S. animal producers, importers, and other individuals and organizations involved in the buying and selling of livestock.

There were 1.03 million cattle and calf producers in the United States in 2003. There were also 95,189 cattle feeding operations in the United States in 2002. On January 1, 2004, there were 95 million beef and dairy cattle and calves in the United States. Nearly 38 million calves were born in the United States in 2003. Each of these 38 million head would presumably be tested, vaccinated, monitored under official disease control programs, or moved in interstate or international commerce and would therefore need to be identified if the NAIS were to be fully implemented. In addition, in 2002, 2.5 million cattle and calves were imported into the United States. Under § 93.404, ruminants imported into the United States require individual identification.

The U.S. hog industry had 60 million hogs as of December 1, 2003. In 2003, 100.4 million head were born. About 7 million head were estimated to die due to disease, predators, and other causes, and 100 million head were slaughtered. There were 75,350 hog producers in the United States in 2002.

The U.S. sheep industry had 7.6 million sheep and lambs on farms as of July 2004. There were 64,170 sheep and lambs produced in 2002.

In addition to animal producers, many non-producers, such as slaughter plants, stockyards, bonded dealers, and marketing agencies involved in buying or selling livestock in the United States may potentially be involved in the NAIS. There were 3,222 U.S. livestock slaughter plants in 2003, of which 879 were under Federal inspection. There are an estimated 7,775 stockyards, bonded dealers, and marketing agencies in the United States.

The primary beneficiaries of the NAIS are expected to be producers, who, because disease outbreaks are likely to be controlled more quickly than in the past, are likely to experience a reduction in costs associated with such outbreaks (*e.g.*, export markets may not be lost or may be restricted for shorter durations); taxpayers, who will need to fund smaller mitigation, eradication, and compensation programs than they have in the past; and consumers, who will experience less disruption in the supply of meat if a major disease event happens and improved confidence in the meat supply system because of the speed with which we will be able to respond to such events.

It is important to note that participation in the NAIS is voluntary. Producers can opt not to participate in the NAIS if they anticipate that the costs they will incur will exceed the benefits they receive from participation. Little information is available at this time about costs that may be incurred by producers. APHIS welcomes comments about the costs of an animal identification system.

Impact on Small Businesses

The Regulatory Flexibility Act requires that agencies consider the economic impact of their rules on small entities. This interim rule has potential implications for small entities in the United States, both in terms of any costs they might incur to satisfy NAIS program requirements and in terms of the benefits associated with the program's establishment. Beef and hog producers are among the small entities potentially affected by this interim rule.

According to Small Business Administration (SBA) guidelines, beef producers with $750,000 or less in annual receipts are considered small businesses. Based on the guidelines, producers with fewer than 1,200 head of cattle would likely be considered small producers. For the period of January to April 2004, the average head of cattle weighed approximately 700 pounds. The 2003 annual market price for live choice steers was $84.69 per hundredweight (cwt). The average price per cwt, $84.69, times the average weight, 7 cwt, gives an average price per head of $592.83. At that price, 1,265

head of cattle would be needed to reach the $750,000 threshold.[1] In 2003, 60 percent of U.S. cattle producers had fewer than 50 head, and 99 percent had fewer than 1,000 head.

According to SBA guidelines, hog producers with $750,000 or less in annual receipts are considered small businesses. In the first quarter of 2004, hogs were priced at $44.18 per hundredweight (cwt). There is a 6-month production cycle for hogs. Assuming an average hog weight of 200 pounds, the average price per head is $88.36; therefore, each production unit could generate $176.72 times the current inventory per year. Producers with fewer than 4,000 head of hogs ($750,000 divided by $176.72 equals 4,244 hogs) would likely be considered small according to the SBA guidelines.[2] In 2003, 40 percent of hog producers had fewer than 99 head, and 57 percent had fewer than 500 head.

We expect that the benefits of more effective disease control will outweigh any costs to producers that may result from their participation in the NAIS. Because participation is voluntary, small entities could opt out of the program if they found that the costs outweighed the benefits. The benefit of this rule is the provision of greater flexibility in official animal and premises identification. As use of this numbering system is voluntary, no costs are imposed on participants and it is unlikely for this interim rule to have any adverse impact on small businesses.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (*See* 7 CFR part 3015, subpart V.)

Executive Order 12988

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

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects

9 CFR Part 71

Animal diseases, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements, Transportation.

9 CFR Part 77

Animal diseases, Bison, Cattle, Reporting and recordkeeping requirements, Transportation, Tuberculosis.

9 CFR Part 78

Animal diseases, Bison, Cattle, Hogs, Quarantine, Reporting and recordkeeping requirements, Transportation.

9 CFR Part 79

Animal diseases, Quarantine, Sheep, Transportation.

9 CFR Part 80

Animal diseases, Livestock, Transportation.

9 CFR Part 85

Animal diseases, Livestock, Quarantine, Reporting and recordkeeping requirements, Transportation.

9 CFR Part 93

Animal diseases, Imports, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements.

■ Accordingly, we are amending 9 CFR parts 71, 77, 78, 79, 80, 85, and 93 as follows:

PART 71—GENERAL PROVISIONS

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

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

■ 2. Section 71.1 is amended by revising the definitions of *official eartag*, *premises identification number*, and *United States Department of Agriculture backtag*; and adding, in alphabetical order, definitions of *animal identification number (AIN)*, *group/lot identification number (GIN)*, and *official identification device or method* to read as follows:

§ 71.1 Definitions.

* * * * *

Animal identification number (AIN). A numbering system for the official identification of individual animals in the United States. The AIN contains 15 digits, with the first 3 being the country code (840 for the United States), the alpha characters USA, or the numeric code assigned to the manufacturer of the identification device by the International Committee on Animal Recording.

* * * * *

Group/lot identification number (GIN). The identification number used to uniquely identify a ''unit of animals'' of the same species that is managed together as one group throughout the preharvest production chain. The GIN consists of a seven-character premises identification number (PIN), as defined in this section, and a six-digit representation of the date on which the group or lot of animals was assembled (MM/DD/YY).

* * * * *

Official eartag. An identification tag providing unique identification for individual animals. An official eartag must bear the U.S. shield. The design, size, shape, color, and other characteristics of the official eartag will depend on the needs of the users. The official eartag must be tamper-resistant and have a high retention rate in the animal. Official eartags must adhere to one of the following numbering systems:

(1) National Uniform Eartagging System.

(2) Animal identification number (AIN).

(3) Premises-based number system. The premises-based number system combines an official premises identification number (PIN), as defined in this section, with a producer's livestock production numbering system to provide a unique identification number. The PIN and the production number must both appear on the official tag.

(4) Any other numbering system approved by the Administrator for the identification of animals in commerce.

Official identification device or method. A means of officially identifying an animal or group of animals using devices or methods approved by the Administrator, including, but not limited to, official tags, tattoos, and registered brands when accompanied by a certificate of inspection from a recognized brand inspection authority.

* * * * *

Premises identification number (PIN). A unique number assigned by a State or

[1] Source: Economic Research Service (ERS) Livestock, Dairy, and Poultry Outlook, April 27, 2004.

[2] Source: ERS Livestock, Dairy, and Poultry Outlook, April 27, 2004.

Federal animal health authority to a premises that is, in the judgment of the State or Federal animal health authority, a geographically distinct location from other livestock production units. The premises identification number is associated with an address or legal land description and may be used in conjunction with a producer's own livestock production numbering system to provide a unique identification number for an animal. It may also be used as a component of a group/lot identification number (GIN). The premises identification number may consist of:

(1) The State's two-letter postal abbreviation followed by the premises' assigned number; or

(2) A seven-character alphanumeric code, with the right-most character being a check digit. The check digit number is based upon the ISO 7064 Mod 36/37 check digit algorithm.

* * * * *

United States Department of Agriculture backtag. A backtag issued by APHIS that provides unique identification for each animal.

■ 3. In § 71.18, a new paragraph (b) is added to read as follows:

§ 71.18 Individual identification of certain cattle 2 years of age or over for movement in interstate commerce.

* * * * *

(b) In lieu of the backtags, eartags, and brands referred to in this section, any other official identification device or method that is approved by the Administrator may also be used.

■ 4. Section 71.19 is amended as follows:

■ a. In paragraph (a)(1), in the introductory text, by removing the words ''(c) and (h)'' and adding the words ''(c) and (g)'' in their place.

■ b. In paragraph (b)(6), by removing the word ''and''.

■ c. In paragraph (b)(7), by removing the period at the end of the paragraph and adding the word ''; and'' in its place.

■ d. By adding a new paragraph (b)(8) to read as set forth below.

■ e. By removing paragraph (g) and redesignating paragraphs (h) and (i) as paragraphs (g) and (h), respectively.

§ 71.19 Identification of swine in interstate commerce.

* * * * *

(b) * * *

(8) Any other official identification device or method that is approved by the Administrator.

* * * * *

■ 5. A new § 71.22 is added to read as follows:

§ 71.22 Removal and loss of official identification devices.

Official identification devices are intended to provide permanent identification of livestock and to ensure the ability to find the source of animal disease outbreaks. Removal of these devices is prohibited except at the time of slaughter. If an official identification device is lost, and it is necessary to retag an animal with a new official number, every effort should be made to correlate the new official number with the previous official number of the animal.

PART 77—TUBERCULOSIS

■ 6. The authority citation for part 77 continues to read as follows:

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

■ 7. Section 77.2 is amended by revising the definitions of *official eartag* and *premises of origin identification* and adding definitions of *animal identification number (AIN)* and *premises identification number (PIN)* to read as follows:

§ 77.2 Definitions.

* * * * *

Animal identification number (AIN). A numbering system for the official identification of individual animals in the United States. The AIN contains 15 digits, with the first 3 being the country code (840 for the United States), the alpha characters USA, or the numeric code assigned to the manufacturer of the identification device by the International Committee on Animal Recording.

* * * * *

Official eartag. An identification tag providing unique identification for individual animals. An official eartag must bear the U.S. shield. The design, size, shape, color, and other characteristics of the official eartag will depend on the needs of the users. The official eartag must be tamper-resistant and have a high retention rate in the animal. Official eartags must adhere to one of the following numbering systems:

(1) National Uniform Eartagging System.

(2) Animal identification number (AIN).

(3) Premises-based number system. The premises-based number system combines an official premises identification number (PIN), as defined in this section, with a producer's livestock production numbering system to provide a unique identification number. The PIN and the production number must both appear on the official tag.

(4) Any other numbering system approved by the Administrator for the identification of animals in commerce.

* * * * *

Premises identification number (PIN). A unique number assigned by a State or Federal animal health authority to a premises that is, in the judgment of the State or Federal animal health authority, a geographically distinct location from other livestock production units. The premises identification number is associated with an address or legal land description and may be used in conjunction with a producer's own livestock production numbering system to provide a unique identification number for an animal. The premises identification number may consist of:

(1) The State's two-letter postal abbreviation followed by the premises' assigned number; or

(2) A seven-character alphanumeric code, with the right-most character being a check digit. The check digit number is based upon the ISO 7064 Mod 36/37 check digit algorithm.

Premises of origin identification. (1) An APHIS-approved eartag or tattoo bearing a premises identification number (PIN), as defined in this section;

(2) A name assigned by a State or Federal animal health authority to the premises on which the animals originated that, in the judgment of that State or Federal animal health authority, is a geographically distinct location from other livestock production units; or

(3) A brand registered with an official brand registry.

* * * * *

PART 78—BRUCELLOSIS

■ 8. The authority citation for part 78 continues to read as follows:

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

■ 9. Section 78.1 is amended by revising the definitions of *official eartag* and *United States Department of Agriculture backtag* and adding definitions of *animal identification number (AIN)* and *official identification device or method* in alphabetical order to read as follows:

§ 78.1 Definitions.

* * * * *

Animal identification number (AIN). A numbering system for the official identification of individual animals in the United States. The AIN contains 15 digits, with the first 3 being the country code (840 for the United States), the alpha characters USA, or the numeric code assigned to the manufacturer of the identification device by the

International Committee on Animal Recording.

* * * * *

Official eartag. An identification tag providing unique identification for individual animals. An official eartag must bear the U.S. shield. The design, size, shape, color, and other characteristics of the official eartag will depend on the needs of the users. The official eartag must be tamper-resistant and have a high retention rate in the animal. Official eartags must adhere to one of the following numbering systems:

(a) National Uniform Eartagging System.

(b) Animal identification number (AIN).

(c) Premises-based number system. The premises-based number system combines an official premises identification number (PIN), as defined in § 71.1 of this chapter, with a producer's livestock production numbering system to provide a unique identification number. The PIN and the production number must both appear on the official tag.

(d) Any other numbering system approved by the Administrator for the identification of animals in commerce.

Official identification device or method. A means of officially identifying an animal or group of animals using devices or methods approved by the Administrator, including, but not limited to, official tags, tattoos, and registered brands when accompanied by a certificate of inspection from a recognized brand inspection authority.

* * * * *

United States Department of Agriculture backtag. A backtag issued by APHIS that provides unique identification for each animal.

* * * * *

§ 78.14 [Amended]

■ 10. In § 78.14, paragraph (a)(2) is amended by adding the words ''or any other official identification device or method approved by the Administrator'' after the word ''eartag''.

PART 79—SCRAPIE IN SHEEP AND GOATS

■ 11. The authority citation for part 79 continues to read as follows:

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

■ 12. Section 79.1 is amended by adding, in alphabetical order, definitions of *official identification device or method* and *premises identification number (PIN)* and revising the definition of *premises identification* to read as follows:

§ 79.1 Definitions.

* * * * *

Official identification device or method. A means of officially identifying an animal or group of animals using devices or methods approved by the Administrator, including, but not limited to, official tags, tattoos, and registered brands when accompanied by a certificate of inspection from a recognized brand inspection authority.

* * * * *

Premises identification. An APHIS approved eartag, backtag, or legible tattoo bearing the premises identification number, as defined in this section, or a flock identification number, or a legible permanent brand or ear notch pattern registered with an official brand registry. Premises identification may be used when official individual animal identification is required, if the premises identification method either includes a unique animal number or is used in conjunction with the producer's livestock production numbering system to provide a unique identification number and where, if brands or ear notches are used, the animals are accompanied by an official brand inspection certificate. Clearly visible and/or legible paint brands may be used on animals moving directly to slaughter and on animals moving for grazing or other management purposes without change in ownership.

Premises identification number (PIN). A unique number assigned by a State or Federal animal health authority to a premises that is, in the judgment of the State or Federal animal health authority, a geographically distinct location from other livestock production units. The premises identification number is associated with an address or legal land description and may be used in conjunction with a producer's own livestock production numbering system to provide a unique identification number for an animal. The premises identification number may consist of:

(1) The State's two-letter postal abbreviation followed by the premises' assigned number; or

(2) A seven-character alphanumeric code, with the right-most character being a check digit. The check digit number is based upon the ISO 7064 Mod 36/37 check digit algorithm.

* * * * *

■ 13. Section 79.2 is amended as follows:

■ a. In paragraph (a)(2)(v), by removing the word ''or'' at the end of the paragraph.

■ b. In paragraph (a)(2)(vi), by removing the period at the end of the paragraph and adding the word ''; or'' in its place.

■ c. By adding a new paragraph (a)(2)(vii) to read as set forth below:

§ 79.2 Identification of sheep and goats in interstate commerce.

(a) * * *

(2) * * *

(vii) Any other official identification method or device approved by the Administrator.

* * * * *

PART 80—JOHNE'S DISEASE IN DOMESTIC ANIMALS

■ 14. The authority citation for part 80 continues to read as follows:

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

■ 15. Section 80.1 is amended by removing the definitions of *premises identification number*; revising the definitions of *official eartag* and *premises identification number*; and adding, in alphabetical order, definition of *animal identification number (AIN)* to read as follows:

§ 80.1 Definitions.

* * * * *

Animal identification number (AIN). A numbering system for the official identification of individual animals in the United States. The AIN contains 15 digits, with the first 3 being the country code (840 for the United States), the alpha characters USA, or the numeric code assigned to the manufacturer of the identification device by the International Committee on Animal Recording.

* * * * *

Official eartag. An identification tag providing unique identification for individual animals. An official eartag must bear the U.S. shield. The design, size, shape, color, and other characteristics of the official eartag will depend on the needs of the users. The official eartag must be tamper-resistant and have a high retention rate in the animal. Official eartags must adhere to one of the following numbering systems:

(1) National Uniform Eartagging System.

(2) Animal identification number (AIN).

(3) Premises-based number system. The premises-based number system combines an official premises identification number (PIN), as defined in this section, with a producer's livestock production numbering system to provide a unique identification number. The PIN and the production number must both appear on the official tag.

(4) Any other numbering system approved by the Administrator for the identification of animals in commerce.

* * * * *

Premises identification number (PIN). A unique number assigned by a State or Federal animal health authority to a premises that is, in the judgment of the State or Federal animal health authority, a geographically distinct location from other livestock production units. The premises identification number is associated with an address or legal land description and may be used in conjunction with a producer's own livestock production numbering system to provide a unique identification number for an animal. The premises identification number may consist of:

(1) The State's two-letter postal abbreviation followed by the premises' assigned number; or

(2) A seven-character alphanumeric code, with the right-most character being a check digit. The check digit number is based upon the ISO 7064 Mod 36/37 check digit algorithm.

* * * * *

PART 85—PSEUDORABIES

■ 16. The authority citation for part 85 continues to read as follows:

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

§ 85.7 [Amended]

■ 17. In § 85.7, paragraphs (b)(3)(i), (b)(3)(ii), and (c)(1) are amended by removing the citation ''§ 71.19(h)'' and adding the citation ''§ 71.19(g)'' in its place.

§ 85.8 [Amended]

■ 18. In § 85.8, paragraph (a)(4) is amended by removing the citation ''§ 71.19(h)'' and adding the citation ''§ 71.19(g)'' in its place.

PART 93—IMPORTATION OF CERTAIN ANIMALS, BIRDS, AND POULTRY, AND CERTAIN ANIMAL, BIRD, AND POULTRY PRODUCTS; REQUIREMENTS FOR MEANS OF CONVEYANCE AND SHIPPING CONTAINERS

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

Authority: 7 U.S.C. 1622 and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

■ 20. Section 93.400 is amended by adding, in alphabetical order, a definition of *official identification device or method* to read as follows:

§ 93.400 Definitions.

* * * * *

Official identification device or method. A means of officially identifying an animal or group of animals using devices or methods approved by the Administrator, including, but not limited to, official tags, tattoos, and registered brands when accompanied by a certificate of inspection from a recognized brand inspection authority.

* * * * *

■ 21. Section 93.401 is amended by adding a new paragraph (c) to read as follows:

§ 93.401 General prohibitions; exceptions.

* * * * *

(c) *Removal and loss of official identification devices.* Official identification devices are intended to provide permanent identification of livestock and to ensure the ability to find the source of animal disease outbreaks. Removal of these devices is prohibited except at the time of slaughter. If an official identification device is lost, and it is necessary to retag an animal with a new official number, every effort should be made to correlate the new official number with the previous official number of the animal.

■ 22. Section 93.500 is amended by adding, in alphabetical order, a definition of *official identification device or method* to read as follows:

§ 93.500 Definitions.

* * * * *

Official identification device or method. A means of officially identifying an animal or group of animals using devices or methods approved by the Administrator, including, but not limited to, official tags, tattoos, and registered brands when accompanied by a certificate of inspection from a recognized brand inspection authority.

* * * * *

■ 23. Section 93.501 is amended by adding a new paragraph (c) to read as follows:

§ 93.501 General prohibitions; exceptions.

* * * * *

(c) *Removal and loss of official identification devices.* Official identification devices are intended to provide permanent identification of livestock and to ensure the ability to find the source of animal disease outbreaks. Removal of these devices is prohibited except at the time of slaughter. If an official identification device is lost and it is necessary to retag an animal with a new official number, every effort should be made to correlate the new official number with the previous official number of the animal.

Done in Washington, DC, this 2nd day of November 2004.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 04–24828 Filed 11–5–04; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM198; Special Conditions No. 25–187A–SC]

Special Conditions: Boeing Model 777 Series Airplanes; Seats With Inflatable Lapbelts

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These amended special conditions are issued to Boeing Commercial Airplanes for the Model 777 series airplanes. These airplanes have a novel or unusual design feature associated with seats with inflatable lapbelts. Special Conditions No. 25–187–SC were issued on October 3, 2001, addressing this issue. Boeing subsequently applied to amend the special conditions to add a new requirement that addresses the flammability of the material used to construct the inflatable lapbelt. The applicable airworthiness regulations, including those contained in Special Conditions No. 25–187–SC, do not contain adequate or appropriate safety standards for this design feature. The amended special conditions contain the additional safety standards that the Administrator considers necessary to establish an appropriate level of safety considering the safety benefits associated with the inflatable lapbelt.

DATES: Effective October 29, 2004.

FOR FURTHER INFORMATION CONTACT: Jayson Claar, FAA, Airframe and Cabin Safety Branch, ANM–115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; telephone (425) 227–2194.

SUPPLEMENTARY INFORMATION:

Background

On April 20, 2001, Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124, applied for a type certificate design change to install inflatable lapbelts for head injury

protection on certain seats in Boeing Model 777 series airplanes. The Model 777 series airplane is a swept-wing, conventional-tail, twin-engine, turbofan-powered transport. The inflatable lapbelt is designed to limit occupant forward excursion in the event of an accident. This will reduce the potential for head injury, as determined by the Head Injury Criteria (HIC) measurement. The inflatable lapbelt behaves similarly to an automotive airbag, but in this case the airbag is integrated into the lapbelt, and inflates away from the seated occupant. While airbags are now standard in the automotive industry, the use of an inflatable lapbelt is novel for commercial aviation.

Because the existing airworthiness standards of 14 CFR part 25 do not address inflatable lapbelts, the FAA developed special conditions to address this design feature. Special Conditions No. 25–187–SC were issued to Boeing Commercial Airplanes on October 3, 2001, and published in the **Federal Register** on October 12, 2001 (66 FR 52017).

On February 26, 2004, The Boeing Company requested that the FAA amend SC No. 25–187–SC to address flammability of the airbag material. During the development of the inflatable lapbelt the manufacturer was unable to develop a fabric that would meet the inflation requirements for the bag and the flammability requirements of Part I(a)(1)(i) of appendix F to part 25. The fabrics that were developed that meet the flammability requirement did not produce acceptable deployment characteristics. However, the manufacturer was able to develop a fabric the meets the less stringent flammability requirements of Part I(a)(1)(iv) of appendix F to part 25 and has acceptable deployment characteristics.

Discussion

Part I of appendix F to part 25 specifies the flammability requirements for interior materials and components. There is no reference to inflatable restraint systems in appendix F because such devices did not exist at the time the flammability requirements were written. The existing requirements are based on both material types, as well as use, and have been specified in light of the state-of-the-art of materials available to perform a given function. In the absence of a specific reference, the default requirement would be for the type of material used to construct the inflatable restraint, which is a fabric in this case. However, in writing a special condition, the FAA must also consider the use of the material, and whether the default requirement is appropriate. In this case, the specialized function of the inflatable restraint means that highly specialized materials are needed. The standard normally applied to fabrics is a 12-second vertical ignition test. However, materials that meet this standard do not perform adequately as inflatable restraints. Since the safety benefit of the inflatable restraint is very significant, the flammability standard appropriate for these devices should not screen out suitable materials, thereby effectively eliminating use of inflatable restraints. The FAA will need to establish a balance between the safety benefit of the inflatable restraint and its flammability performance. At this time, the 2.5-inch per minute horizontal test is considered to provide that balance. As the state-of-the-art in materials progresses (which is expected), the FAA may change this standard in subsequent special conditions to account for improved materials.

The additional safety standard is added as Item 14 to existing SC 25–187–SC. Items 1 through 13 are standards already adopted in Special Conditions No. 25–187–SC.

Type Certification Basis

Under the provisions of § 21.101, Boeing Commercial Airplanes must show that the Model 777 series airplanes, as changed, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. T00001SE, or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type certification basis.'' The regulations incorporated by reference in Type Certificate No. T00001SE are as follows: Amendments 25–1 through 25–82 for the Model 777–200, and amendments 25–1 through 25–86 with exceptions for the Model 777–300. The U.S. type certification basis for the Model 777 is established in accordance with §§ 21.29 and 21.17 and the type certification application date. The U.S. type certification basis is listed in Type Certificate Data Sheet No. T00001SE.

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, part 25 as amended) do not contain adequate or appropriate safety standards for Boeing Model 777 series airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Boeing Model 777 must comply with the fuel vent and exhaust emission requirements of part 34 and the noise certification requirements of part 36.

Special conditions, as defined in § 11.19, are issued in accordance with § 11.38 and become part of the type certification basis in accordance with § 21.101.

Applicability

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same or similar novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101.

Discussion of Comments

Notice of proposed amendment of Special Conditions No. 25–187–SC was published in the **Federal Register** on September 23, 2004 as Notice 25–04–03–SC (69 FR 56961). We received one comment.

Comment: The commenter states that the special conditions should address the Model 747, A340, and A380 airplanes as well. As written the special conditions give the Model 777 a marketing advantage over these other airplanes that are used in similar markets. The Model 747, A340, and A380 should have the ability to take advantage of this functionality until a suitable material is found that addresses the functionality of the system as well as the 12-second vertical burn requirements.

FAA Reply: The special conditions are not a rule of general applicability and therefore cannot be applied to other airplanes such as the Model 747, A340, and A380. However, should an applicant apply for certification of an airplane with the same or similar design of inflatable lapbelts, we would consider that request for a less stringent flammability requirement for the inflatable bag fabric as well. We would consider the state-of-the-art inflatable bag fabric at that time.

Under standard practice, the effective date of final or amended special conditions would be 30 days after the date of publication in the **Federal Register**. However, because delivery of the affected airplanes with this additional novel or unusual design feature is imminent, and because a delay would significantly affect the applicant's installation and type

certification of the lapbelt, the FAA finds that good cause exists for making these amended special conditions effective upon issuance.

Conclusion

This action affects only certain novel or unusual design features on the Boeing Model 777 series airplanes. It is not a rule of general applicability, and it affects only Model 777 series airplanes listed on Type Certificate Data Sheet T00001SE.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

Authority Citation

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Amended Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following amended special conditions are issued as part of the type certification basis for the Boeing Model 777 series airplanes with inflatable lapbelts installed.

1. *Seats With Inflatable Lapbelts.* It must be shown that the inflatable lapbelt will deploy and provide protection under crash conditions where it is necessary to prevent serious head injury. The means of protection must take into consideration a range of stature from a two-year-old child to a ninety-fifth percentile male. The inflatable lapbelt must provide a consistent approach to energy absorption throughout that range. In addition, the following situations must be considered:

a. The seat occupant is holding an infant.

b. The seat occupant is a child in a child restraint device.

c. The seat occupant is a child not using a child restraint device.

d. The seat occupant is a pregnant woman.

2. The inflatable lapbelt must provide adequate protection for each occupant regardless of the number of occupants of the seat assembly, considering that unoccupied seats may have active seatbelts.

3. The design must prevent the inflatable lapbelt from being either incorrectly buckled or incorrectly installed such that the inflatable lapbelt would not properly deploy. Alternatively, it must be shown that such deployment is not hazardous to the occupant and will provide the required head injury protection.

4. It must be shown that the inflatable lapbelt system is not susceptible to inadvertent deployment as a result of wear and tear, or inertial loads resulting from in-flight or ground maneuvers (including gusts and hard landings), likely to be experienced in service.

5. Deployment of the inflatable lapbelt must not introduce injury mechanisms to the seated occupant, or result in injuries that could impede rapid egress. This assessment should include an occupant who is in the brace position when it deploys and an occupant whose belt is loosely fastened.

6. It must be shown that an inadvertent deployment that could cause injury to a standing or sitting person is improbable.

7. It must be shown that inadvertent deployment of the inflatable lapbelt during the most critical part of the flight will either not cause a hazard to the airplane or is extremely improbable.

8. It must be shown that the inflatable lapbelt will not impede rapid egress of occupants 10 seconds after its deployment.

9. The system must be protected from lightning and HIRF. The threats specified in Special Condition No. 25–ANM–78 are incorporated by reference for the purpose of measuring lightning and HIRF protection. For the purposes of complying with HIRF requirements, the inflatable lapbelt system is considered a ''critical system'' if its deployment could have a hazardous effect on the airplane; otherwise it is considered an ''essential'' system.

10. The inflatable lapbelt must function properly after loss of normal aircraft electrical power, and after a transverse separation of the fuselage at the most critical location. A separation at the location of the lapbelt does not have to be considered.

11. It must be shown that the inflatable lapbelt will not release hazardous quantities of gas or particulate matter into the cabin.

12. The inflatable lapbelt installation must be protected from the effects of fire such that no hazard to occupants will result.

13. There must be a means for a crewmember to verify the integrity of the inflatable lapbelt activation system prior to each flight or it must be demonstrated to reliably operate between inspection intervals.

14. The inflatable material may not have an average burn rate of greater than 2.5 inches/minute when tested using the horizontal flammability test as defined in 14 CFR part 25, appendix F, part I, paragraph (b)(5).

Issued in Renton, Washington, on October 29, 2004.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–24847 Filed 11–5–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–19559; Directorate Identifier 2004–NE–03–AD; Amendment 39–13858; AD 2004–23–03]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce plc RB211 Trent 700 Series Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for Rolls-Royce plc (RR) RB211 Trent 700 series turbofan engines. This AD requires initial and repetitive borescope inspections of the high pressure-and-intermediate pressure (HP–IP) turbine internal and external oil vent tubes for coking and carbon buildup, and cleaning or replacing the vent tubes if necessary. This AD results from a report of a RB211 Trent 700 series engine experiencing a disk shaft separation, overspeed of the IP turbine rotor, and multiple blade release of IP turbine blades. Preliminary findings suggest these events resulted from an internal oil fire in the HP–IP turbine oil vent tubes due to coking and carbon buildup. This fire led to a second fire in the internal air cavity below the IP turbine disk drive shaft. We are issuing this AD to prevent internal oil fires due to coking and carbon buildup, that could cause uncontained engine failure and damage to the airplane.

DATES: Effective November 23, 2004. The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of November 23, 2004.

We must receive any comments on this AD by January 7, 2005.

ADDRESSES: Use one of the following addresses to comment 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 20590–001.

• 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.

Contact Rolls-Royce plc, PO Box 31, Derby, England; telephone: 011–44–1332–249428; fax: 011–44–1332–249223 for the service information referenced in this AD. You may examine the comments on this AD in the AD docket on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Ian Dargin, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7178; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: As a member of the National Transportation Safety Board (NTSB) investigation team, we are investigating an incident event and possible unsafe condition on RR RB211 Trent 700 series engines. The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom (UK) is helping us investigate. A report was received of a RB211 Trent 700 series engine experiencing a disk shaft separation, overspeed of the IP turbine rotor, and multiple blade release of IP turbine blades. Preliminary findings suggest these events resulted from an internal oil fire in the HP–IP turbine oil vent tubes due to coking and carbon buildup. This fire led to a second fire in the internal air cavity below the IP turbine disk drive shaft. Because the oil vent tubes on the event engine were destroyed, the partner engine on the same airplane was inspected. That inspection revealed heavy coking and carbon buildup, with partial blockage of the HP–IP turbine oil vent tubes. Both engines had the same on-wing life of 15,169 hours with 2,344 cycles-since-new. Both engines contained Mobil Jet Oil 291, which also is suspect and will be removed from the list of approved oils for these engines. The NTSB investigation is ongoing and a finding of probable cause has not yet been made. The fire, disk overspeed, and blade release appear to be the result of the coking and carbon buildup, evident in the sister engine and linked by cycles and oil use to the event engine.

Relevant Service Information

We have reviewed and approved the technical contents of RR Alert Service Bulletin (ASB) No. RB.211–72–AE302, Revision 1, dated May 25, 2004, that describes procedures for:

• Initial and repetitive borescope inspections for coking and carbon buildup in the HP–IP turbine oil vent tubes; and

• Cleaning the tubes if necessary, and removing the engine from service to clean or replace the tubes.

This ASB requires that all operators submit inspection data to the manufacturer. The CAA classified this ASB as mandatory and issued AD G–2004–0016, dated June 20, 2004, in order to ensure the airworthiness of these RB211 Trent 700 series engines in the UK.

Bilateral Airworthiness Agreement

These engine models are manufactured in the UK and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Under this bilateral airworthiness agreement, the CAA kept the FAA informed of the situation described above. As a member of the NTSB investigation team, we have examined the findings with the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

FAA's Determination and Requirements of This AD

Although no airplanes that are registered in the United States use these engines, the possibility exists that the engines could be used on airplanes that are registered in the United States in the future. The unsafe condition described previously is likely to exist or develop on other RB211 Trent 700 series turbofan engines of the same type design. We are issuing this AD to prevent internal oil fires due to coking and carbon buildup, that could cause uncontained engine failure and damage to the airplane. This AD requires:

• Initial and repetitive borescope inspections of the HP–IP turbine oil vent tubes for coking and carbon buildup; and

• Cleaning or replacing the oil vent tubes if they fail the inspection.

FAA's Determination of the Effective Date

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

Interim Action

These actions are interim actions and we may take further rulemaking actions in the future.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any written relevant data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES.** Include ''AD Docket No. FAA–2004–19559; Directorate Identifier 2004–NE–03–AD'' in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify it.

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 AD. Using the search function of the DMS 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.*

Examining the AD Docket

You may examine the docket that contains the AD, any comments received, and any final disposition in person at the DMS Docket Offices between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone (800) 647–5227) is located on the plaza level of the Department of Transportation Nassif Building at the street address stated in **ADDRESSES.** Comments will be available in the AD docket shortly after the DMS receives them.

Regulatory Findings

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

responsibilities among the various levels of government.

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2004–23–03 Rolls-Royce plc: Amendment 39–13858. Docket No. FAA–2004–19559; Directorate Identifier 2004–NE–03–AD.

Effective Date

(a) This AD becomes effective November 23, 2004.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Rolls-Royce plc (RR) RB211 Trent 768–60, RB211 Trent 772–60, and RB211 Trent 772B–60 series turbofan engines. These engines are installed on, but not limited to, Airbus A330–243, –341, –342 and –343 series airplanes.

Unsafe Condition

(d) This AD results from a report of a RB211 Trent 700 series engine experiencing a disk shaft separation, overspeed of the IP turbine rotor, and multiple blade release of IP turbine blades. Preliminary findings suggest these events resulted from an internal oil fire in the HP–IP turbine oil vent tubes due to coking and carbon buildup. This fire led to a second fire in the internal air cavity below the IP turbine disk drive shaft. We are issuing this AD to prevent internal oil fires due to coking and carbon buildup, that could cause uncontained engine failure and damage to 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.

Initial Visual Inspection

(f) Using the inspection schedule in Table 1 of this AD, perform an initial borescope inspection of the high pressure-and-intermediate pressure (HP–IP) turbine internal and external oil vent tubes for coking and carbon buildup as follows:

(1) Insert an 8 mm diameter flex borescope to see if it will pass along the full length of the vent tube into the bearing chamber.

(2) If the vent tube prevents an 8 mm diameter flex borescope from passing along the full length of the tube into the bearing chamber, repeat the action using a 6mm flex borescope.

(3) If the 6 mm diameter flex borescope passes through to the bearing chamber, continue using the engine in service, and perform the repetitive inspections in this AD at the required intervals.

(4) If the vent tube prevents the 6 mm diameter flex borescope from passing along the full length of the tube into the bearing chamber, clean or replace the vent tube. Information on oil vent tube cleaning or replacement can be found in Rolls-Royce plc Alert Service Bulletin No. RB.211–72–AE302, Revision 1, dated May 25, 2004.

TABLE 1.—INITIAL INSPECTION SCHEDULE

If the engine or the 05 module:	Then initially inspect:
Has reached 10,000 hours time-since-new (TSN) or reached 2,500 cycles-since-new (CSN) on the effective date of this AD.	Within 3 months after the effective date of this AD.
Has fewer than 10,000 hours TSN or fewer than 2,500 CSN on the effective date of this AD.	Within 3 months after reaching 10,000 hours TSN or 2,500 CSN, whichever occurs first.

Repetitive Visual Inspections

(g) Using the inspection schedule in Table 2 of this AD and paragraphs (f)(1) through (f)(4) of this AD, perform repetitive borescope inspections of the HP–IP turbine internal and external oil vent tubes for coking and carbon buildup.

TABLE 2.—REPETITIVE INSPECTION SCHEDULE

If at the previous inspection, before any cleaning was performed:	Then:
(1) There was no coking and carbon buildup of a visible thickness; or an 8 mm diameter flex borescope could pass along the full length of the internal vent tube into the bearing chamber.	Reinspect within 6,400 hours time-since-last-inspection (TSLI) or within 1,600 cycles-since-last-inspection (CSLI), whichever occurs first.
(2) The coking or carbon buildup prevented an 8 mm diameter flex borescope from passing through the internal vent tube, but a 6 mm diameter flex borescope could pass along the full length of the internal vent tube into the bearing chamber.	Reinspect within 1,600 hours TSLI or within 400 CSLI, whichever occurs first.
(3) The coking or carbon buildup prevented the 6 mm diameter flex borescope from passing through the full length of the internal vent tube and into the bearing chamber.	Clean or replace the vent tubes within 10 CSLI. Information on oil vent tube cleaning or replacement can be found in Rolls-Royce plc Alert Service Bulletin No. RB.211–72–AE302, Revision 1, dated May 25, 2004.

Alternative Methods of Compliance

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

Material Incorporated by Reference

(i) None.

Related Information

(j) CAA airworthiness directive No. G–2004–0016, dated June 20, 2004, also addresses the subject of this AD.

Issued in Burlington, Massachusetts, on November 1, 2004.

Peter A. White,

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

[FR Doc. 04–24817 Filed 11–5–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–19404; Airspace Docket No. 2004–ASW–13]

Modification to Class D Airspace; Alamogordo, NM

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action modifies the Class D airspace area at Holloman Air Force Base, Alamogordo, NM (HMN). The closure of Midway Airport, Alamogordo, NM has made this rule necessary. The intended effect of this rule is to modify the controlled airspace to include that area within the 4.8-mile radius of Holloman Air Force Base originally excluded because of Midway Airport.

DATES: Effective 0901 UTC, March 17, 2005.

Comments for inclusion in the Rules Docket must be received on or before December 15, 2004.

ADDRESSES: Send comments on the rule to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number, FAA–2004–19404/Airspace Docket No. 2004–ASW–13, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* Anyone can find and read the comments received in this docket, including the name, address and any other personal information placed in the docket by a commenter. You may review the public docket containing any comments received and this Direct Final Rule in person at the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is located on the plaza level of the Department of Transportation Nassif Building at the street address stated previously.

An informal docket may also be examined during normal business hours at the office of the Air Traffic Division, Airspace Branch, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX. Call the manager, Airspace Branch, ASW–520, telephone (817) 222–5520; fax (817) 222–5981, to make arrangements for your visit.

FOR FURTHER INFORMATION CONTACT: Joseph R. Yadouga, Air Traffic Division, Airspace Branch, Federal Aviation Administration, Southwest Region, Fort Worth, TX 76193–0520; telephone: (817) 222–5597.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR Part 71 modifies the Class D airspace designation for an airspace area from the surface up to but not including 6,600 feet MSL at Holloman Air Force Base, Alamogordo, NM and will be published in paragraph 5000 of FAA Order 7400.9M, dated August 30, 2004, and effective September 16, 2004, which is incorporated by reference in 14 CFR 71.1.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in an adverse or negative comment, and, therefore, issues it as a direct final rule. The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a direct final rule, and was not preceded by a notice of proposed rulemaking, interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications must identify both docket numbers. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

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

Agency Findings

This rule does not have federalism implications, as defined in Executive Order No. 13132, because it does not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with State authorities prior to publication of this rule.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as these routine matters will only affect air traffic procedures and air navigation. I certify that this rule will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration amends part 71 of the

Federal Aviation Regulations (14 CFR part 71) as follows:

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9M, Airspace Designations and Reporting Points, dated august 30, 2004, and effective September 16, 2004, is amended as follows:

Paragraph 500 Class D Airspace Areas Extending Upward From the Surface of the Earth.

* * * * *

ASW NM D Alamogordo, TX [Revised]

Alamogordo, Holloman AFB, NM

Lat. 32°51′09″ N, long. 106°06′23″ W

Alamogordo-White Sands Regional Airport, NM

Lat. 32°50′24″ N, long. 105°59′26″ W

Holloman ILS Localizer

Lat. 32°49′48″ N, long. 106°06′31″ W

That airspace extending upward from the surface up to and including 6,600 feet MSL within a 4.8-mile radius of Holloman AFB, NM and within 1 mile each side of the Holloman ILS Localizer northwest course extending from the 4.8-mile radius to 5.4 miles northwest of the airport excluding that airspace within 2-mile radius of the Alamogordo-White Sands Regional Airport, NM.

* * * * *

Issued in Fort Worth, TX, on October 25, 2004.

Herman J. Lyons, Jr.,

Area Director, Central En Route and Oceanic Operations.

[FR Doc. 04–24848 Filed 11–5–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 740 and 744

[Docket No. 040818241–4241–01]

RIN 0694–AC46

Revisions to the Export Administration Regulations: Removal of the List of Missile Projects and Expansion of Missile-Related End-Use and End-User Controls

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Interim rule.

SUMMARY: This interim rule amends the Export Administration Regulations (EAR) by removing the list of missile projects of concern and expanding license requirements for missile-related end-users and end-uses. This rule expands the scope of end-uses to which a license requirement applies to include certain rocket and unmanned air vehicle activities in certain countries of concern for missile proliferation reasons. In addition, this rule implements a new license requirement for exports, reexports and transfers anywhere in the world that applies when you know or are informed that an item subject to the EAR will be used in rocket systems or unmanned air vehicles of any range for the delivery of chemical, biological or nuclear weapons. These changes to the end-use and end-user controls are necessary to meet U.S. nonproliferation objectives and are consistent with the Missile Technology Control Regime (MTCR) Guidelines.

DATES: This rule is effective November 8, 2004.

ADDRESSES: You may submit comments, identified by RIN 0694–AC46, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: mblaskov@bis.doc.gov.* Include ''RIN 0694–AC46'' in the subject line of the message.
- *Fax:* (202) 482–3355.
- *Mail or Hand Delivery/Courier:* Matthew Blaskovich, U.S. Department of Commerce, Bureau of Industry and Security, Regulatory Policy Division, 14th & Pennsylvania Avenue, NW., Room 2705, Washington, DC 20230, ATTN: RIN 0694–AC46.

FOR FURTHER INFORMATION CONTACT: Steven B. Clagett, Director, Nuclear and Missile Technology Controls Division, Bureau of Industry and Security, Telephone: (202) 482–1641.

SUPPLEMENTARY INFORMATION:

Background

Current License Requirements for Missile-Related End-Uses/End-Users. Section 742.5 of the Export Administration Regulations (EAR) requires a license for the export or reexport to all destinations (except Canada) of those dual-use items specifically identified on the Commerce Control List (CCL) as controlled for missile technology (MT) reasons. Section 744.3 of the EAR also requires a license for the export or reexport of any item subject to the EAR, when the exporter knows or has reason to know that the item (1) is destined for a missile project listed in the footnote to Country Group D:4 in Supplement 1 to part 740 of the EAR, or (2) will be used in the design, development, production, or use of missiles in or by a country listed in Country Group D:4, whether or not the use involves a project listed in the footnote. ''Missile'' is defined in the EAR as a rocket system or unmanned air vehicle system capable of delivering at least 500 kilograms payload to a range of at least 300 kilometers. The list of missile projects set forth in the footnote to Supplement No. 1 to part 740 includes only those projects meeting the ''missile'' payload and range criteria.

Removal of List of Missile Projects in D:4 Countries. This rule removes the list of missile projects in D:4 countries set forth in the footnote in Supplement No. 1 to Part 740 of the EAR because the activities subject to the license requirement set forth in 744.3 are no longer limited to ''missile'' projects with a certain payload and range capability. The referenced activities are expanded, by this rule, to include any rocket system or unmanned air vehicle with a range of 300 kilometers to be used in D:4 countries.

Worldwide License Requirement for Delivery Systems for Chemical, Biological or Nuclear Weapons. This rule implements a new license requirement in section 744.3 for exports, reexports and transfers to anywhere in the world that applies when you know, or are informed, that an item subject to the EAR will be used in rocket systems or unmanned air vehicles of any range for the delivery of chemical, biological or nuclear weapons.

Expansion of End-Use License Requirement for Country Group D:4 Countries. This rule revises the license requirements under section 744.3 of the EAR to provide that a license is required for the export, reexport or transfer of any item subject to the EAR if you know, or are informed, that the item will be used in the design, development, production or use of rocket systems or

unmanned air vehicles capable of a range of at least 300 kilometers in or by a country listed in Country Group D:4. This rule also provides that a license is required if you know that the item will be used in the design, development, production or use of rocket systems or unmanned air vehicles in or by a country listed in Country Group D:4, but are unable to determine the characteristics (*i.e.*, range capabilities) of the rocket systems or unmanned air vehicles, or whether the rocket systems or unmanned air vehicles, regardless of range capabilities, are used for the delivery of chemical, biological, or nuclear weapons.

For purposes of this rule, ''rocket systems'' include, but are not limited to, ballistic missile systems, space launch vehicles, and sounding rockets. ''Unmanned air vehicles'' include, but are not limited to, cruise missile systems, target drones and reconnaissance drones. This rule adds these definitions in a note to section 744.3 of the EAR.

This rule imposes new export controls for foreign policy reasons. As required by section 6 of the Export Administration Act of 1979, as amended (the Act), a report on the imposition of these controls was delivered to Congress on September 20, 2004.

Although the Act expired on August 20, 2001, Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp., p. 783 (2002)), as extended by the Notice of August 6, 2004, 69 FR 48763 (August 10, 2004), continues the EAR in effect under the International Emergency Economic Powers Act.

Savings Clause

Shipments of items that are subject to a license requirement as a result of this regulatory action that were on dock for loading, on lighter, laden aboard an exporting carrier, or en route aboard a carrier to a port of export, on November 8, 2004, pursuant to actual orders for export to a foreign destination, may proceed to that destination without a license so long as they have been exported from the United States before December 8, 2004. Any such items not actually exported before midnight, on December 8, 2004, require a license in accordance with this regulation.

Rulemaking Requirements

1. This rule has been determined to be not significant for purposes of Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid Office of Management and Budget Control Number. This rule involves a collection of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This collection has been approved by the Office of Management and Budget under control number 0694–0088, ''Multi-Purpose Application,'' which carries a burden hour estimate of 58 minutes for a manual or electronic submission. Send comments regarding these burden estimates or any other aspect of these collections of information, including suggestions for reducing the burden, to David Rostker, Office of Management and Budget (OMB), by e-mail to *David_Rostker@omb.eop.gov*, or by fax to (202) 395–7285; and to the Office of Administration, Bureau of Industry and Security, Department of Commerce, 14th and Pennsylvania Avenue, NW., Room 6883, Washington, DC 20230.

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

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (Sec. 5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this interim rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 5 U.S.C. 553 or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable.

However, because of the importance of the issues raised by these regulations, this rule is being issued in interim form and BIS will consider comments in the development of the final regulations. Accordingly, BIS encourages interested persons who wish to comment to do so at the earliest possible time to permit the fullest consideration of their views.

The period for submission of comments will close December 23, 2004. BIS will consider all comments received before the close of the comment period in developing final regulations. Comments received after the end of the comment period will be considered if possible, but their consideration cannot be assured. BIS will not accept public comments accompanied by a request that a part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. BIS will return such comments and materials to the persons submitting the comments and will not consider them in the development of final regulations. All public comments on these regulations will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, BIS requires comments in written form.

Oral comments must be followed by written memoranda, which will also be a matter of public record and will be available for public review and copying. Communications from agencies of the United States Government or foreign governments will not be available for public inspection.

The public record concerning these comments will be maintained in the Bureau of Industry and Security, Office of Administration, U.S. Department of Commerce, Room 6883, 14th Street and Constitution Avenue, NW., Washington, DC 20230; (202) 482–2165. This component does not maintain a separate public inspection facility. Requesters should first view BIS's FOIA Web site (which can be reached through *http://www.bis.doc.gov/foia*). If the records sought cannot be located at this site, or if the requester does not have access to a computer, please call the phone number above for assistance.

Please refer to the **ADDRESSES** section cited above for comment submission.

List of Subjects

15 CFR Part 740

Exports, Foreign trade, Reporting and Recordkeeping requirements.

15 CFR Part 744

Exports, Foreign trade, Reporting and Recordkeeping requirements.

■ Accordingly, parts 740 and 744 of the Export Administration Regulations (15 CFR Parts 730–799) are amended as follows:

PART 740—[AMENDED]

■ 1. The authority citation for 15 CFR part 740 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; Sec. 901–911, Pub. L. 106–387; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 6, 2004, 69 FR 48763 (August 10, 2004).

■ 2. Supplement No. 1 to part 740 is amended by removing the footnote to Country Group D:4, and all footnote references in the table.

PART 744—[AMENDED]

■ 3. The authority citation for 15 CFR part 744 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; Sec. 901–911, Pub. L. 106–387; Sec. 221, Pub. L. 107–56; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 356; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; Notice of October 29, 2003, 68 FR 62209, 3 CFR, 2003 Comp., p. 347; Notice of August 6, 2004, 69 FR 48763 (August 10, 2004).

■ 4. Section 744.3 is amended by revising the section heading and paragraphs (a), (b) and (d) to read as follows:

§ 744.3 Restrictions on Certain Rocket Systems (including ballistic missile systems and space launch vehicles and sounding rockets) and Unmanned Air Vehicles (including cruise missile systems, target drones and reconnaissance drones) End-Uses.

(a) *General prohibition.* In addition to the license requirements for items specified on the CCL, you may not export, reexport, or transfer (in-country) an item subject to the EAR, without a license if at the time of the export, reexport or transfer you know the item:

(1) Will be used in the design, development, production or use of rocket systems or unmanned air vehicles capable of a range of at least 300 kilometers in or by a country listed in Country Group D:4 of Supplement No. 1 to part 740 of the EAR.

(2) Will be used, anywhere in the world, in rocket systems or unmanned air vehicles, regardless of range capabilities, for the delivery of chemical, biological, or nuclear weapons; or

(3) Will be used in the design, development, production or use of any rocket systems or unmanned air vehicles in or by a country listed in Country Group D:4, but you are unable to determine:

(i) The characteristics (*i.e.*, range capabilities) of the rocket systems or unmanned air vehicles, or

(ii) Whether the rocket systems or unmanned air vehicles, regardless of range capabilities, will be used in a manner prohibited under paragraph (a)(2) of this section.

Note to paragraph (a) of this section: For the purposes of this section, ''Rocket Systems'' include, but are not limited to, ballistic missile systems, space launch vehicles, and sounding rockets. Also, for the purposes of this section, ''unmanned air vehicles'' include, but are not limited to, cruise missile systems, target drones and reconnaissance drones.

(b) *Additional prohibition.* BIS may inform, either individually, by specific notice, or generally through amendment to the EAR, that a license is required for a specific export, reexport or transfer of specified items to a certain end-user, anywhere in the world, because there is an unacceptable risk of use in or diversion to activities described in paragraphs (a)(1) or (a)(2) of this section. Specific notice is to be given only by, or at the direction of, the Deputy Assistant Secretary for Export Administration. When such notice is provided orally, it will be followed by a written notice within two working days signed by the Deputy Assistant Secretary for Export Administration. However, the absence of any such notification does not excuse non-compliance with the license requirements of paragraphs (a)(1), (a)(2), or (a)(3) of this section.

* * * * *

(d) *License Review Standards.* (1) Applications to export, reexport or transfer the items subject to this section will be considered on a case-by-case basis to determine whether the export, reexport or transfer would make a material contribution to the proliferation of certain rocket systems, or unmanned air vehicles. When an export, reexport or transfer is deemed to make a material contribution, the license will be denied.

(2) The following factors are among those that will be considered to determine what action should be taken on an application required by this section:

(i) The specific nature of the end use;

(ii) The significance of the export, reexport or transfer in terms of its contribution to the design, development, production or use of certain rocket systems or unmanned air vehicles;

(iii) The capabilities and objectives of the rocket systems or unmanned air vehicles of the recipient country;

(iv) The nonproliferation credentials of the importing country;

(v) The types of assurances or guarantees against design, development, production, or use for certain rocket system or unmanned air vehicle delivery purposes that are given in a particular case; and

(vi) The existence of a pre-existing contract.

Dated: October 27, 2004.

Peter Lichtenbaum,

Assistant Secretary for Export Administration.

[FR Doc. 04–24857 Filed 11–5–04; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 375

[Docket No. RM04–13–000]

Delegations of Authority

Issued November 1, 2004.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission is amending its regulations governing delegations of authority to reflect a recent internal reorganization. The change is necessary to transfer certain authority to the official now responsible for the affected functions.

EFFECTIVE DATE: The rule will become effective November 8, 2004.

FOR FURTHER INFORMATION CONTACT: Wilbur Miller, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. (202) 502–8953.

SUPPLEMENTARY INFORMATION:

Before Commissioners: Pat Wood, III, Chairman; Nora Mead Brownell, Joseph T. Kelliher, and Suedeen G. Kelly.

Delegations of Authority; Docket No. RM04–13–000; Order No. 650; Final Rule

1. This final rule revises the Federal Energy Regulatory Commission's (Commission) regulations governing delegations of authority to reflect a recent internal reorganization. The changes will become effective immediately.

2. The Commission's Division of Regulatory Audits has been moved from the Office of the Executive Director (OED) to the Office of Market Oversight and Investigations (OMOI). It has been renamed the Division of Financial Audits (DFA). Among DFA's duties are financial audits, in which it reviews the accounting records and financial statements of jurisdictional companies to determine if they are complying with requirements of the Uniform Systems of Accounts and related Regulations of the Commission. DFA also performs other types of audits, in which it reviews the

performance of a program, activity, or function in order to provide information to improve public accountability and facilitate decision-making by parties with responsibility to oversee or initiate corrective action.

3. The transfer of DFA to OMOI requires several revisions to the delegations made by the Commission to the Director of OMOI, which are found at 18 CFR 375.314. The changes are as follows:

- The phrase ''non-financial'' has been deleted from references to ''non-financial audits'' or ''non-financial auditing'' in subsections (i) and (k).
- Subsection (j) is being revised to include the authority to pass upon actual legitimate original cost and depreciation thereon, and net investment in jurisdictional companies under the conditions contained in that provision.
- New subsection (1) is being added to allow the Director of OMOI to approve corrective measures with regard to billing errors, where the company agrees.

Parallel revisions are being made to delete these authorities from the Executive Director's delegations, contained in 18 CFR 375.312.

4. In addition, the Commission's Division of Regulatory Accounting Policy has been moved from OED to the Office of Markets, Tariffs and Rates. Accounting Policy currently is headed by the Commission's Chief Accountant. The Commission's regulations, at 18 CFR 375.303, already contain several delegations made directly to the Chief Accountant; these delegations remain unchanged, although they are being renumbered in this rule. The following delegations are being added to § 375.303 to reflect the move from OED:

- The ability to sign correspondence relating to financial matters is added in new subsection (a).
- New subsection (b) is being added to include the authority to pass upon actual legitimate original cost and depreciation thereon, and net investment in jurisdictional companies under the conditions contained in that provision.
- New subsection (h) is being added to include the authority to pass upon requests for waiver under parts 352 and 356, except in matters that are controversial or involve unusually large transactions.

As with the changes related to OMOI, parallel changes are being made to delete these authorities from the Executive Director's delegations.

Information Collection Statement

5. The Office of Management and Budget's (OMB) regulations require that OMB approve certain information collection requirements imposed by agency rule. 5 CFR part 1320. This final rule contains no information reporting requirements and thus is not subject to OMB approval.

Environmental Analysis

6. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[1] The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment. Included is an exemption for procedural, ministerial or internal administrative actions.[2] This rulemaking is exempt under that provision.

Regulatory Flexibility Act Certification

7. The Regulatory Flexibility Act of 1980 (RFA)[3] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. This final rule concerns a matter of internal agency procedure and the Commission therefore certifies that it will not have such an impact. An analysis under the RFA is not required.

Document Availability

8. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's home page (*http://www.ferc.gov*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

9. From FERC's home page on the Internet, this information is available in the Commission's document management system, eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

10. User assistance is available for eLibrary and the FERC's Web site during normal business hours. For assistance, please contact FERC Online Support at 1–866–208–3676 (toll free) or 202–502–6652 (e-mail at *FERCOnlineSupport@FERC.gov*), or the Public Reference Room at 202–502–8371, TTY 202–502–8659 (e-mail at *public.referenceroom@ferc.gov*).

Effective Date and Congressional Notification

11. In accordance with 5 U.S.C. 553(d)(3), the Commission finds that good cause exists to make this final rule effective immediately upon issuance. This rule affects only matters of internal organization. It will have no impact upon the rights of outside parties. The Commission further finds that a period for public comment on this rule is unnecessary. Under 5 U.S.C. 553(b), notice and comment procedures are unnecessary where a rulemaking concerns only agency procedure and practice, or where the agency finds that notice and comment is unnecessary. This rule concerns only matters of internal agency procedure and will not significantly affect regulated entities or the general public.

12. The provisions of 5 U.S.C. 801 regarding Congressional review of final rules do not apply to this final rule, because the rule concerns agency procedure and practice and will not substantially affect the rights of non-agency parties.

List of Subjects in 18 CFR Part 375

Authority delegations (Government agencies), Seals and insignia, Sunshine Act.

By the Commission.

Linda Mitry,

Deputy Secretary.

■ In consideration of the foregoing, the Commission amends part 375, chapter I, title 18, Code of Federal Regulations, as follows.

PART 375—THE COMMISSION

■ 1. The authority citation for part 375 continues to read as follows:

Authority: 5 U.S.C. 551–557; 15 U.S.C. 717–717w, 3301–3432; 16 U.S.C. 791–825r, 2601–2645; 42 U.S.C. 7101–7352.

■ 2. Section 375.303 is amended by redesignating paragraphs (a) through (e) as paragraphs (c) through (g), and by adding new paragraphs (a), (b), and (h) as follows:

[1] Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs., Regulations Preambles 1986–1990, ¶ 30,783 (Dec. 10, 1987) (*codified at* 18 CFR part 380).

[2] 18 CFR 380.4(1) and (5).

[3] 5 U.S.C. 601–612.

§ 375.303 Delegations to the Chief Accountant.

The Commission authorizes the Chief Accountant or the Chief Accountant's designee to:

(a) Sign all correspondence with respect to financial accounting and reporting matters on behalf of the Commission.

(b) Pass upon actual legitimate original cost and depreciation thereon and the net investment in jurisdictional companies and revisions thereof.

* * * * *

(h) Deny or grant, in whole or in part, requests for waiver of the requirements of parts 352 and 356 of this chapter, except if the matters involve unusually large transactions or unique or controversial features, the Chief Accountant must present the matters to the Commission for consideration.

§ 375.312 [Amended]

■ 3. Section 375.312 is amended by removing paragraphs (a) through (e), and by redesignating paragraphs (f) through (n) as paragraphs (a) through (i).

§ 375.314 [Amended]

■ 4. Section 375.314 is amended by removing the phrase ''non-financial'' from paragraphs (i) and (k), and by revising paragraph (j) and adding new paragraph (l) to read as follows:

§ 375.314 Delegations to the Director of the Office of Market Oversight and Investigations.

* * * * *

(j) Pass upon actual legitimate original cost and depreciation thereon and the net investment in jurisdictional companies and revisions thereof, and sign audit reports involving jurisdictional companies,

(1) If the company agrees with the audit report, or

(2) If the company does not agree with the audit report, provided that any notification of the opportunity for a hearing required under Section 301(a) of the Federal Power Act or Section 8(a) of the Natural Gas Act accompanies the audit report.

* * * * *

(l) With regard to billing errors noted as a result of the Commission staff's examination of automatic adjustment tariffs approved by the Commission, approve corrective measures, including recomputation of billings and refunds, to the extent the company agrees.

[FR Doc. 04–24813 Filed 11–5–04; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R05–OAR–2004–IN–0004; FRL–7820–4]

Approval and Promulgation of Implementation Plans; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving revisions to volatile organic compound (VOC) requirements for Eli Lilly and Company (Eli Lilly) for a facility which it owns and operates in Marion County, Indiana. On February 11, 2004, the Indiana Department of Environmental Management (IDEM) submitted a Commissioner's Order requesting the revision as an amendment to the Indiana State Implementation Plan (SIP). The February 11, 2004 submission supplements a December 19, 2001 submission.

Eli Lilly owns and operates a synthesized pharmaceutical manufacturing facility in Marion County. This SIP revision covers new and existing sources in Eli Lilly's Building 110 pilot plant. Eli Lilly is seeking an exemption from 326 Indiana Administrative Code (IAC) 8–5–3, control requirements for synthesized pharmaceutical manufacturing, under the site-specific reasonably available control technology (RACT) rule, 326 IAC 8–1–5. Eli Lilly is seeking this exemption for reactors, filters, centrifuges, and vacuum dryers at Building 110. Other Building 110 sources, such as air dryers, in-process tanks, and storage tanks, comply with 326 IAC 8–5–3. The total VOC annual emissions from Building 110 are limited to less than 10 tons per year (TPY).

DATES: This rule is effective on January 7, 2005, unless the EPA receives relevant adverse written comments by December 8, 2004. If adverse comment is received, the EPA will publish a timely withdrawal of the rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit comments, identified by Docket ID No. R05–OAR–2004–IN–0004 by one of the following methods: Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

E-mail: *bortzer.jay@epa.gov.*

Fax: (312) 886–5824.

Mail: You may send written comments to: J. Elmer Bortzer, Chief, Air Programs Branch, (AR–18J), Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Hand delivery: Deliver your comments to: J. Elmer Bortzer, Chief, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, 18th floor, Chicago, Illinois 60604.

Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. R05–AR–2004–N–0004. EPA's policy is that all comments received will be included in the public docket without change, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov, or e-mail. The Federal regulations.gov Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional instructions on submitting comments, go to Section I of the **SUPPLEMENTARY INFORMATION** section of the related proposed rule which is published in the Proposed Rules section of this **Federal Register.**

Docket: All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket.* Although listed in the index, some information is not publicly available, *i.e.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at Environmental Protection

Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (We recommend that you telephone Matt Rau, Environmental Engineer, at (312) 886–6524 before visiting the Region 5 office.) This Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Matt Rau, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, Telephone: (312) 886–6524, e-mail: *rau.matthew@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document wherever ''we,'' ''us,'' or ''our'' are used we mean the EPA.

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I. General Information

A. How Can I Get Copies of This Document and Other Related Information?

1. The Regional Office has established an electronic public rulemaking file available for inspection on EDOCKET and a hard copy file which is available for inspection at the Regional Office. EPA has established an official public rulemaking file for this action under Docket ID No. R05–AR–2004–IN–0004. The official public file consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public rulemaking file does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public rulemaking file is the collection of materials that is available for public viewing at the Air Programs Branch, Air and Radiation Division, EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

2. Electronic Access. You may access this **Federal Register** document electronically through the regulations.gov Web site located at *http://www.regulations.gov* where you can find, review, and submit comments on Federal rules that have been published in the **Federal Register,** the Government's legal newspaper, and are open for comment.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at the EPA Regional Office, as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in the official public rulemaking file. The entire printed comment, including the copyrighted material, will be available at the Regional Office for public inspection.

B. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number by including the text ''Public comment on proposed rulemaking Region 5 Air Docket ''R05–OAR–2004–IN–0004'' in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

For detailed instructions on submitting public comments and on what to consider as you prepare your comments see the **ADDRESSES** section and the section I General Information of the **SUPPLEMENTARY INFORMATION** section of the related proposed rule which is published in the Proposed Rules section of this **Federal Register.**

II. What Is EPA Approving?

EPA is approving revisions to VOC control requirements for the Eli Lilly pharmaceutical manufacturing facility in Marion County, Indiana. Indiana submitted Commissioner's Order #2003–02 on February 11, 2004, requesting revisions as an amendment to its SIP. The February 11, 2004 submission supplements a December 19, 2001 submission.

Indiana is seeking an exemption from 326 IAC 8–5–3 for reactors, centrifuges, filters, and vacuum dryers in Building 110, the pilot plant for Eli Lilly. This exemption can be granted under 326 IAC 8–1–5, which allows site-specific RACT plans as an alternative to 326 IAC Article 8 requirements. Other Building 110 sources such as the air dryers and the storage tanks comply with 326 IAC 8–5–3.

Indiana has determined that using primary reactor condensers operating at −10° Celsius on the reactors is RACT. Indiana has also determined that no emissions controls are feasible for the vacuum dryers. Eli Lilly must enclose all Building 110 centrifuges and filters having an exposed solvent surface. The RACT control level is the condensers set at −10°C, which meets the required control level for most VOCs that Eli Lilly will be using. However, some VOCs may be used for which 326 IAC 8–5–3 requires a lower temperature on the condensers. The temperature requirement is based on the vapor pressure of the solvent. Eli Lilly will operate its primary reactor condensers at a steady temperature, −10°C, instead of adjusting for the vapor pressure of the VOC being used because of the frequent solvent changes. Eli Lilly is required to certify that the condensers were operating at all required times.

Even with these relaxations from 326 IAC 8–5–3, the total VOC emissions from this facility will remain low because VOC emissions for Building 110 are limited to less than 10 tons per 12 consecutive months period rolled on a monthly basis. IDEM determines the Building 110 emissions using the detailed batch records kept by Eli Lilly. The records consist of the amount of each solvent contained in each input, product, and waste stream for each batch operation including: New solvent added, solvent generated during the process reactions, solvent added from another batch, waste solvent generated, solvent sent to the sewer, solvent consumed during process reactions, solvent drummed for later use, and solvent collected and emitted during product drying. Eli Lilly measures the new and recovered solvent used, the solvent in the liquid waste, and the material collected from the condenser during drying. The amount of each solvent that is generated or consumed by the chemical reactions is calculated using information found in process notebooks that are available for inspection. The air emissions are obtained by a material balance

calculation by subtracting the measured waste solvent and dryer collected product and the calculated solvent consumed from the measured solvent added and the calculated solvent generated. Eli Lilly tallies the VOC emission amounts for all batches to determine the monthly VOC emissions from Building 110.

III. What Are the Changes From the Current Rule?

Indiana requested VOC rule revisions for sources in Eli Lilly's Building 110. Eli Lilly is also now allowed to add equipment to and move equipment around Building 110 without the need for approval of a new SIP revision. Previously, Eli Lilly had listed its equipment and the module where it was being used. Equipment changes required a permit and a SIP revision. The new process simplifies the addition of new equipment within certain parameters, while establishing a strict building-wide VOC limit. Other changes include allowing the condensers on the reactors to maintain a steady temperature. This is a change from the requirements of 326 IAC 8–5–3 (b)(1)(A), which varies the condenser temperature based on the solvent vapor pressure.

IV. What Is the EPA's Analysis of the Supporting Materials?

Indiana has submitted Technical Support Documents in support of the requested SIP revision. It has also provided a listing of the solvents used in the reactors. The two technically feasible control techniques for Eli Lilly to meet the 326 IAC 8–5–3 requirements are absorption and condensation. Indiana found these to be economically infeasible for both absorption and for condensation at −25°C, a level that ensures compliance with 326 IAC 8–5–3 (b)(1)(A). Indiana determined that RACT for Eli Lilly's pilot plant is operating condensers at −10°C on the reactors, enclosing all centrifuges and filters, and no controls on vacuum dryers. Air dryers, storage tanks, and in-process tanks in Building 110 comply with 326 IAC 8–5–3.

Indiana also replaced an equipment list for each module in the pilot plant as contained in a 1994 construction permit (CP 097–3341), with the requirement that Eli Lilly can add sources without a SIP revision if:

- They are part of Eli Lilly's research and development (R&D) process;
- They comply with the RACT plan provided in Commissioner's Order #2003–02, Appendix A; and,
- The total Building 110 VOC emissions remain limited to less than 10 TPY.

This gives Eli Lilly more flexibility with its R&D equipment and eliminates the need for both Indiana and EPA to review numerous SIP revisions for sources with low emissions levels.

EPA finds that these revisions can be approved. Building 110 sources are used for R&D activities. The pharmaceutical products made there are used to test more efficient production processes and to develop new pharmaceutical products. This means there are frequent changes in the equipment and solvents used in production. EPA believes that the requested revisions are appropriate considering the operations occurring in Building 110 and the annual building-wide VOC limit of less than 10 TPY.

V. What Are the Environmental Effects of These Actions?

Reactions involving VOCs and nitrogen oxides in warm air form tropospheric (ground level) ozone. The highest concentrations of ozone occur in the warm months of the year. Ozone decreases lung function causing chest pain and coughing. It can aggravate asthma and other respiratory diseases. Children playing outside and healthy adults who work or exercise outside also may be harmed by elevated ozone levels. Ozone also reduces vegetation growth and reproduction including economically important agricultural crops.

Eli Lilly's Building 110 VOC emissions are limited to less than 10 tons per 12 consecutive months period rolled on a monthly basis. Eli Lilly must keep its VOC emissions below 10 TPY, even if it adds more R&D equipment to Building 110. This should continue to protect the air quality of Marion County, Indiana. In addition, Eli Lilly remains subject to all applicable New Source Review requirements.

VI. What Rulemaking Actions Is the EPA Taking?

The EPA is approving, through direct final rulemaking, revisions to VOC emissions regulations for the Eli Lilly pharmaceutical manufacturing facility in Marion County, Indiana. The revisions include an exemption from the control requirements of 326 IAC 8–5–3 for reactors, centrifuges, filters, and vacuum dryers in Building 110, the pilot plant. This exemption can be approved under Indiana's site-specific RACT rule, 326 IAC 8–1–5. Eli Lilly is also authorized to add R&D equipment to Building 110 without additional rulemaking. Eli Lilly will follow the appropriate RACT plan for the new equipment and keep the total annual VOC limit for Building 110 to less than 10 TPY.

We are publishing this action without a prior proposal because we view these as noncontroversial revisions and anticipate no adverse comments. However, in the ''Proposed Rules'' section of today's **Federal Register**, we are publishing a separate document that will serve as the proposal to approve the SIP revision if written adverse comments are filed. This rule will be effective on January 7, 2005 without further notice unless we receive relevant adverse written comment by December 8, 2004. If the EPA receives adverse written comment, we will publish a final rule informing the public that this rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. The EPA does not intend to institute a second comment period on this action. Any parties interested in commenting on these actions must do so at this time.

VII. Statutory and Executive Order Reviews

Executive Order 12866: Regulatory Planning and Review

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.

Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

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).

Regulatory Flexibility Act

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.*).

Unfunded Mandates Reform Act

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

Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

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).

Executive Order 13132: Federalism

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.

Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

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.

National Technology Transfer Advancement Act

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.

Paperwork Reduction Act

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804, however, exempts from section 801 the following types of rules: Rules of particular applicability; rules relating to agency management or personnel; and rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United StatesCourt of Appeals for the appropriate circuit by January 7, 2005. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Volatile organic compounds.

Dated: September 16, 2004 .

Norman Niedergang,

Acting Regional Administrator, Region 5.

■ For the reasons stated in the preamble, part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart P—Indiana

■ 2. Section 52.770 is amended by adding paragraph (c)(157) to read as follows:

§ 52.770 Identification of plan.

* * * * *

(c) * * *

(157) On December 19, 2001, and February 11, 2004, Indiana submitted revised volatile organic compound (VOC) emissions regulations for Eli Lilly and Company in Marion County. The submission provides alternate VOC control requirements for reactors, vacuum dryers, centrifuges, and filters in the pilot plant. The alternate control requirements are being approved under site-specific Reasonably Available Control Technology standards.

(i) Incorporation by reference.

(A) Commissioner's Order #2003–02 as issued by the Indiana Department of Environmental Management on February 11, 2004.

[FR Doc. 04–24821 Filed 11–5–04; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 13 and 80

[WT Docket No. 00–48; PR Docket No. 92–257; RM–9499; FCC 04–3]

Maritime Communications

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document the Commission amends parts 13 and 80 of the Commission's rules to update and streamline the rules governing the maritime radio services. The paramount goals of these amendments are to enhance maritime safety, promote the efficient use of the maritime radio spectrum, and, to the extent it is consistent with these first two objectives, remove unnecessary regulatory burdens on the users and manufacturers of maritime radio equipment. The amendments also conform part 80 of the Commission's rules with international standards where doing so will not undermine domestic regulatory objectives.

DATES: Effective January 7, 2005. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register, as of January 7, 2005.

FOR FURTHER INFORMATION CONTACT: Jeffrey Tobias, *Jeff.Tobias@FCC.gov*, Public Safety and Critical Infrastructure Division, Wireless Telecommunications Bureau, (202) 418–0680, or TTY (202) 418–7233.

SUPPLEMENTARY INFORMATION: This is a summary of the Federal Communications Commission's consolidated *Second Report and Order* in WT Docket No. 00–48 and *Sixth*

Report and Order in PR Docket No. 92–257, FCC 04–3, adopted on January 8, 2004, and released on February 12, 2004. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the Commission's copy contractor, Qualex International, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The full text may also be downloaded at: *http://www.fcc.gov*. Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365 or at *bmillin@fcc.gov*.

1. In the *Second Report and Order* and *Sixth Report and Order*, we adopt changes to parts 13 and 80 of the Commission's rules that were either proposed in or suggested in response to the Further Notice of Proposed Rule Making (''*FNPRM*'') in WT Docket No. 00–48, which was released on April 9, 2002, 67 FR 35086, May 17, 2002, and the Fourth Further Notice of Proposed Rule Making (''*Fourth FNPRM*'') in PR Docket No. 92–257, which was released on December 28, 2001, 67 FR 5080, February 4, 2002. The *FNPRM* proposed to amend part 80 of the Commission's rules to reflect the implementation domestically of the Global Maritime and Distress Safety System (''GMDSS'') by conforming the rules to revised and updated international standards for GMDSS; deleting or modifying rules affected by full implementation of GMDSS; and to delete or modify any other regulations pertaining to GMDSS that may be unnecessary or in need of clarification. The *Fourth FNPRM* invited public comment on a number of recommendations from the United States Coast Guard (''USCG'') and from MariTEL, Inc. (''Maritel''), a Commission licensee, to amend the rules pertaining to VHF public coast (''VPC'') stations.

2. The Commission takes the following significant actions in the *Second Report and Order* in WT Docket No. 00–48: (i) Declines to create a voluntary restricted Global Maritime Distress and Safety System (GMDSS) license for recreational boaters; (ii) clarifies the responsibilities of VPC stations that receive calls on the digital selective calling (''DSC'') distress frequency, Channel 70; (iii) clarifies that VPC stations that are not exempt from the VHF Channel 16 watch requirement must have a radio operator on duty; (iv) prohibits ship operation of any device capable of transmitting on a distress frequency without regulatory authorization; (v) redesignates Channels 75 and 76 for communications related to port operations, and establish requirements for equipment to operate on the channels with reduced carrier power; (vi) authorizes domestic use of INMARSAT–E emergency position indicating radiobeacons (''EPIRBs'') and establishes standards for such devices; (vii) requires that small passenger vessels have DSC capability one year after the USCG declares Sea Areas A1 and A2 to be operational, and establishes additional equipment requirements for such vessels; (viii) declines to specify that the qualified GMDSS operator required to be on vessels under our rules must be assigned exclusively to radio communications duties during an emergency; (ix) updates the requirements for ship radio installations to incorporate new international regulations; (x) incorporates into the rules the international requirement that all passenger ships have the ability to communicate with search and rescue personnel on two specified aeronautical frequencies; (xi) determines to continue listing the carrier frequency, rather than the assigned frequency, in part 80 tables of frequencies; and (xii) specifies the number of questions to include in the GMDSS radio operator license examinations.

3. The Commission takes the following significant actions in the *Sixth Report and Order* in PR Docket No. 92–257: (i) Clarifies the responsibilities of VPC stations as to when they must maintain a watch on the Channel 16 distress frequency and as to their obligation to notify the USCG of a station relocation; (ii) generally declines to impose additional technical requirements for VPC stations operating on offset channels; (iii) denies a request to reallocate nine channel pairs from public safety and other private land mobile radio operations to use by VPC stations; (iv) adopts new rules requested by the USCG to govern the implementation of Automatic Identification Systems (''AIS''); (v) establishes a new emission mask in part 80 to accommodate a wide range of data services; (vi) eliminates the station identification requirement for VPC stations licensed on a geographic area basis; (vii) authorizes VPC stations to maintain required station records in electronic form; (viii) relaxes the posting requirement for VPC stations; and (ix) clarifies that VPC stations, like other providers of commercial mobile radio services, have been relieved of certain filing requirements as a matter of forbearance.

I. Regulatory Matters

A. Paperwork Reduction Act

4. The *Second Report and Order* and *Sixth Report and Order* does not contain any new or modified information collection.

B. Final Regulatory Flexibility Analyses

5. As required by the Regulatory Flexibility Act of 1980, as amended (''RFA''), the Commission has prepared a Final Regulatory Flexibility Analysis (''FRFA'') of the rules adopted in the *Second Report and Order* in WT Docket No. 00–48. The Commission's Consumer and Governmental Affairs Bureau, Reference Information center, will send a copy of the *Second Report and Order* in WT Docket No. 00–48, including the *FRFA*, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with the *RFA*.

Second Report and Order in WT Docket No. 00–48

A. Need for, and Objectives of, the Rules Adopted in the Second Report and Order

6. The rules adopted in the *Second Report and Order* are intended to further streamline, consolidate and clarify the Commission's part 80 rules; remove unnecessary or duplicative requirements; address new international maritime requirements; and promote flexibility and efficiency in the use of marine radio equipment in a manner that will further maritime safety. Specifically, in the *Second Report and Order* the Commission (i) declines to create a voluntary restricted Global Maritime Distress and Safety System (GMDSS) license for recreational boaters; (ii) clarifies the responsibilities of VHF public coast stations that receive calls on the DSC distress frequency, Channel 70; (iii) clarifies that VHF public coast stations that are not exempt from the VHF Channel 16 watch requirement must have a radio operator on duty; (iv) prohibits ship operation of any device capable of transmitting on a distress frequency without regulatory authorization; (v) redesignates Channels 75 and 76 for communications related to port operations, and establishes requirements for equipment to operate on the channels with reduced carrier power; (vi) authorizes domestic use of INMARSAT-E emergency position indicating radiobeacons (EPIRBs) and establishes standards for such devices; (vii) requires that small passenger vessels have digital selective calling capability one year after the U.S. Coast Guard (Coast Guard or USCG) declares

Sea Areas A1 and A2 to be operational, and establishes additional equipment requirements for such vessels; (viii) declines to specify that the qualified GMDSS operator required to be on vessels under our rules must be assigned exclusively to radio communications duties during an emergency; (ix) updates the requirements for ship radio installations to incorporate new international regulations; (x) incorporates into the rules the international requirement that all passenger ships have the ability to communicate with search and rescue personnel on two specified aeronautical frequencies; (xi) determines to continue listing the carrier frequency, rather than the assigned frequency, in part 80 Tables of Frequencies; and (xii) specifies the number of questions to be included in the GMDSS radio operator license examinations.

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

7. No comments were submitted specifically in response to the IRFA. We note, however, that the Passenger Vessel Association (PVA) indicated that it was opposed to several of the proposed rules because of the compliance costs that would be incurred by small passenger vessel operators, many of which are small businesses. Specifically, PVA argued that the costs of compliance outweighed the safety benefits of the proposed rules requiring that the VHF and MF radios carried by small passenger vessels be upgraded to have digital selective calling (DSC) capability; that on passenger ships, at least one qualified person must be assigned to perform only radio communications duties during distress situations; and that passenger vessels be equipped with means for two-way on-scene radiocommunications for search and rescue purposes using the aeronautical frequencies 121.5 and 123.1 MHz. We have considered the potential economic impact on small entities of these rules and the other rules discussed in the IRFA, and we have considered alternatives that would reduce the potential economic impact on small entities of the rules enacted herein, regardless of whether the potential economic impact was discussed in any comments.

C. Description and Estimate of the Number of Small Entities To Which Rules Will Apply

8. 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 proposed rules, if adopted. The *RFA* 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: (i) Is independently owned and operated; (ii) is not dominant in its field of operation; and (iii) satisfies any additional criteria established by the Small Business Administration (SBA).

9. Small businesses in the aviation and marine radio services use a marine very high frequency (VHF), medium frequency (MF), or high frequency (HF) radio, any type of emergency position indicating radio beacon (EPIRB) and/or radar, an aircraft radio, and/or any type of emergency locator transmitter (ELT). The Commission has not developed a definition of small entities specifically applicable to these small businesses. For purposes of this *FRFA*, therefore, the applicable definition of small entity is the definition under the SBA rules applicable to wireless telecommunications. Pursuant to this definition, a ''small entity'' for purposes of the ship station licensees, public coast station licensees, or other marine radio users that may be affected by these rules, is any entity employing 1,500 of fewer persons. 13 CFR 121.201 (NAICS Code 517212). Since the size data provided by the Small Business Administration do not enable us to make a meaningful estimate of the number of marine radio service providers and users that are small businesses, we have used the 1992 Census of Transportation, Communications, and Utilities, conducted by the Bureau of the Census, which is the most recent information available. This document shows that twelve radiotelephone firms out of a total of 1,178 such firms which operated in 1992 had at least 1,000 employees. Thus, we estimate that as many as 1,166 small entities may be affected.

10. Some of the rules adopted herein affect VHF public coast station licensees. The Commission has defined the term ''small entity'' specifically applicable to public coast station licensees as any entity employing less than 1,500 persons, based on the definition under the Small Business Administration rules applicable to radiotelephone service providers. See Amendment of the Commission's rules Concerning Maritime Communications, *Third Report and Order and Memorandum Opinion and Order*, 13 FCC Rcd 19853, 19893 (1998) (citing 13 CFR 121.201, Standard Industrial Classification (SIC) Code 4812, now NAICS Code 513322). Since the size data provided by the Small Business Administration do not enable us to make a meaningful estimate of the number of public coast station licensees that are small businesses, we have used the 1992 Census of Transportation, Communications, and Utilities, conducted by the Bureau of the Census, which is the most recent information available. This document shows that twelve radiotelephone firms out of a total of 1,178 such firms which operated in 1992 had 1,000 or more employees. Thus, we estimate that no fewer than 1,166 small entities will be affected.

11. Some of the rules adopted herein may also affect small businesses that manufacture marine radio equipment. The Commission has not developed a definition of small entities applicable to marine radio equipment manufacturers. Therefore, the applicable definition is that for Wireless Communications Equipment Manufacturers. The SBA has established a small business size standard for radio and television broadcasting and wireless communications equipment manufacturing. Under this standard, firms are considered small if they have 750 or fewer employees. Census Bureau data for 1997 indicate that, for that year, there were a total of 1,215 establishments in this category. Of those, there were 1,150 that had employment under 500, and an additional 37 that had employment of 500 to 999. The percentage of wireless equipment manufacturers in this category is approximately 61.35%, so the Commission estimates that the number of wireless equipment manufacturers with employment under 500 was actually closer to 706, with and additional 23 establishments having employment of between 500 and 999. The Commission estimates that the great majority of wireless communications equipment manufacturers are small businesses.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

12. In the *Second Report and Order*, we adopt several rule amendments that may affect reporting, recordkeeping and other compliance requirements for small entities. First, we amend § 80.203 of the rules to bar ship stations from including any device capable of transmitting on a distress frequency without regulatory authorization. This prohibition could affect small entities that manufacture ship radio equipment. Second, we amend § 80.215(g)(3) to require that ship

station transmitters have Channels 75 and 76, and automatically reduce the carrier power to one watt or less when tuned those channels, with no manual override capability. This new requirement could affect small entities that manufacture or use such transmitters. Third, we adopt a number of new requirements for small passenger vessels: a requirement that the VHF and MF radios already mandated by § 80.905(a) of the rules be DSC-equipped; a requirement that the single sideband (SSB) radios required to be carried by ships operating over one hundred nautical miles from shore be DSC-equipped; a requirement that the INMARSAT ship earth stations that may be carried by ships operating more than one hundred nautical miles from shore in lieu of an SSB radio be limited to specified classes of earth stations; a requirement that vessels required to carry a SSB radio with a reserve power supply also carry a reserve power supply for the navigation receiver; and a requirement for updating position information. These requirements may have a direct economic impact on operators of small passenger vessels. Finally, we amend § 80.1085 of the rules to require that every passenger ship be provided with means for two-way on-scene radiocommunications for search and rescue purposes using the aeronautical frequencies 121.5 and 123.1 MHz from the position from which the ship is normally navigated.

13. In the IRFA accompanying the *FNPRM* in this proceeding, we specifically identified each of the above rule amendments as potentially affecting reporting, recordkeeping and other compliance requirements, and specifically requested comment on the economic impact of these changes.

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

14. 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): ''(i) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (ii) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (iii) the use of performance rather than design standards; and (iv) an exemption from coverage of the rule, or any part thereof, for such small entities.''

15. With respect to all of the rules adopted in the *Second Report and Order* that may affect reporting, recordkeeping and other compliance requirements for small entities, as identified in section D of the *FRFA*, *supra*, we have considered how we might minimize the economic impact on small entities, and we have considered alternative measures that might minimize that impact. As a general matter, the alternatives considered, and in many cases adopted, include exempting small entities from the requirement; providing ''grandfathering'' protection from the requirement; providing a transition period to give either small entities or all affected entities additional time to come into compliance; and imposing a less burdensome requirement, either for small entities or for all affected entities. In addition, to the extent we establish here new standards for authorization of marine radio equipment, we have generally required compliance with performance standards, rather than prescribing a particular equipment design. In the IRFA accompanying the *FNPRM* in this proceeding, we specifically requested comment addressing particular alternatives that may be appropriate for particular rules proposed or discussed in the *FNPRM*. Although we received no comments specifically addressed to the IRFA, we have considered all comments to the *FNPRM* addressing the impact of any proposed change on small entities and all suggestions for alternative measures that would have a less significant impact on small entities. Moreover, even where we received no comments of this nature with regard to a particular new requirement, we considered the potential impact of the requirement on small entities, and considered alternatives. We discuss each of the specific new requirements adopted in the Second Report and Order, and relevant alternatives, below.

16. In the *Second Report and Order*, we amend § 80.203 of the rules to bar ship stations from including any device capable of transmitting on a distress frequency without regulatory authorization. This rule change had been proposed by the Coast Guard, and the *FNPRM* specifically asked for comment on whether this rule change would hamper the ability of manufacturers to add tone signaling capability or to otherwise improve their equipment. However, no manufacturer commented on this rule change, no commenter opposed it, and there is nothing in the record to indicate that it will adversely effect manufacturers. In any event, given that this rule change does not require manufacturers to add any features or capabilities to equipment, but merely prohibits what was never affirmatively authorized in the first place, there is no reason to phase in this requirement gradually. Further, there is no basis in the record to exempt manufacturers that are small entities from this requirement. Any such exemption, moreover, would jeopardize maritime safety since any unauthorized emissions on a distress frequency, from whatever source, could compromise the ability of the Coast Guard to process and respond to distress signals.

17. In the *Second Report and Order,* we amend § 80.215(g)(3) to require that ship station transmitters have Channels 75 and 76, and automatically reduce the carrier power to one watt or less when tuned those channels, with no manual override capability. In the *FNPRM,* the Commission expressed concern about the impact of this rule on manufacturers, and specifically solicited comment on appropriate grandfathering protection if the new requirements are adopted. No manufacturer commented on the proposed equipment requirements relating to Channels 75 and 76, and no one opposed such requirements. The only commenter responding to the Commission's request for input on appropriate grandfathering protection was the Coast Guard, which stated simply that it supports grandfathering protection of some sort. Notwithstanding the absence of comment on this issue from manufacturers or vessel operators, we have provided both grandfathering protection for existing installed equipment and a transitional period before new installations have to comply with the new requirements. Specifically, non-compliant equipment installed prior to the effective date of these rules is grandfathered indefinitely, so that it may continue to be used for its remaining useful life. In addition, we are allowing installations of non-compliant equipment until one year after the effective date of the *Second Report and Order.* We believe these actions will effectively minimize the compliance burden of this requirement on manufacturers and ship station licensees, especially any affected small entities. Given that no manufacturers commented on these rules, we do not believe this approach will leave manufacturers with stranded inventory. We decline to exempt small entities from these requirements because the benefits of designating Channels 75 and 76 for port operations, and the associated equipment requirements, cannot be fully realized unless access to

Channels 75 and 76 is ubiquitous, and because there is nothing in the record of this proceeding to suggest a need for such an exemption, especially given the grandfathering and transition provisions we have adopted.

18. In the *Second Report and Order,* we adopt a requirement that the VHF and MF radios already mandated by § 80.905(a) of the rules be DSC-equipped. The Passenger Vessel Association (PVA) filed comments opposing this requirement. PVA contends that small passenger vessels that are not subject to GMDSS requirements under SOLAS should not be required to meet GMDSS-derived equipment requirements such as this. PVA further asserts that many of the vessel operators that will be affected by this requirement are small businesses, and suggested that, instead of eliminating or tightening the exemption, the Commission should broaden the exemption to cover all passenger-carrying vessels, irrespective of size, that operate in protected waterways, such as harbors, bays and waterways covered by Vessel Traffic Systems. We decline to exempt any class of vessels otherwise subject to § 80.905(a) from the new DSC requirement, even with respect to vessels owned and operated by small businesses and/or restricted to voyages in particular inland or coastal waterways. We agree with the Coast Guard and the GMDSS Task Force that the public safety benefits of imposing this requirement on small passenger vessels are paramount. DSC represents an important enhancement of maritime safety, and requiring DSC capability in small passenger vessels, even those limited to voyages on protected waterways, will provide safety benefits not only to the passengers and crew on such vessels, but to all GMDSS participating vessels. We also believe, moreover, that the compliance costs of this requirement will not be significant because, pursuant to § 80.203(n) of the Commission's rules, the Commission already requires that all VHF and MF marine radio transmitters submitted for equipment authorization have DSC capability. In fact, the DSC requirement has applied to all VHF and MF marine radio transmitters submitted for equipment authorization since June 17, 1999. As a consequence of this requirement, more and more of the new equipment available in the market will be DSC-capable. In addition, as a means to minimize whatever compliance costs are incurred by small passenger vessel operators, we have decided to defer the compliance deadline for this requirement. We will not require that VHF radios be upgraded to DSC until one year after the Coast Guard declares Sea Area A1 to be operational, and we will not require that MF radios be upgraded to DSC until one year after the Coast Guard declares Sea Area A2 to be operational. This compliance deadline is sufficiently far off that it will give affected small passenger vessel operators ample time to plan and budget for the required upgrades. In addition, as the deadline for compliance extends further into the future, it is likely that there will be fewer non-DSC transmitters in manufacturers' and retailers' inventory (because of the DSC requirement in § 80.203(n)), and we therefore expect that most new VHF and MF radio equipment available in the market during the time period immediately preceding the compliance deadline will have DSC capability, further minimizing the economic impact on small entities.

19. In the *Second Report and Order,* we adopt a requirement that the SSB radios required of ships operating over one hundred nautical miles from shore, pursuant to § 80.905, be DSC-equipped. The Coast Guard was the only party directly commenting on this issue, and it stated that, as in the case of VHF and MF radio equipment, requiring DSC capabilities in SSB radios will provide significant safety advantages over non-DSC equipment. No party opposed this requirement or attempted to quantify the compliance costs. On this record, then, we believe considerations of maritime safety should be given paramount weight. Indeed, given that the subject vessels by definition operate more than one hundred nautical miles from shore, the safety benefits of this requirement are even greater than those we have adopted for VHF and MF radios in vessels that do not operate so far from shore. Significantly, DSC capability will enhance the ability of passenger vessels on such voyages to contact nearby ships as well as shore facilities. Although we decline to exempt small passenger vessel operators that qualify as small entities from this DSC requirement, we have determined to give affected parties until one year after the effective date of the *Second Report and Order* before requiring compliance. We believe this reasonably fulfills the objective of minimizing compliance costs for small entities without compromising the objective of promoting public safety on the high seas. We do not hinge the compliance deadline in this case on the timing of the Coast Guard's declaration of Sea Area A1 or Sea Area A2 because vessels operating more than one hundred nautical miles from shore are operating in Sea Area A3.

20. In the *Second Report and Order,* we adopt a requirement that the INMARSAT ship earth stations that may be carried by ships operating more than one hundred nautical miles from shore in lieu of an SSB radio, pursuant to § 80.905, be limited to specified classes of earth stations. We do not believe this requirement should have a significant impact on any small entities. No commenter opposed this proposal. In addition, we note that the rule merely permits the use of an INMARSAT earth station as an alternative to other equipment, rather than mandating the use of an INMARSAT earth station in all instances. Nonetheless, we have decided to relax the requirement, as it was proposed in the *FNPRM,* by adding the INMARSAT Mini–M to the list of approved earth stations. As thus revised, we believe the adopted rule represents a reasonable compromise between tightening the existing rule for safety reasons while according a fair measure of flexibility to small passenger vessel operators, especially small entities, in selecting an earth station that will be deemed suitable to obviate the need for an SSB radio.

21. In the *Second Report and Order,* we extend the current § 80.905 SSB reserve power supply requirement to the navigation receiver. No party has opposed this proposal or provided information that would permit a quantification of estimated compliance costs. The Coast Guard, the only commenter on this issue, urges adoption of the requirement because of the safety benefits. We agree with the Coast Guard. Since this rule merely extends an existing reserve power supply requirement to an additional piece of equipment, and there have been no comments in opposition to this proposal, we see no basis for exempting small entities from this requirement or providing an extended implementation period.

22. In the *Second Report and Order,* we adopt a new requirement specifying that vessels subject to § 80.905 must comply with the requirement in § 80.1085(c) for updating position information. In discussing the proposal for this rule in the FNPRM, the Commission observed that its adoption would impose a GMDSS requirement on small passenger vessels. The only party commenting on this matter was the Coast Guard, which reiterated its support for this requirement because it will enable the Coast Guard to locate mariners in a more timely manner and better utilize its limited resources. No party opposed this requirement, and the

record is devoid of information as to the costs of compliance. Accordingly, we find no basis in the record to exempt some small passenger vessels from this requirement or to delay its implementation through a phased-in schedule.

23. Finally, in the *Second Report and Order,* we amend § 80.1085 of the rules to require that every passenger ship be provided with means for two-way on-scene radiocommunications for search and rescue purposes using the aeronautical frequencies 121.5 and 123.1 MHz from the position from which the ship is normally navigated. PVA argues that a requirement for on-scene radios with aeronautical frequencies is expensive and is not useful outside of open ocean environments. It urges that this requirement not be imposed upon passenger vessels operating in or near coastal, inland, and other protected waters. More broadly, PVA complains that the USCG's proposals in this proceeding indicate that the USCG is seeking to extend equipment requirements that are justified for vessels in open-ocean service to vessels on domestic voyages. We agree with PVA that equipment requirements that make sense for vessels on the open ocean should not be extended without further analysis to vessels that stay closer to shore. However, we disagree with PVA that an on-scene capability for two-way radiocommunications with aircraft using the aeronautical frequencies 121.5 and 123.1 MHz offers no potential safety benefits to vessels on domestic voyages. We believe that the ability to communicate with helicopters or other aircraft involved in search and rescue operations could save lives where, for example, a passenger vessel catches fire and is exuding thick smoke on an inland waterway. We further believe that these safety benefits militate against exempting certain vessels from this requirement, based either on the operator's small business status or the restriction of the vessel to inland or protected waterways, or a combination of both factors. Additionally, we do not believe that adopting this requirement in the part 80 rules imposes a new compliance cost on passenger vessels since the requirement was imposed internationally under SOLAS well before the release of this order. Moreover, because the safety benefits of this requirement are not dependent on GMDSS implementation, and because passenger vessels are already required to have this capability under SOLAS, we see no reason to defer the effective date of this requirement to one year after Sea Area A1 or Sea Area A2 implementation, as we have done with some of the other requirements adopted herein in the interest of reducing compliance costs. However, we believe it is appropriate to defer the effective date for this requirement for some shorter period in order to mitigate the compliance costs for small passenger vessel operators. Accordingly, we will make this requirement effective six months after the effective date of the *Second Report and Order.*

F. Federal Rules that May Duplicate, Overlap, or Conflict With the Proposed Rules

24. None.

Report to Congress: The Commission will send a copy of the Second Report and Order in WT Docket No. 00–48, including the Final Regulatory Flexibility Analysis, in a report to be sent to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the *Second Report and Order* in WTB Docket No. 00–48, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the SBA.

Sixth Report and Order in PR Docket No. 92–257

25. As required by the RFA, the Commission has also prepared a *FRFA* of the rules adopted in the *Sixth Report and Order* in PR Docket No. 92–257. The Commission's Consumer and Governmental Affairs Bureau, Reference Information center, will send a copy of the *Sixth Report and Order* in PR Docket No. 92–257, including the *FRFA,* to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with the RFA.

A. Need for, and Objectives of, the Sixth Report and Order

26. The rules adopted in the *Sixth Report and Order* are intended to further streamline, consolidate and clarify the Commission's part 80 rules governing VHF public coast (VPC) stations; remove unnecessary or duplicative requirements; address new international maritime requirements; and promote flexibility and efficiency in the use of marine radio equipment in a manner that will further maritime safety. Specifically, in the *Sixth Report and Order* the Commission (i) clarifies the responsibilities of VPC stations as to when they must maintain a watch on the Channel 16 distress frequency and as to their obligation to notify the Coast Guard of a station relocation; (ii) generally declines to impose additional technical requirements for VPC stations operating on offset channels; (iii) denies a request that nine channel pairs now allocated for public safety and other private land mobile radio operations be reallocated for use by VPC stations; (iv) adopts new rules to govern the implementation of Automatic Identification Systems; (v) establishes a new emission mask in Part 80 to accommodate a wide range of data services; (vi) eliminates the station identification requirement for VPC stations licensed on a geographic area basis; (vii) authorizes VPC stations to maintain required station records in electronic form; (viii) relaxes the posting requirement for VPC stations; and (ix) provides a clarification in the rules that VPC stations, like other providers of commercial mobile radio services, have been relieved of certain filing requirements as a matter of forbearance.

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

27. No comments were submitted specifically in response to the IRFA. Nonetheless, we have considered the potential economic impact on small entities of the rules discussed in the IRFA, and we have considered alternatives that would reduce the potential economic impact on small entities of the rules enacted herein.

C. Description and Estimate of the Number of Small Entities to Which Rules Will Apply

28. 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* 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: (i) Is independently owned and operated; (ii) is not dominant in its field of operation; and (iii) satisfies any additional criteria established by the Small Business Administration (SBA).

29. Small businesses in the aviation and marine radio services use a marine very high frequency (VHF), medium frequency (MF), or high frequency (HF) radio, any type of emergency position indicating radio beacon (EPIRB) and/or radar, an aircraft radio, and/or any type of emergency locator transmitter (ELT). The Commission has not developed a definition of small entities specifically applicable to these small businesses. For purposes of this FRFA, therefore, the

applicable definition of small entity is the definition under the SBA rules applicable to wireless telecommunications. Pursuant to this definition, a ''small entity'' for purposes of the ship station licensees, public coast station licensees, or other marine radio users that may be affected by these rules, is any entity employing 1,500 of fewer persons. 13 CFR 121.201 (NAICS Code 517212). Since the size data provided by the Small Business Administration do not enable us to make a meaningful estimate of the number of marine radio service providers and users that are small businesses, we have used the 1992 Census of Transportation, Communications, and Utilities, conducted by the Bureau of the Census, which is the most recent information available. This document shows that twelve radiotelephone firms out of a total of 1,178 such firms which operated in 1992 had at least 1,000 employees. Thus, we estimate that as many as 1,166 small entities may be affected.

30. Some of the rules adopted herein affect VHF public coast station licensees. The Commission has defined the term ''small entity'' specifically applicable to public coast station licensees as any entity employing less than 1,500 persons, based on the definition under the Small Business Administration rules applicable to radiotelephone service providers. *See* Amendment of the Commission's Rules Concerning Maritime Communications, *Third Report and Order and Memorandum Opinion and Order,* 13 FCC Rcd 19853, 19893 (1998) (citing 13 CFR 121.201, Standard Industrial Classification (SIC) Code 4812, now NAICS Code 517212). Since the size data provided by the Small Business Administration do not enable us to make a meaningful estimate of the number of public coast station licensees that are small businesses, we have used the 1992 Census of Transportation, Communications, and Utilities, conducted by the Bureau of the Census, which is the most recent information available. This document shows that twelve radiotelephone firms out of a total of 1,178 such firms which operated in 1992 had 1,000 or more employees. Thus, we estimate that no fewer than 1,166 small entities will be affected.

31. Some of the rules adopted herein may also affect small businesses that manufacture marine radio equipment. The Commission has not developed a definition of small entities applicable to marine radio equipment manufacturers. Therefore, the applicable definition is that for Wireless Communications Equipment Manufacturers. The SBA has established a small business size standard for radio and television broadcasting and wireless communications equipment manufacturing. Under this standard, firms are considered small if they have 750 or fewer employees. Census Bureau data for 1997 indicate that, for that year, there were a total of 1,215 establishments in this category. Of those, there were 1,150 that had employment under 500, and an additional 37 that had employment of 500 to 999. The percentage of wireless equipment manufacturers in this category is approximately 61.35%, so the Commission estimates that the number of wireless equipment manufacturers with employment under 500 was actually closer to 706, with and additional 23 establishments having employment of between 500 and 999. Given the above, the Commission estimates that the great majority of wireless communications equipment manufacturers are small businesses.

32. *D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities*

33. The *Sixth Report and Order* does not impose any additional reporting, recordkeeping, or other compliance requirements on small entities. The rule amendments adopted in the *Sixth Report and Order* generally relieve VPC station licensees of existing requirements or relax those requirements. The *Sixth Report and Order* does amend section 80.302(a) of the Commission's rules to expressly mandate that VPC licensees subject to a Channel 16 watch requirement must notify the Coast Guard as soon as practicable of a relocation of the station. This requirement was not opposed by any party. In fact, the only parties commenting on the issue—the Coast Guard and a VPC licensee—urged the Commission to adopt this rule change. Accordingly, we do not believe this requirement will have a direct and significant economic impact on any small entities or, for that matter, any entities at all. In any event, and as we state in the *Sixth Report and Order,* this is not a *new* or *additional* requirement. Prior to the amendment adopted herein, section 80.302(a) specified that a VPC licensee subject to the watch requirement must notify the Coast Guard as soon as practicable when there is any change in the operation of the station that would result in a ''discontinuance, reduction or suspension'' of the watch. We believe this language already encompassed a requirement to notify the Coast Guard of a relocation of the watch, and we have amended the rule only to clarify the point, as requested by the commenters.

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

34. 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): ''(i) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (ii) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (iii) the use of performance rather than design standards; and (iv) an exemption from coverage of the rule, or any part thereof, for such small entities.''

35. As explained in section D of the *FRFA, supra,* the *Sixth Report and Order* does not impose any additional reporting, recordkeeping, or other compliance requirements on small entities. The rule amendments adopted in the *Sixth Report and Order* generally relieve VPC station licensees of existing requirements or relax those requirements.

F. Federal Rules that May Duplicate, Overlap, or Conflict With the Proposed Rules

36. None.

Report to Congress: The Commission will send a copy of the *Sixth Report and Order* in PR Docket No. 92–257, including the Final Regulatory Flexibility Analysis, in a report to be sent to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the *Sixth Report and Order* in PR Docket No. 92–257, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the SBA.

II. Ordering Clauses

33. The Commission's Consumer Information Bureau, Reference Information Center, *shall send* a copy of the *Second Report and Order/Sixth Report and Order* including the Final Regulatory Flexibility Analyses to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects

47 CFR Part 13

Radio.

47 CFR Part 80

Communications equipment, Incorporation by reference, Marine

safety, Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

Rule Changes

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR Parts 13 and 80 as follows:

PART 13—COMMERCIAL RADIO OPERATORS

■ 1. The authority citation for part 13 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082 as amended; 47 U.S.C. 154, 303.

■ 2. Section 13.203 is amended by revising paragraph (a)(5), redesignating paragraphs (a)(6) and (a)(7) as paragraphs (a)(7) and (a)(8), and adding a new paragraph (a)(6) to read as follows:

§ 13.203 Examination elements.

(a) * * *

(5) Element 7: GMDSS radio operating practices. 100 questions concerning GMDSS radio operating procedures and practices sufficient to show detailed practical knowledge of the operation of all GMDSS sub-systems and equipment; ability to send and receive correctly by radio telephone and narrow-band direct-printing telegraphy; detailed knowledge of the regulations applying to radio communications, knowledge of the documents relating to charges for radio communications and knowledge of those provisions of the International Convention for the Safety of Life at Sea which relate to radio; sufficient knowledge of English to be able to express oneself satisfactorily both orally and in writing; knowledge of and ability to perform each function listed in § 80.1081; and knowledge covering the requirements set forth in IMO Assembly Resolution on Training for Radio Personnel (GMDSS), Annex 3. The minimum passing score is 75 questions answered correctly.

(6) Element 7R: Restricted GMDSS radio operating practices. 50 questions concerning those GMDSS radio operating procedures and practices that are applicable to ship stations on vessels that sail exclusively in sea area A1, as defined in § 80.1069 of this chapter, sufficient to show detailed practical knowledge of the operation of pertinent GMDSS sub-systems and equipment; ability to send and receive correctly by radio telephone and narrow-band direct-printing telegraphy; detailed knowledge of the regulations governing radio communications within sea area A1, knowledge of the pertinent documents relating to charges for radio communications and knowledge of the pertinent provisions of the International Convention for the Safety of Life at Sea; sufficient knowledge of English to be able to express oneself satisfactorily both orally and in writing; knowledge of and ability to perform each pertinent function listed in § 80.1081; and knowledge covering the pertinent requirements set forth in IMO Assembly Resolution on Training for Radio Personnel (GMDSS), Annex 3. The minimum passing score is 38 questions answered correctly.

* * * * *

PART 80—STATIONS IN THE MARITIME SERVICES

■ 3. The authority citation for Part 80 continues to read as follows:

Authority: Secs. 4, 303, 307(e), 309, and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, 307(e), 309, and 332, unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609; 3 UST 3450, 3 UST 4726, 12 UST 2377.

■ 4. Section 80.15 is amended by revising paragraph (e)(2) to read as follows:

§ 80.15 Eligibility for station license.

* * * * *

(e) * * *

(2) A 406.0–406.1 MHz EPIRB may be used by any ship required by U.S. Coast Guard regulations to carry an EPIRB or by any ship that is equipped with a VHF ship radio station. An INMARSAT–E EPIRB may be used by any ship required by U.S. Coast Guard regulations to carry an EPIRB or by any ship that is equipped with a VHF radio station, provided that the ship is not operating in sea area A4 as defined in § 80.1069(a)(4).

* * * * *

■ 5. Section 80.59 is amended by revising paragraph (c)(1)(x) to read as follows:

§ 80.59 Compulsory ship inspections.

* * * * *

(c) * * *

(1) * * *

(x) Type and quantity of radio equipment on board, including:

(A) VHF Radio Installation (indicate if GMDSS approved);

(B) Single Side-Band (SSB) (indicate the band of operation, MF or HF and indicate if GMDSS approved);

(C) Category 1, 406 MHz EPIRB (GMDSS approved);

(D) NAVTEX Receiver (GMDSS approved);

(E) Survival Craft VHF (GMDSS approved);

(F) 9 GHz Radar Transponder (GMDSS approved);

(G) Ship Earth Station;

(H) 2182 Radiotelephone Auto Alarm

(I) Reserve Power Supply (capability); and

(J) Any other equipment.

* * * * *

■ 6. Section 80.95 is amended by revising paragraph (a) introductory text to read as follows:

§ 80.95 Message charges.

(a) Except as specified in § 20.15(c) of this chapter with respect to commercial mobile radio service providers, charges must not be made for service of:

* * * * *

■ 7. Section 80.98 is revised to read as follows:

§ 80.98 Radiotelegraph testing procedures.

Stations authorized to use telegraphy may conduct tests on any assigned frequency. Emissions must not cause harmful interference. When radiation is necessary the radiotelegraph testing procedure described in this paragraph must be followed:

(a) The operator must not interfere with transmissions in progress.

(b) The operator must transmit ''IE'' (two dots, space, one dot) on the test frequency as a warning that test emissions are about to be made.

(c) If any station transmits ''AS'' (wait), testing must be suspended. When transmission of ''IE'' is resumed and no response is heard, the test may proceed.

(d) Test signals composed of a series of ''VVV'' having a duration of not more than ten seconds, followed by the call sign of the testing station will be transmitted. The call sign must be sent clearly at a speed of approximately 10 words per minute. This test transmission must not be repeated until a period of at least one minute has elapsed.

■ 8. Section 80.102 is amended by revising paragraph (f) to read as follows:

§ 80.102 Radiotelephone station identification.

* * * * *

(f) VHF public coast stations licensed to serve a predetermined geographic service area are not required to provide station identification under this section. A site-based VHF public coast station may identify by means of the approximate geographic location of the station or the area it serves when it is the only VHF public coast station serving the location or there will be no

conflict with the identification of any other station.

§ 80.142 [Amended]

■ 9. Section 80.142 is amended by removing paragraph (c)(1)(i) and redesignating paragraphs (c)(1)(ii) and (c)(1)(iii) as (c)(1)(i) and (c)(1)(ii).

■ 10. Section 80.203 is amended by adding a new paragraph (m)(6) to read as follows:

§ 80.203 Authorization of transmitters for licensing.

* * * * *

(m) * * *

(6) No ship station shall include any device or provision capable of transmitting any tone or signal on a distress frequency for any purpose unless specific provisions exist in this Part authorizing such tone or signal.

* * * * *

■ 11. Section 80.207 is amended by revising paragraph (d) to read as follows:

§ 80.207 Classes of emission.

* * * * *

(d) The authorized classes of emission are as follows:

Types of stations	Classes of emission
Ship Stations [1]	
Radiotelegraphy:	
100–160 kHz	A1A
405–525 kHz	A1A, J2A
1605–27500 kHz:.	
Manual [15 16 17]	A1A, J2A, J2B, J2D
DSC [6]	F1B, J2B
NB–DP [14 16]	F1B, J2B, J2D
Facsimile	F1C, F3C, J2C, J3C
156–162 MHz [2]	F1B, F2B, F2C, F3C, F1D, F2D
DSC	G2B
216–220 MHz [3]	F1B, F2B, F2C, F3C
1626.5–1646.5 MHz	([4])
Radiotelephony:	
1605–27500 kHz [5 16]	H3E, J2D, J3E, R3E
27.5–470 MHz [6]	G3D, G3E
162.5–1646.5 MHz	([4])
Radiodetermination:	
285–325 kHz [7]	A1A, A2A
405–525 kHz (Direction Finding) [8]	A3N, H3N, J3N, NON
154–459 MHz [12]	A1D, A2D, F1D, F2D, G1D, G2D
2.4–9.5 GHz	PON
14.00–14.05 GHz	F3N
Land Stations [1]	
Radiotelegraphy:	
100–160 kHz	A1A
405–525 kHz	A1A, J2A
1605–2850 kHz:	
Manual	A1A, J2A
Facsimile	F1C, F3C, J2C, J3C
Alaska—Fixed	A1A, J2A
4000–27500 kHz:	
Manual [16]	A1A, J2A, J2B, J2D
DSC [18]	F1B, J2B
NB–DP [14 18]	F1B, J2B, J2D
Facsimile	F1C, F3C, J2C, J3C
Alaska–Fixed [17 18]	A1A, A2A, F1B, F2B, J2B, J2D
72–76 MHz [2 18]	A1A, A2A, F1B, F2B
156–162 MHz [2 20]	F1B, F2B, F2C, F3C, F1D, F2D
DSC	G2B
216–220 MHz [3]	F1B, F2B, F2C, F3C
Radiotelephony:	
1605–27500 kHz [18 19]	H3E, J3E, R3E
72–76 MHz	A3E, F3E, G3E
156–470 MHz	G3E
Radiodetermination:	
2.4–9.6 GHz	PON
Distress, Urgency and Safety [8 9]	
2182 kHz [10 11]	A2B, A3B, H2B, H3E, J2B, J3E
121.500 MHz	A3E, A3X, N0N
123.100 MHz	A3E
156.750 and 156.800 MHz [13]	G3E, G3N
243.000 MHz	A3E, A3X, N0N
406.025 MHz	G1D

[1] Excludes distress, EPIRBs, survival craft, and automatic link establishment.

[2] Frequencies used for public correspondence and in Alaska 156.425 MHz. *See* §§ 80.371(c), 80.373(f) and 80.385(b). Transmitters approved before January 1, 1994, for G3E emissions will be authorized indefinitely for F2C, F3C, F1D and F2D emissions. Transmitters approved on or after January 1, 1994, will be authorized for F2C, F3C, F1D or F2D emissions only if they are approved specifically for each emission designator.

[3] Frequencies used in the Automated Maritime Telecommunications System (AMTS). *See* § 80.385(b).

[4] Types of emission are determined by the INMARSAT Organization.

[5] Transmitters approved prior to December 31, 1969, for emission H3E, J3E, and R3E and an authorized bandwidth of 3.5 kHz may continue to be operated. These transmitters will not be authorized in new installations.
[6] G3D emission must be used only by one-board stations for maneuvering or navigation.
[7] Frequencies used for cable repair operations. *See* § 80.375(b).
[8] For direction finding requirements see § 80.375.
[9] Includes distress emissions used by ship, coast, EPIRBs and survival craft stations.
[10] On 2182 kHz A1B, A2B, H2B and J2B emissions indicate transmission of the auto alarm signals.
[11] Ships on domestic voyages must use J3E emission only.
[12] For frequencies 154.585 MHz, 159.480 MHz, 160.725 MHz, 160.785 MHz, 454.000 MHz and 459.000 MHz, authorized for offshore radiolocation and related telecommand operations.
[13] Class C EPIRB stations may not be used after February 1, 1999.
[14] NB–DP operations which are not in accordance with CCIR Recommendation 625 or 476 are permitted to utilize any modulation, so long as emissions are within the limits set forth in § 80.211(f).
[15] J2B is permitted only on 2000–27500 kHz.
[16] J2D is permitted only on 2000–27500 kHz, and ship stations employing J2D emissions shall at no time use a peak envelope power in excess of 1.5 kW per channel.
[17] J2B and J2D are permitted provided they do not cause harmful interference to A1A.
[18] Coast stations employing J2D emissions shall at no time use a peak envelope power in excess of 10 kW per channel.
[19] J2D is permitted only on 2000–27500 kHz.
[20] If a station uses another type of digital emission, it must comply with the emission mask requirements of § 90.210 of this Chapter, except that Automatic Identification System (AIS) transmissions do not have to comply with the emission mask requirements of § 90.210 of this Chapter.

■ 12. Section 80.213 is amended by revising paragraph (d) to read as follows:

§ 80.213 Modulation requirements.

* * * * *

(d) Ship and coast station transmitters operating in the 156–162 MHz and 216–220 bands must be capable of proper operation with a frequency deviation that does not exceed ±5 kHz when using any emission authorized by § 80.207.

* * * * *

■ 13. Section 80.215 is amended by revising paragraph (g) to read as follows:

§ 80.215 Transmitter power.

* * * * *

(g) The carrier power of ship station radiotelephone transmitters, except portable transmitters, operating in the 156–162 MHz band must be at least 8 but not more than 25 watts. Transmitters that use 12 volt lead acid storage batteries as a primary power source must be measured with a primary voltage between 12.2 and 13.7 volts DC. Additionally, unless otherwise indicated, equipment in radiotelephone ship stations operating in the 156–162 MHz band must meet the following requirements:

(1) All transmitters and remote control units must be capable of reducing the carrier power to one watt or less;

(2) Except as indicated in (g)(4) of this section, all transmitters manufactured after January 21, 1987, or in use after January 21, 1997, must automatically reduce the carrier power to one watt or less when the transmitter is tuned to 156.375 MHz or 156.650 MHz, and must be provided with a manual override switch which when held by an operator will permit full carrier power operation on 156.375 MHz and 156.650 MHz;

(3) Except as indicated in (g)(4) of this section, all ship station transmitters installed after January 9, 2006, must be capable of tuning to 156.775 MHz and 156.825 MHz and must automatically reduce the carrier power to one watt or less, with no manual override capability, when the transmitter is tuned to either 156.775 MHz or 156.825 MHz;

(4) Hand-held portable transmitters are not required to comply with the automatic reduction of carrier power in (g)(2) of this section; and

(5) Transmitters dedicated for use on public correspondence duplex channels as additional equipment to a VHF ship station in the Great Lakes which meet all pertinent rules in this part are not required to reduce their carrier power to one watt.

* * * * *

■ 14. Section 80.275 is added to read as follows:

§ 80.275 Technical Requirements for Automatic Identification Systems (AIS) equipment.

(a) Prior to submitting a certification application for an AIS device, the following information must be submitted in duplicate to the Commandant (G–MSE), U.S. Coast Guard, 2100 2nd Street, SW., Washington DC 20593–0001:

(1) The name of the manufacturer or grantee and the model number of the AIS device;

(2) Copies of the test report and test data obtained from the test facility showing that the device complies with the environmental and operational requirements identified in § 80.1101.

(b) After reviewing the information described in paragraph (a) of this section, the U.S. Coast Guard will issue a letter stating whether the AIS device satisfies all of the requirements specified in § 80.1101.

(c) A certification application for an AIS device submitted to the Commission must contain a copy of the U.S. Coast Guard letter stating that the device satisfies all of the requirements specified in § 80.1101, a copy of the technical test data, and the instruction manual(s).

§ 80.301 [Amended]

■ 14a. Section 80.301 is amended by removing paragraph (a) and redesignating paragraphs (b) through (d) as paragraphs (a) through (c).

■ 15. Section 80.302 is amended by revising paragraph (a) to read as follows:

§ 80.302 Notice of discontinuance, reduction, or impairment of service involving a distress watch.

(a) When changes occur in the operation of a public coast station which include discontinuance, relocation, reduction or suspension of a watch required to be maintained on 2182 kHz or 156.800 MHz, notification must be made by the licensee to the nearest district office of the U.S. Coast Guard as soon as practicable. The notification must include the estimated or known resumption time of the watch.

* * * * *

■ 16. Section 80.304 is revised to read as follows:

§ 80.304 Watch requirement during silence periods.

Each ship station operating on telephony on frequencies in the band 1605–3500 kHz must maintain a watch on the frequency 2182 kHz. This watch must be maintained at least twice each hour for 3 minutes commencing at x h.00 and x h.30 Coordinated Universal Time (UTC) using either a loudspeaker or headphone. Except for distress, urgency or safety messages, ship stations must not transmit during the silence periods on 2182 kHz.

§ 80.305 [Amended]

■ 17. Section 80.305 is amended by removing paragraph (a)(1) and redesignating paragraphs (a)(2) and (a)(3) as paragraphs (a)(1) and (a)(2).

§ 80.306 [Removed]

■ 18. Remove § 80.306.

■ 19. Section 80.319 is amended by revising paragraph (c) to read as follows:

§ 80.319 Radiotelegraph distress call and message transmission procedure.

* * * * *

(c) The distress message, preceded by the distress call, must be repeated at intervals until an answer is received. The radiotelegraph alarm signal may also be repeated, if necessary.

* * * * *

■ 20. Section 80.329 is amended by revising paragraph (d) to read as follows:

§ 80.329 Safety signals.

* * * * *

(d) The safety signal and call must be sent on one of the international distress frequencies (2182 kHz or 156.8 MHz radiotelephone). Stations which cannot transmit on a distress frequency may use any other available frequency on which attention might be attracted.

§ 80.330 [Amended]

■ 21. Section 80.330 is amended by removing paragraph (b) and redesignating paragraphs (c) and (d) as paragraphs (b) and (c).

§ 80.355 [Amended]

■ 22. Section 80.355 is amended by removing paragraph (b) and redesignating paragraphs (c) and (d) as paragraphs (b) and (c).

§ 80.357 [Amended]

■ 23. Section 80.357 is amended by removing paragraph (b)(2)(iv).

■ 24. Section 80.371 is amended by revising paragraphs (c)(1)(ii) introductory text and (c)(1)(iii) to read as follows:

§ 80.371 Public correspondence frequencies.

* * * * *

(c) * * *

(1) * * *

(ii) Service areas in the marine VHF 156–162 MHz band are VHF Public Coast Station Areas (VPCSAs). As listed in the table in this paragraph, VPCSAs are based on, and composed of one or more of, the U.S. Department of Commerce's 172 Economic Areas (EAs). See 60 FR 13114 (March 10, 1995). In addition, the Commission shall treat Guam and the Northern Mariana Islands, Puerto Rico and the United States Virgin Islands, American Samoa, and the Gulf of Mexico as EA-like areas, and has assigned them EA numbers 173–176, respectively. Maps of the EAs and VPCSAs are available for public inspection and copying at the FCC Public Reference Room, Room CY–A257, 445 12th Street, SW., Washington, DC 20554. Except as shown in the table, the frequency pairs listed in paragraph (c)(1)(i) of this section are available for assignment to a single licensee in each of the VPCSAs listed in the table in this paragraph. In addition to the EAs listed in the table in this paragraph, each VPCSA also includes the adjacent waters under the jurisdiction of the United States. * * *

(iii) Subject to paragraph (c)(3) of this section, each licensee may also operate on 12.5 kHz offset frequencies in areas where the licensee is authorized on both frequencies adjacent to the offset frequency, and in areas where the licensee on the other side of the offset frequency consents to the licensee's use of the adjacent offset frequency. Coordination with Canada is required for offset operations under any circumstance in which operations on either adjoining 25 kHz channel would require such coordination. *See* § 80.57 of this part.

* * * * *

■ 25. Section 80.373 is amended by revising paragraph (f) to read as follows:

§ 80.373 Private communications frequencies.

* * * * *

(f) *Frequencies in the 156–162 MHz band.* The following tables describe the carrier frequencies available in the 156–162 MHz band for radiotelephone communications between ship and private coast stations. (Note: the letter ''A'' following the channel designator indicates simplex operation on a channel designated internationally as a duplex channel.)

FREQUENCIES IN THE 156–162 MHZ BAND

Channel designator	Carrier frequency (MHz) ship transmit	Carrier frequency (MHz) coast transmit	Points of communication (intership and between coast and ship unless otherwise indicated)
Port Operations			
01A[1]	156.050	156.050	
63A[1]	156.175	156.175	
05A[2]	156.250	156.250	
65A	156.275	156.275	
66A	156.325	156.325	
12[3]	156.600	156.600	
73	156.675	156.675	
14[3]	156.700	156.700	
74	156.725	156.725	
75[18]	156.775	156.775	
76[18]	156.825	156.825	
77[4]	156.875	.....	Intership only.
20A[12]	157.000	.....	Intership only.
Navigational (Bridge-to-Bridge)[5]			
13[6]	156.650	156.650	
67[7]	156.375	156.375	
Commercial			
01A[1]	156.050	156.050	
63A[1]	156.175	156.175	
07A	156.350	156.350	
67[7]	156.375	.....	Intership only.

FREQUENCIES IN THE 156–162 MHZ BAND—Continued

Channel designator	Carrier frequency (MHz) ship transmit	Carrier frequency (MHz) coast transmit	Points of communication (intership and between coast and ship unless otherwise indicated)
08	156.400		Do.
09	156.450	156.450	
10	156.500	156.500	
11 [3]	156.550	156.550	
18A	156.900	156.900	
19A	156.950	156.950	
79A	156.975	156.975	
80A	157.025	157.025	
88A [8]	157.425		Intership only.
72 [14]	156.625		Intership only.
Digital Selective Calling			
70 [15]	156.525	156.525	
Noncommercial			
68 [17]	156.425	156.425	
09 [16]	156.450	156.450	
69	156.475	156.475	
71	156.575	156.575	
72	156.625		Intership only.
78A	156.925	156.925	
79A	156.975	156.975	Great Lakes only.
80A	157.025	157.025	Do.
67 [14]	156.375		Intership only.
Distress, Safety and Calling			
16	156.800	156.800	
Intership Safety			
06	156.300		a. Intership, or b. For SAR: Ship and aircraft for the U.S. Coast Guard.
Environmental			
15 [13]		156.750	Coast to ship only.
Maritime Control			
17 [9 10]	156.850	156.850	
Liaison and Safety Broadcasts, U.S. Coast Guard			
22A [11]	157.100	157.100	Ship, aircraft, and coast stations of the U.S. Coast Guard and at Lake Mead, Nev., ship and coast stations of the National Park Service, U.S. Department of the Interior.

[1] 156.050 MHz and 156.175 MHz are available for port operations and commercial communications purposes when used only within the U.S. Coast Guard designated Vessel Traffic Services (VTS) area of New Orleans, on the lower Mississippi River from the various pass entrances in the Gulf of Mexico to Devil's Swamp Light at River Mile 242.4 above head of passes near Baton Rouge.

[2] 156.250 MHz is available for port operations communications use only within the U.S. Coast Guard designated VTS radio protection areas of New Orleans and Houston described in § 80.383. 156.250 MHz is available for intership port operations communications used only within the area of Los Angeles and Long Beach harbors, within a 25-nautical mile radius of Point Fermin, California.

[3] 156.550 MHz, 156.600 MHz and 156.700 MHz are available in the U.S. Coast Guard designated port areas only for VTS communications and in the Great Lakes available primarily for communications relating to the movement of ships in sectors designated by the St. Lawrence Seaway Development Corporation or the U.S. Coast Guard. The use of these frequencies outside VTS and ship movement sector protected areas is permitted provided they cause no interference to VTS and ship movement communications in their respective designated sectors.

[4] Use of 156.875 MHz is limited to communications with pilots regarding the movement and docking of ships. Normal output power must not exceed 1 watt.

[5] 156.375 MHz and 156.650 MHz are available primarily for intership navigational communications. These frequencies are available between coast and ship on a secondary basis when used on or in the vicinity of locks or drawbridges. Normal output power must not exceed 1 watt. Maximum output power must not exceed 10 watts for coast stations or 25 watts for ship stations.

[6] On the Great Lakes, in addition to bridge-to-bridge communications, 156.650 MHz is available for vessel control purposes in established vessel traffic systems. 156.650 MHz is not available for use in the Mississippi River from South Pass Lighted Whistle Buoy "2" and Southwest Pass entrance Mid-channel Lighted Whistle Buoy to mile 242.4 above Head of Passes near Baton Rouge. Additionally it is not available for use in the Mississippi River-Gulf Outlet, the Mississippi River-Gulf Outlet Canal, and the Inner Harbor Navigational Canal, except to aid the transition from these areas.

[7] Use of 156.375 MHz is available for navigational communications only in the Mississippi River from South Pass Lighted Whistle Buoy "2" and Southwest Pass entrance Mid-channel Lighted Whistle Buoy to mile 242.4 above Head of Passes near Baton Rouge, and in addition over the full length of the Mississippi River-Gulf Outlet Canal from entrance to its junction with the Inner Harbor Navigational Canal, and over the full length of the Inner Harbor Navigational Canal from its junction with the Mississippi River to its entry to Lake Pontchartrain at the New Seabrook vehicular bridge.

[8] Within 120 km (75 miles) of the United States/Canada border, in the area of the Puget Sound and the Strait of Juan de Fuca and its approaches, 157.425 MHz is half of the duplex pair designated as Channel 88. In this area, Channel 88 is available to ship stations for communications with public coast stations only. More than 120 km (75 miles) from the United States/Canada border, in the area of the Puget Sound and the Strait of Juan de Fuca, its approaches, the Great Lakes, and the St. Lawrence Seaway, 157.425 MHz is available for intership and commercial communications. Outside Puget Sound area and its approaches and the Great Lakes, 157.425 MHz is also available for communications between commercial fishing vessels and associated aircraft while engaged in commercial fishing activities.

[9] When the frequency 156.850 MHz is authorized, it may be used additionally for search and rescue training exercises conducted by state or local governments.

[10] The frequency 156.850 MHz is additionally available to coast stations on the Great Lakes for transmission of scheduled Coded Marine Weather Forecasts (MAFOR), Great Lakes Weather Broadcast (LAWEB) and unscheduled Notices to Mariners or Bulletins. F3C and J3C emissions are permitted. Coast stations on the Great Lakes must cease weather broadcasts which cause interference to stations operating on 156.800 MHz until the interference problem is resolved.

[11] The frequency 157.100 MHz is authorized for search and rescue training exercises by state or local government in conjunction with U.S. Coast Guard stations. Prior U.S. Coast Guard approval is required. Use must cease immediately on U.S. Coast Guard request.

[12] The duplex pair for channel 20 (157.000/161.600 MHz) may be used for ship to coast station communications.

[13] Available for assignment to coast stations, the use of which is in accord with an agreed program, for the broadcast of information to ship stations concerning the environmental conditions in which vessels operate, *i.e.*, weather; sea conditions; time signals; notices to mariners; and hazards to navigation.

[14] Available only in the Puget Sound and the Strait of Juan de Fuca.

[15] The frequency 156.525 MHz is to be used exclusively for distress, safety and calling using digital selective calling techniques. No other uses are permitted.

[16] The frequency 156.450 MHz is available for intership, ship and coast general purpose calling by noncommercial vessels, such as recreational boats and private coast stations.

[17] The frequency 156.425 MHz is assigned by rule to private coast stations in Alaska for facsimile transmissions as well as voice communications.

[18] The frequencies 156.775 and 156.825 MHz are available for navigation-related port operations or ship movement only, and all precautions must be taken to avoid harmful interference to channel 16. Transmitter output power is limited to 1 watt for ship stations, and 10 watts for coast stations.

* * * * *

■ 26. Section 80.405 is amended by revising paragraph (c) to read as follows:

§ 80.405 Station license.

* * * * *

(c) *Posting.* (1) The current station authorization for a station other than a public coast station, or a clearly legible copy, must be posted at the principal control point of each station. If a copy is posted, it must indicate the location of the original. When the station license cannot be posted as in the case of a marine utility station operating at temporary unspecified locations or the ship or recreational boat does not have an enclosed wheelhouse, it must be kept where it will be readily available for inspection. The licensee of a station on board a ship subject to Part II or III or Title III of the Communications Act or the Safety Convention must retain the most recently expired ship station license in the station records until the first Commission inspection after the expiration date.

(2) Public coast stations authorized under this part must make available either a clearly legible copy of the authorization for each station at the principal control point of the station or an address or location where the current authorization may be found and a telephone number of that authorization's representative.

■ 27. Section 80.409 is amended by revising paragraphs (b)(2) and (c), by removing paragraphs (d)(4), (d)(5), and (d)(11), and redesignating paragraphs (d)(6) through (d)(10) as paragraphs (d)(4) through (d)(8).

§ 80.409 Station logs.

* * * * *

(b) * * *

(2) Logs containing entries required by paragraph (c) of this section must be kept either at the principal control point of the station or electronically filed at the station licensee's primary office or available to the Commission via secured access to the licensee's Internet web site. Logs containing entries required by paragraphs (e) and (f) of this section must be kept at the principal radiotelephone operating location while the vessel is being navigated. All entries in their original form must be retained on board the vessel for at least 30 days from the date of entry. Additionally, logs required by paragraph (f) of this section must be retained on board the vessel for a period of 2 years from the date of the last inspection of the ship radio station.

* * * * *

(c) *Public coast station logs.* Public coast stations must maintain a log, whether by means of written or automatic logging or a combination thereof. The log must contain the following information:

(1) "ON DUTY" must be entered by the operator beginning a duty period, followed in the case of a written log by the operator's signature. "OFF DUTY" must be entered by the operator being relieved of or terminating duty, followed in the case of a written log by the operator's signature.

(2) The date and time of making an entry must be shown opposite the entry.

(3) Failure of equipment to operate as required and incidents tending to unduly delay communication must be entered.

(4) All measurements of the transmitter frequency(ies) must be entered with a statement of any corrective action taken.

(5) Entries must be made giving details of all work performed which may affect the proper operation of the station. The entry must be made, dated and in the case of a written log signed by the operator who supervised or performed the work and, unless the operator is regularly employed on a full-time basis at the station, must also include the mailing address, class, serial number, and expiration date of the operator license.

(6) Entries must be made about the operation of the antenna tower lights when the radio station has an antenna structure requiring illumination by part 17 of this chapter.

(7) All distress or safety related calls transmitted or received must be entered, together with the frequency used and the position of any vessel in need of assistance.

* * * * *

■ 28. Section 80.471 is revised to read as follows:

§ 80.471 Discontinuance or impairment of service.

Except as specified in § 20.15(b)(3) of this chapter with respect to commercial mobile radio service providers, a public coast station must not discontinue or impair service unless authorized to do so by the Commission.

■ 29. Section 80.905 is amended by revising paragraph (a) to read as follows:

§ 80.905 Vessel radio equipment.

(a) Vessels subject to part III of title III of the Communications Act that operate in the waters described in § 80.901 must, at a minimum, be equipped as follows:

(1) Vessels operated solely within the communications range of a VHF public coast station or U.S. Coast Guard station that maintains a watch on 156.800 MHz while the vessel is navigated must be equipped with a VHF-DSC radiotelephone installation, except that a VHF radiotelephone installation without DSC capability is permitted until one year after the Coast Guard notifies the Commission that shore-based sea area A1 coverage is established. Vessels in this category must not operate more than 20 nautical miles from land.

(2) Vessels operated beyond the 20 nautical mile limitation specified in paragraph (a)(1) of this section, but not more than 100 nautical miles from the nearest land, must be equipped with a MF–DSC frequency transmitter capable of transmitting J3E emission and a receiver capable of reception of J3E emission within the band 1710 to 2850 kHz, in addition to the VHF–DSC radiotelephone installation required by paragraph (a)(1) of this section, except that a MF radiotelephone installation without DSC capability is permitted until one year after the Coast Guard notifies the Commission that shore-based sea area A2 coverage is established. The MF or MF–DSC transmitter and receiver must be capable of operation on 2670 kHz.

(3) Vessels operated more than 100 nautical miles but not more than 200 nautical miles from the nearest land must:

(i) Be equipped with a VHF–DSC radiotelephone installation, except that a VHF radiotelephone installation without DSC capability is permitted until one year after the Coast Guard notifies the Commission that shore-based sea area A1 coverage is established;

(ii) Be equipped with an MF–DSC radiotelephone transmitter and receiver meeting the requirements of paragraph (a)(2) of this section, except that a MF radiotelephone installation without DSC capability is permitted until one year after the Coast Guard notifies the Commission that shore-based sea area A2 coverage is established; and

(iii) Be equipped with either:

(A) A DSC-capable single sideband radiotelephone that complies with ITU–R Rec. (series) M.493 Class A, B or E, and is capable of operating on all distress and safety frequencies in the medium frequency and high frequency bands listed in § 80.369(a) and (b), on all of the ship-to-shore calling frequencies in the high frequency bands listed in § 80.369(d), and on at least four of the automated mutual-assistance vessel rescue (AMVER) system HF duplex channels (this requirement may be met by the addition of such frequencies to the radiotelephone installation required by paragraph (a)(2) of this section); or

(B) If operated in an area within the coverage of an INMARSAT maritime mobile geostationary satellite in which continuous alerting is available, an INMARSAT B, C, or M ship earth station, or an INMARSAT A ship earth station if installed prior to February 12, 2004.

(iv) Be equipped with a reserve power supply meeting the requirements of §§ 80.917(b), 80.919 and 80.921, and capable of powering the single sideband radiotelephone or the ship earth station (including associated peripheral equipment) required by paragraph (a)(3)(iii) of this section, including the navigation receiver referred to in § 80.905(a)(5);

(v) Be equipped with a NAVTEX receiver conforming to the following performance standards: IMO Resolution A.525(13) and ITU–R Recommendation 540;

(vi) Be equipped with a Category I 406–406.1 MHz satellite emergency position-indicating radiobeacon (EPIRB) meeting the requirements of § 80.1061 or, if the ship is not operating in sea area A4, as defined in § 80.1069(a)(4), an automatic float-free INMARSAT–E EPIRB meeting the requirements of § 80.1063; and

(vii) Participate in the AMVER system while engaged on any voyage where the vessel is navigated in the open sea for more than 24 hours. Copies of the AMVER Bulletin are available at: AMVER Maritime Relations, USCG Battery Park Building, Room 201, New York, NY 10004–1499. Phone 212–668–7764; Fax 212–668–7684.

(4) Vessels operated more than 200 nautical miles from the nearest land must:

(i) Be equipped with two VHF–DSC radiotelephone installations, except that VHF radiotelephone installations without DSC capability are permitted until one year after the Coast Guard notifies the Commission that shore-based sea area A1 coverage is established;

(ii) Be equipped with an MF–DSC radiotelephone transmitter and receiver meeting the requirements of paragraph (a)(2) of this section, except that a MF radiotelephone installation without DSC capability is permitted until one year after the Coast Guard notifies the Commission that shore-based sea area A2 coverage is established;

(iii) Be equipped with either:

(A) A DSC-capable independent single sideband radiotelephone that complies with ITU–R Rec. (series) M.493 Class A, B or E, and is capable of operating on all distress and safety frequencies in the medium frequency and high frequency bands listed in § 80.369(a) and (b), on all of the ship-to-shore calling frequencies in the high frequency bands listed in § 80.369(d), and on at least four of the automated mutual-assistance vessel rescue (AMVER) system HF duplex channels; or

(B) If operated in an area within the coverage of an INMARSAT maritime mobile geostationary satellite in which continuous alerting is available, an INMARSAT B, C, or M ship earth station, or an INMARSAT A ship earth station if installed prior to February 12, 2004.

(iv) Be equipped with a reserve power supply meeting the requirements of §§ 80.917(b), 80.919 and 80.921, and capable of powering the single sideband radiotelephone or the ship earth station (including associated peripheral equipment) required by paragraph (a)(4)(iii) of this section, including the navigation receiver referred to in § 80.905(a)(5);

(v) Be equipped with a NAVTEX receiver conforming to the following performance standards: IMO Resolution A.525(13) and ITU–R Recommendation 540;

(vi) Be equipped with a Category I 406–406.1 MHz satellite emergency position-indicating radiobeacon (EPIRB) meeting the requirements of § 80.1061 or, if the ship is not operating in sea area A4, as defined in § 80.1069(a)(4), an automatic float-free INMARSAT–E EPIRB meeting the requirements of § 80.1063;

(vii) Be equipped with a radiotelephone distress frequency watch receiver meeting the requirements of § 80.269;

(viii) Be equipped with an automatic radiotelephone alarm signal generator meeting the requirements of § 80.221; and

(ix) Participate in the AMVER system while engaged on any voyage where the vessel is navigated in the open sea for more than 24 hours. Copies of the AMVER Bulletin are available at: AMVER Maritime Relations, USCG Battery Park Building, Room 201, New York, NY 10004–1499. Phone 212–668–7764; Fax 212–668–7684.

(5) Vessels must comply with the requirements for a navigation receiver or manual updating of position information contained in § 80.1085(c).

* * * * *

■ 30. Section 80.1061 is amended by revising paragraphs (e) and (f) to read as follows:

§ 80.1061 Special requirements for 406.0–406.1 MHz EPIRB stations.

* * * * *

(e) An identification code, issued by the National Oceanic and Atmospheric Administration (NOAA), the United States Program Manager for the 406.025 MHz COSPAS/SARSAT satellite system, must be programmed in each EPIRB unit to establish a unique identification for each EPIRB station. With each marketable EPIRB unit, the manufacturer or grantee must include a postage pre-paid registration card printed with the EPIRB identification code addressed to: NOAA/SARSAT Beacon Registration, E/SP3, Federal Building 4, Room 3320, 5200 Auth Road, Suitland, MD 20746–4304. The registration card must request the owner's name, address, telephone number, type of ship, alternate emergency contact and other information as required by NOAA. The registration card must also contain information regarding the availability to register the EPIRB at NOAA's online web-based registration database at: *http://www/beaconregistration.noaa.gov.* In addition, the following statement must be included: ''WARNING—failure to register this EPIRB with NOAA before installation could result in a monetary forfeiture being issued to the owner.''

(f) To enhance protection of life and property it is mandatory that each 406.0–406.1 MHz EPIRB be registered with NOAA before installation and that information be kept up-to-date. Therefore, in addition to the identification plate or label requirements contained in §§ 2.925 and 2.926 of this chapter, each 406.0–406.1 MHz EPIRB must be provided on the outside with a clearly discernible permanent plate or label containing the following statement: ''The owner of this 406.0–406.1 MHz EPIRB must register the NOAA identification code contained on this label with the National Oceanic and Atmospheric Administration (NOAA) whose address is: NOAA, NOAA/SARSAT Beacon Registration, E/SP3, Federal Building 4, Room 3320, 5200 Auth Road, Suitland, MD 20746–4304.'' Vessel owners shall advise NOAA in writing upon change of vessel or EPIRB ownership, transfer of EPIRB to another vessel, or any other change in registration information. NOAA will provide registrants with proof of registration and change of registration postcards.

* * * * *

■ 31. Section 80.1063 is added to read as follows:

§ 80.1063 Special requirements for INMARSAT–E EPIRB stations.

(a) Notwithstanding the provisions in paragraph (b) of this section, INMARSAT–E EPIRBs must meet all the technical and performance standards contained in IEC 61097–5 Ed. 1.0, titled ''Global maritime and distress safety system (GMDSS)—Part 5: INMARSAT–E—Emergency position indicating radio beacon (EPIRB) operating through the INMARSAT system—Operational and performance requirements, methods of testing and required test results,'' including Annexes A, B, and C, 1997. IEC 61097–5 Ed. 1.0, including Annexes A, B, and C, is incorporated by reference (see § 80.1101).

(b) Prior to submitting a certification application for an INMARSAT–E radiobeacon, the radiobeacon must be certified by INMARSAT as complying with IEC 61097–5 Ed. 1.0. In addition, the radiobeacon must be tested as to compliance with the environmental and operational requirements identified in this paragraph (b) by the test facility which conducted the INMARSAT certification tests, or a test facility recognized by the U.S. Coast Guard. Information regarding recognized test facilities may be obtained from Commandant (G–MSE), U.S. Coast Guard, 2100 2nd Street, SW., Washington, D.C. 20593–0001, *http://www.uscg.mil/hq/g-m/mse/lablist/161.011.htm.*

(1) After an INMARSAT–E PIRB has been certified by the test facility, the following information must be submitted in duplicate to the Commandant (G–MSE), U.S. Coast Guard, 2100 2nd Street, SW., Washington D.C. 20593–0001:

(i) The name of the manufacturer or grantee and the model number of the radiobeacon;

(ii) Copies of the Inmarsat certification of compliance with IEC 61097–5 Ed. 1.0;

(iii) Copies of the test report and test data obtained from the test facility showing that the radiobeacon complies with IEC 61097–5 Ed. 1.0 and the environmental and operational requirements identified in this paragraph (b); and

(iv) Instruction manuals associated with the radiobeacon, description of the test characteristics of the radiobeacon including assembly drawings, electrical schematics, description of parts list, specifications of materials, and the manufacturer's quality assurance program.

(2) After reviewing the information described in paragraph (c)(1) of this section, the U.S. Coast Guard will issue a letter stating whether the radiobeacon satisfies all of the requirements specified in paragrpahs (a) and (b) of this section.

(c) A certification application for an INMARSAT–EPIRB submitted to the Commission must also contain a copy of the U.S. Coast Guard letter stating that the radiobeacon satisfies all of the requirements specified in paragraphs (a) and (b) of this section, a copy of the technical test data, and the instruction manual(s).

(d) The manufacturer or grantee must include with each marketable INMARSAT–E EPIRB appropriate material for registration of the radiobeacon with INMARSAT, along with a written warning that failure to register the radiobeacon could delay rescue services in an emergency.

(e) To enhance protection of life and property it is mandatory that each INMARSAT–E EPIRB be registered with INMARSAT before installation and that information be kept up-to-date. Therefore, in addition to the identification plate or label requirements contained in §§ 2.925 and 2.926 of this chapter, each INMARSAT–E EPIRB must be provided on the outside with a clearly discernable permanent plate or label containing the following statement: ''The owner of this INMARSAT–E EPIRB must register the NOAA identification code contained on this label with INMARSAT at the following address: INMARSAT, 99 City Road, London, EC1Y 1AX, United Kingdom.'' Vessel owners shall advise INMARSAT in writing upon change of vessel or EPIRB ownership, transfer of EPIRB to another vessel, or any other change in registration information.

(f) For INMARSAT–E EPIRBs whose identification code can be changed after manufacture, the identification code shown on the plate or label must be easily replaceable using commonly available tools.

■ 32. Section 80.1077 is revised to read as follows:

§ 80.1077 Frequencies.

The following table describes the frequencies used in the Global Maritime Distress and Safety System:

Alerting:	
406.0–406.1 EPIRBs	406.0–406.1 MHz (Earth-to-space). 1544–1545 MHz (space-to-Earth).
INMARSAT–E EPIRBs	1626.5–1645.5 MHz (Earth-to-space).
INMARSAT Ship Earth Stations capable of voice and/or direct printing.	1626.5–1645.5 MHz (Earth-to-space).
VHF DSC Ch. 70	156.525 MHz.[1]
MF/HF DSC[2] [11]	2187.5 kHz[3], 4207.5 kHz, 6312 kHz, 8414.5 kHz, 12577 kHz, and 16804.5 kHz.
On-scene communications:	
VHF Ch.16	156.8 MHz.
MF Radiotelephony	2182 kHz.
NBDP	2174.5 kHz.
Communications involving aircraft:	
On-scene, including search and rescue	156.8 MHz[4], 121.5 MHz[5], 123.1 MHz, 156.3 MHz, 2182 kHz, 3023 kHz, 4125 kHz, and 5680 kHz.[6]
Locating signals:	
406–406.1 EPIRB Beacons	121.5 MHz.
9 GHz radar transponders	9200–9500 MHz.
Maritime safety information (MSI):	
International NAVTEX	518 kHz.[7]
Warnings	490 kHz, 4209.5 kHz.
NBDP	4210 kHz, 6314 kHz, 8416.5 kHz, 12579 kHz, 16806.5 kHz, 19680.5 kHz, 22376 kHz, 26100.5 kHz.
Satellite	1530–1545 MHz.[10]
General distress and safety communications and calling:	
Satellite	1530–1544 MHz (space-to-Earth) and 1626.5–1645.5 MHz (Earth-to-space).[10]
Radiotelephony	2182 kHz, 4125 kHz, 6215 kHz, 8291 kHz, 12290 kHz, 16420 kHz, and 156.8 MHz.
NBDP	2174.5 kHz, 4177.5 kHz, 6268 kHz, 8376.5 kHz, 12520 kHz, and 16695 kHz.
DSC	2187.5 kHz, 4207.5 kHz, 6312 kHz, 8414.5 kHz, 12577 kHz, 16804.5 kHz, and 156.525 MHz.
Survival craft:	
VHF radiotelephony	156.8 MHz and one other 156–174 MHz frequency
9 GHz radar transponders	9200–9500 MHz.

[1] Frequency 156.525 MHz can be used for ship-to-ship alerting and, if within sea area A1, for ship-to-shore alerting.
[2] For ships equipped with MF/HF equipment, there is a watch requirement on 2187.5 kHz, 8414.5 kHz, and one other frequency.
[3] Frequency 2187.5 kHz can be used for ship-to-ship alerting and, if within sea area A2, for ship-to-shore alerting.
[4] Frequency 156.8 MHz may also be used by aircraft for safety purposes only.
[5] Frequency 121.5 MHz may be used by ships for aeronautical distress and urgency purposes.
[6] The priority of use for ship-aircraft communications is 4125 kHz, then 3023 kHz. Additionally, frequencies 123.1 MHz, 3023 kHz and 5680 kHz can be used by land stations engaged in coordinated search and rescue operations.
[7] The international NAVTEX frequency 518 kHz is the primary frequency for receiving maritime safety information. The other frequencies are used only to augment the coverage or information provided on 518 kHz.
[8] [Reserved]
[9] [Reserved]
[10] In addition to EPIRBs, 1544–1545 MHz can be used for narrowband distress and safety operations and 1645.5–1646.5 MHz can be used for relay of distress alerts between satellites. Feeder links for satellite communications are assigned from the fixed satellite service, see 47 CFR § 2.106.
[11] Routine calling is not permitted on MF and HF DSC frequencies.

* * * * *

■ 33. Section 80.1083 is amended by adding paragraphs (e) through (g) to read as follows:

§ 80.1083 Ship radio installations.

* * * * *

(e) In passenger ships, a distress panel shall be installed at the conning position. This panel shall contain either one single button which, when pressed, initiates a distress alert using all radiocommunications installations required on board for that purpose or one button for each individual installation. The panel shall clearly and visually indicate whenever any button or buttons have been pressed. Means shall be provided to prevent inadvertent activation of the button or buttons. If the satellite EPIRB is used as the secondary means of distress alerting and is not remotely activated, it shall be acceptable to have an additional EPIRB installed in the wheelhouse near the conning position.

(f) In passenger ships, information on the ship's position shall be continuously and automatically provided to all relevant radiocommunications equipment to be included in the initial distress alert when the button or buttons on the distress panel is pressed.

(g) In passenger ships, a distress alarm panel shall be installed at the conning position. The distress alarm panel shall provide visual and aural indication of any distress alert or alerts received on board and shall also indicate through which radiocommunication service the distress alerts have been received.

■ 34. Section 80.1085 is amended by revising paragraph (a)(6)(i) and by adding paragraph (d) to read as follows:

§ 80.1085 Ship radio equipment-General.

(a) * * *

(6) * * *

(i) Capable of transmitting a distress alert through the polar orbiting satellite service operating in the 406.0–406.1 MHz band (406.0–406.1 MHz EPIRB) of, if the ship is not operating in sea area A4, as defined in § 80.1069(a)(4), the 1.6 GHz band (INMARSAT–E EPIRB); and

* * * * *

(d) Every passenger ship shall be provided with means for two-way on-scene radiocommunications for search and rescue purposes using the aeronautical frequencies 121.5 and 123.1 MHz from the position from which the ship is normally navigated.

■ 35. Section 80.1087 is amended by revising paragraph (a)(2) to read as follows:

§ 80.1087 Ship radio equipment—Sea area A1.

(a) * * *

(2) Through the polar orbiting satellite service on 406.0–406.1 MHz or the INMARSAT–E service in the 1.6 GHz band (this requirement may be fulfilled by the EPIRB required by § 80.1085(a)(6), either by installing the EPIRB close to, or by allowing remote activation from, the position from which the ship is normally navigated); or

* * * * *

■ 36. Section 80.1089 is amended by revising paragraph (a)(3)(i) to read as follows:

§ 80.1089 Ship radio equipment—Sea areas A1 and A2.

(a) * * *

(3) * * *

(i) Through the polar orbiting satellite service on 406.0–406.1 MHz or the INMARSAT–E service in the 1.6 GHz band (this requirement may be fulfilled by the EPIRB required by § 80.1085(a)(6), either by installing the EPIRB close to, or by allowing remote activation from, the position from which the ship is normally navigated); or

* * * * *

■ 37. Section 80.1091 is amended by revising paragraph (a)(4)(i), redesignating paragraph (b)(3)(ii) as (b)(3)(iii), and adding a new paragraph (b)(3)(ii) to read as follows:

§ 80.1091 Ship radio equipment—Sea areas A1, A2, and A3.

* * * * *

(a) * * *

(4) * * *

(i) Through the polar orbiting satellite service on 406.0–406.1 MHz or the INMARSAT–E service in the 1.6 GHz band (this requirement may be fulfilled by the EPIRB required by § 80.1085(a)(6), either by installing the EPIRB close to, or by allowing remote activation from, the position from which the ship is normally navigated); or

* * * * *

(b) * * *

(3) * * *

(ii) Through the INMARSAT–E service in the 1.6 GHz band (this requirement may be fulfilled by the EPIRB required by § 80.1085(a)(6), either by installing the EPIRB close to, or by allowing remote activation from, the position from which the ship is normally navigated); or

* * * * *

■ 38. Section 80.1093 is amended by revising paragraph (a) to read as follows:

§ 80.1093 Ship radio equipment—Sea areas A1, A2, A3, and A4.

* * * * *

(a) In addition to meeting the requirements of § 80.1085 of this part, ships engaged on voyages in all sea areas must be provided with the radio installations and equipment required by § 80.1091(b), except that the equipment required by § 80.1091(b)(3)(ii) and § 80.1091(b)(3)(iii) cannot be accepted as an alternative to that required by § 80.1091(b)(3)(i), which must always be provided.

* * * * *

■ 39. Section 80.1101 is amended by adding a new sentence to the end of paragraph (b) introductory text, by redesignating paragraph (c)(11) as (c)(13) and adding new paragraphs (c)(11) and (c)(12) to read as follows:

§ 80.1101 Performance standards.

* * * * *

(b) * * *

The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(c) * * *

(11) *INMARSAT–E EPIRBs:* (i) IMO Resolution A.812(19), ''Performance Standards for Float-Free Satellite EPIRBs Operating Through the Geostationary INMARSAT Satellite System on 1.6 GHz,'' adopted 23 November 1995, and Annex, ''Recommendation on Performance.''.

(ii) IMO Resolution A.662(16), ''Performance Standards for Float-Free Release and Activation Arrangements for Emergency Radio Equipment,'' with Annex, adopted 19 October 1989.

(iii) Recommendation ITU–R M.632–3, ''Transmission Characteristics of a Satellite Emergency Position Indicating Radio Beacon (Satellite EPIRB) System Operating Through Geostationary Satellites in the 1.6 GHz Band,'' 1997.

(iv) IEC 61097–5, First Edition ''Global maritime distress and safety system (GMDSS)—Part 5: Inmarsat–E Emergency position indicating radio beacon (EPIRB) operating through the Inmarsat system—operational and performance requirements, methods of testing and required test results,'' including Annexes A, B, and C, 1997.

(v) The INMARSAT E–EPIRBs must also comply with § 80.1063.

(12) *Automatic Identification Systems (AIS):* (i) ITU–R M.1371–1, ''Technical characteristics for a universal shipborne automatic identification system using time division multiple access in the VHF maritime mobile band,'' with Annexes, August 2001.

(ii) IMO Resolution MSC.74(69), ''Adoption of New and Amended Performance Standards, Annex 3 Recommendation on Performance Standards for a Universal Shipborne Automatic Identification Systems (AIS),'' adopted 12 May 1998.

(iii) IEC 61162–1, Second Edition, ''Maritime navigation and radiocommunication equipment and systems—Digital interfaces—Part 1: Single talker and multiple listeners,'' July 2000.

(iv) IEC 61162–100, Edition 1.0, ''Maritime navigation and radiocommunication equipment and systems—Digital interfaces—Part 100: Single talker and multiple listeners—Extra requirements to IEC 61162–1 for the UAIS,'' April 2002.

(v) IEC 61993–2, First Edition, ''Maritime navigation and radiocommunication equipment and systems—Automatic identification systems (AIS)—Part 2: Class A shipborne equipment of the universal automatic identification system (AIS)—Operational and performance requirements, methods of test and required test results,'' December 2001, with Annexes.

* * * * *

■ 40. Section 80.1103 is amended by revising paragraphs (b) and (c) to read as follows:

§ 80.1103 Equipment authorization.

* * * * *

(b) Applicants for certification must submit with their applications measurement data sufficiently complete to ensure compliance with the technical parameters. The application must include the items listed in 47 CFR 2.1033. Additional measurement data or information may be requested depending upon the equipment. For items not listed in § 2.1033 of this chapter, the applicant must attest that the equipment complies with performance standards as specified in § 80.1101 and, where applicable, that

measurements have been made that demonstrate the necessary compliance. Submission of representative data demonstrating compliance is not required unless requested by the Commission.

(c) Applicants for verification must attest that the equipment complies with performance standards as specified in § 80.1101 and, where applicable, that measurements have been made that demonstrate the necessary compliance. Submission of representative data demonstrating compliance is not required unless requested by the Commission. An application must include the items listed in §§ 2.953 and 2.955 of this chapter and a copy of the INMARSAT type-approval certification indicating that equipment meets GMDSS standards and includes all peripheral equipment associated with the specific unit under review.

* * * * *

[FR Doc. 04–23759 Filed 11–5–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 04–3334, MM Docket No. 01–47, RM–10063, RM–10119, RM–10120]

Radio Broadcasting Services; Brady, Hico, Meridian, San Saba, Richland Springs, Teague, and Valley Mills, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document dismisses a petition filed by Valley Mills Radio Broadcasting proposing the allotment of Channel 237C2 at Valley Mills, Texas, as its first local service. *See* 66 FR 12921, published March 1, 2001. This document grants, in part, a counterproposal filed by Roy Henderson and Pecan Bayou Radio by allotting Channel 285A to Hico, Texas, as its first local service. To accommodate this allotment, the document also substitutes Channel 237A for Channel 285A at Meridian, Texas. This document also grants a counterproposal filed by Teague Broadcasting Company requesting the allotment of Channel 237C3 at Teague, Texas, as its first local service. *See* **SUPPLEMENTARY INFORMATION.**

DATES: Effective January 5, 2005.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order,* MM Docket No. 01–47 adopted October 20, 2004, and released October 25, 2004. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 Twelfth Street, SW., Washington, DC 20554. 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 20054, telephone 1–800–378–3160 or *http://www.BCPIWEB.com.* The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the General Accounting Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

Channel 285A can be allotted to Hico consistent with the Commission's minimum distance separation requirements at city reference coordinates. The reference coordinates for Channel 285A at Hico are 31–58–54 North Latitude and 98–01–54 West Longitude. Channel 237A can be allotted to Meridian consistent with the Commission's minimum distance separation requirements provided there is a site restriction of 7.4 kilometers (4.6 miles) northwest of the community. The reference coordinates for Channel 237A at Meridian are 31–59–07 North Latitude and 97–41–22 West Longitude. Channel 237C3 can be allotted to Teague, in compliance with the Commission's minimum distance separation requirements provided there is a site restriction of 19.6 kilometers (12.2 miles) north of the community. The reference coordinates for Channel 237C3 at Teague are 31–47–33 North Latitude and 96–12–39 West Longitude.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

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.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Hico, Channel 285A, by removing Channel 285A and by adding Channel 237A at Meridian; and by adding Teague, Channel 237C3.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 04–24831 Filed 11–5–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 04–3336; MB Docket No. 04–33; RM–10847]

Radio Broadcasting Services; Cordele, Dawson, and Pinehurst, GA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In response to a *Notice of Proposed Rule Making,* 69 FR 12296 (March 16, 2004) this *Report and Order* upgrades Channel 251A, Station WMRZ(FM), Dawson, Georgia, to Channel 251C3; reallots Channel 252A, Station WQXZ(FM), Cordele, Georgia, to Pinehurst, Georgia, and modifies Station WQXZ(FM)'s license accordingly. The *Report and Order* also dismisses a pleading filed as a counterproposal, which proposed the allotment of Channel 252A to Coolidge, Georgia, as unacceptable for consideration. The coordinates for Channel 251C3 at Dawson, Georgia, are 31–37–25 NL and 84–19–49 WL, with a site restriction of 20 kilometers (12.4 miles) southeast of Dawson. The coordinates for Channel 252A at Pinehurst, Georgia are 32–10–03 NL and 83–37–51 WL, with a site restriction of 12.9 kilometers (8.0 miles) east of Pinehurst.

DATES: Effective December 10, 2004.

FOR FURTHER INFORMATION CONTACT: R. Barthen Gorman, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MB Docket No. 04–33, adopted October 20, 2004, and released October 25, 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, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or *http://www.BCPIWEB.com.* The Commission will send a copy of this *Report and*

Order in a report to be sent to Congress and the General Accounting Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

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

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for Part 73 reads as follows:

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

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Georgia, is amended by removing Cordele, Channel 252A, by removing Channel 251A and adding Channel 251C3 at Dawson, and by adding Pinehurst, Channel 252A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 04–24832 Filed 11–5–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 04–3337; MB Docket No. 04–150; RM–10857]

Radio Broadcasting Services; Burlington and Trenton, NJ

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In response to petition for rule making filed by Nassau Broadcasting, ll, L.L.C. this document reallots Channel 248B from Trenton to Burlington, New Jersey, and modifies the Station WPST license to specify operation on Channel 248B at Burlington. *See* 69 FR 25874, May 10, 2004. The reference coordinates for the Channel 248B allotment at Burlington, NewJersey, are 40–14–05 and 74–46–02. With this action, the proceeding is terminated.

DATES: Effective December 10, 2004.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Media Bureau, (202) 418–2177.

SUPPLEMENTARY INFORMATION: This is a synopsis of the *Report and Order* in MB Docket No. 04–150 adopted October 20, 2004, and released October 25, 2004. The full text of this decision is available for inspection and copying during normal business hours in the FCC Reference Information Center at Portals ll, CY–A257, 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or *http://www.BCPIWEB.com*. The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

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.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under New Jersey, is amended by removing Channel 248B at Trenton, and adding Burlington, Channel 248B.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 04–24829 Filed 11–5–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 04–3338; MB Docket No. 02–248; RM–10537, 10710]

Radio Broadcasting Services; Markham, Smiley, and Yoakum, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In response to a *Notice of Proposed Rule Making,* 67 FR 57779 (September 12, 2002), this *Report and Order* allots Channel 280A to Smiley, Texas, as its first local aural transmission service. It also dismisses a counterproposal filed by New Ulm Broadcasting Company (''New Ulm'') at New Ulm's request and dismisses a counterproposal submitted by LBR Enterprises, Inc. as unacceptable for consideration. The coordinates for Channel 280A at Smiley, Texas, are 29–14–17 NL and 97–32–07 WL, with a site restriction of 10.3 kilometers (6.4 miles) east of Smiley. The Mexican Government has concurred with this allotment.

DATES: Effective December 10, 2004.

FOR FURTHER INFORMATION CONTACT: R. Barthen Gorman, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order* in MB Docket No. 02–248, adopted October 20, 2004, and released October 25, 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, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or *http://www.BCPIWEB.com.* The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

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

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 reads as follows:

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

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Smiley, Channel 280A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 04–24830 Filed 11–5–04; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 040713206–4292–02; I.D. 070704F]

RIN 0648–AR77

Fisheries of the Exclusive Economic Zone Off Alaska; Revisions to the Annual Harvest Specifications Process for the Groundfish Fisheries of the Gulf of Alaska and the Bering Sea and Aleutian Islands Management Area

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

ACTION: Final rule.

SUMMARY: NMFS issues a final rule that implements Amendment 48 to the Fishery Management Plan (FMP) for Groundfish of the Gulf of Alaska (GOA) and Amendment 48 to the FMP for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI) (Amendments 48/48). Amendments 48/48 revise the administrative process used to establish annual harvest specifications for the groundfish fisheries of the GOA and the BSAI and update the FMPs by revising the description of the groundfish fisheries and participants, revising the name of the BSAI FMP, revising text to simplify wording and correct typographical errors, and revising the description of the North Pacific Fishery Management Council (Council) Groundfish Plan Teams' responsibilities. This action is necessary to manage fisheries based on the best scientific information available, to provide adequate opportunity for prior public review and comment to the Secretary of Commerce (Secretary) on Council recommendations, to provide additional opportunity for Secretarial review, to minimize unnecessary disruption to fisheries, to promote the public's understanding, and to promote administrative efficiency. The final rule revises regulations to implement the new harvest specifications process in Amendments 48/48 and revises the name of the BSAI FMP. This action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the FMPs, and other applicable laws.

DATES: Effective December 8, 2004, except that the amendments to §§ 679.20(c)(5) and (c)(6) and 679.62(a)(3) will be effective April 1, 2005.

ADDRESSES: Copies of the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) and the Final Regulatory Flexibility Analysis (FRFA) prepared for Amendments 48/48 and the final rule may be obtained by mail from NMFS Alaska Region, P. O. Box 21668, Juneau, AK 99802–1668, Attn: Lori Durall, or from the NMFS Alaska Region website at *www.fakr.noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Melanie Brown, 907–586–7228 or *melanie.brown@noaa.gov*.

SUPPLEMENTARY INFORMATION: The groundfish fisheries in the Exclusive Economic Zone of the GOA and the BSAI are managed under the FMPs. The Council prepared the FMPs under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801, *et seq.* Regulations implementing the FMPs appear at 50 CFR part 679. General regulations governing U.S. fisheries also appear at 50 CFR part 600.

The Council submitted Amendments 48/48 for Secretarial review and a notice of availability (NOA) of the FMP amendments was published in the **Federal Register** on July 14, 2004 (69 FR 42128), with comments on the FMP amendments invited through September 13, 2004. A complete description of the amendments is in the NOA. The proposed rule for this action was published in the **Federal Register** on July 27, 2004 (69 FR 44634), with comments on the proposed rule invited through September 10, 2004. Four letters of comment were received on the FMP amendments and the proposed rule. Comments are summarized and responded to under Comments and Responses, below. The Secretary approved Amendments 48/48 on October 12, 2004.

Background

Amendments 48/48 were unanimously recommended by the Council in October 2003. These amendments revise the administrative process used to establish harvest specifications for the groundfish fisheries of the BSAI and GOA. Harvest specifications establish specific limits on the commercial harvest of groundfish and are used to manage the groundfish fisheries. Harvest specifications include total allowable catch (TAC), acceptable biological catch (ABC), overfishing levels, and prohibited species catch amounts, and apportionments thereof, which have been recommended by the Council. The current regulations authorize annual harvest specifications that are applicable January 1 through December 31. The objectives in revising the harvest specifications process are to: (1) manage fisheries based on the best scientific information available, (2) provide adequate opportunity for prior public review and comment to the Secretary on Council recommendations, (3) provide additional opportunity for Secretarial review, (4) minimize unnecessary disruption to fisheries and public confusion, and (5) promote administrative efficiency.

The changes to the harvest specifications process under Amendments 48/48 and considerations in establishing harvest specifications are described in the proposed rule (69 FR 44634, July 27, 2004). This action provides consistency between the groundfish FMPs for the harvest specifications process and provides flexibility during the harvest specifications process to react to the best available science. Amendments 48/48 allow harvest specifications to be effective for up to two fishing years, allowing for the use of either an annual or biennial harvest specifications process. For species on an annual harvest specifications process schedule, two years of harvest specifications will be established, with the second year of specifications being superceded in approximately March or June of the second year by the new set of two years of harvest specifications established each year. Specifying annually two-year harvest specifications is necessary to allow for Administrative Procedure Act rulemaking requirements to be met after the December Council recommendations without disrupting the start of the groundfish fisheries and to ensure that harvest specifications can be updated on an annual basis. A full second year of harvest specifications also is necessary to provide the annual TAC basis for the seasonal apportionment of harvest and associated fisheries that are conducted in the early part of the fishing year.

The stock assessment models used for determining the harvest specifications use two-year projections for biomass and ABC. The frequency of fishery resource surveys also affects whether new information is available to support adjustments to harvest specifications on an annual or biennial basis. Allowing specifications to be effective for up to two years fits well with the frequency of stock projections that must be used for the harvest specifications and provides the Council and NMFS the flexibility to adjust the specifications process frequency in response to potential changes in the frequency of stock assessment surveys or other stock

assessment data or administrative issues.

Regulatory Amendments

Amendment 48 to the BSAI FMP revises the title of the FMP to read ''The Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area.'' This change provides a more concise description of the BSAI FMP, establishes consistency with the name of the GOA groundfish FMP, and reduces confusion for users of the two documents. In § 679.1(b), the title of the BSAI FMP is revised to reflect the new title resulting from the approval of Amendment 48 to the BSAI FMP.

Sections 679.20 and 679.21 are revised to implement the new administrative process for harvest specifications under Amendments 48/48. In §§ 679.20(c)(1) and (c)(3) and 679.21(d)(1)(i), (e)(1)(ii), (e)(1)(iii), and (e)(6)(i), the revisions authorize harvest specifications to remain in effect for up to two fishing years, allowing time to comply with rulemaking requirements and ensuring that management is based on the best scientific information available.

Section 679.20(c)(1) is further revised to remove the requirement to address the U. S. harvesting and processing capacity in the proposed harvest specifications. This requirement was necessary when foreign groundfish fishing occurred before the 1990s. Harvesting and processing groundfish in Alaskan waters are performed exclusively by U. S. owned and operated vessels and processors under the Magnuson-Stevens Act and the American Fisheries Act (AFA). Amendments 48/48 remove references to allocations to foreign fishing in the FMPs, and this revision makes the regulations consistent with the FMPs.

The final rule allows NMFS to specify the length of the public comment period for the proposed harvest specifications when the proposed specifications are published. Current regulations require a public comment period of 30 days (§§ 679.20(c)(1), 679.21(d)(2), and 679.21(e)(6)(ii)). The final rule affords NMFS the discretion to specify a comment period of a reasonable period given the length of the document and the complexity of the issues presented when the proposed specifications are published.

The final rule rescinds provisions for interim harvest specifications at § 679.20(c)(2) on April 1, 2005. However, as NMFS implements the new harvest specification process, interim harvest specifications are needed in 2005 until the new harvest specifications are effective. The use of interim harvest specifications until April 1, 2005, ensures no disruption to the 2005 groundfish fisheries prior to the effective date of the final 2005 harvest specifications. Once harvest specifications are implemented under Amendments 48/48, interim harvest specifications no longer are needed. Thus, the applicable regulatory provision authorizing interim harvest specifications is rescinded on April 1, 2005.

The species listed for seasonal allowances for the final harvest specifications under §§ 679.20 (c)(1)(ii), (c)(1)(iii), (c)(3)(ii) and (c)(3)(iii) are revised by the final rule. The Steller sea lion protection measures (68 FR 204, January 2, 2003) require the seasonal apportionment of the harvest of Pacific cod, pollock, and Atka mackerel in the BSAI and of Pacific cod and pollock in the GOA. The current regulations reference seasonal harvest specifications only for pollock in the BSAI and GOA. The final rule adds Pacific cod and Atka mackerel seasonal allowances to the BSAI harvest specifications and Pacific cod seasonal allowances to the GOA harvest specifications. Paragraphs (c)(1)(ii) and (c)(1)(iii) of the same section also are revised to be consistent with (c)(3)(ii) and (c)(3)(iii) of the same section so that proposed and final harvest specifications contents are consistent.

The final rule revises §§ 679.20(c)(5) and (c)(6), and 679.62(a)(3) to remove references to interim harvest specifications. Interim harvest specifications will not be used once the new harvest specifications process is effective. These revisions will be effective April 1, 2005, when the regulations for interim harvest specifications at § 679.20(c)(2) are removed.

No changes were made to the final rule from the proposed rule.

Comments and Responses

Four letters containing 11 unique comments were received regarding the amendments and proposed rule. The comments are summarized and responded to below.

Comment 1. Concern exists regarding use of a biennial harvest specifications process for rockfish species which have TACs established at or near the ABCs. Rockfish species are of particular concern because of their biological sensitivity and high economic value. Significant changes have occurred for some of these species between the proposed and final TAC values based on information available between surveys. Allowing specifications for rockfish to be based on two year old surveys may harm the stocks by allowing too much harvest or may unnecessarily constrain the fishery. Under the future management programs, rockfish harvest likely will be conducted up to the TAC level, so that a TAC set at too high a level has more potential for adverse impacts on the stock.

Response. Amendments 48/48 allow NMFS to adjust the frequency of harvest specifications for a particular species or species group to ensure the use of best available science information. Specifications may be effective for up to two years, but the final rule does not require a biennial harvest specifications process for any GOA species. The EA/RIR/IRFA for Amendments 48/48 (see **ADDRESSES**) analyzes the impact of using a biennial process for certain long-lived GOA species, including rockfish, so that the Council and NMFS can make an informed decision during the harvest specifications process in October through December of each year as to whether a particular species should be managed using biennial or annual harvest specifications. The Council has recommended that GOA rockfish be managed on a biennial harvest specifications process based on the information available in the EA/RIR/IRFA for Amendments 48/48. However, new fishery information will be considered during the development of harvest specifications to determine the appropriate effectiveness period of specifications for GOA rockfish species within the two-year maximum. Concerns about the frequency of the harvest specifications process should be brought to the Council's groundfish plan teams and Science and Statistical Committee for consideration during their September and October meetings, respectively.

Comment 2. The primary objective of this rule should be fish health and abundance. The allowance of continual overfishing is severely impacting our children's heritage. The intention of this rule is to add more bureaucracy to confuse the public on how much of our children's heritage is being taken by commercial fisheries.

Response. NMFS' primary objective during the harvest specifications process is the conservation and management of fish resources. Annual or biennial review of the stock assessments for each managed species and the setting of TACs at levels that prevent overfishing help accomplish this objective. Currently, no Alaska groundfish species are known to be experiencing overfishing. This rule provides a meaningful opportunity to the public to review and comment on

harvest specifications and is not bureaucratic.

Comment 3. Making a point of helping small businesses is ridiculous. Small businesses may instantly access decisions by computers.

Response. The commentor may be referring to the IRFA analysis completed for this action and the description of the results in the preamble to the proposed rule. This analysis of the potential impacts on small businesses is required by the Regulatory Flexibility Act. The analysis is intended to identify aspects of the action that may be further refined to prevent disproportional adverse impacts on small businesses.

Comment 4. A preferred alternative means that anything the environmental public say will be ignored.

Response. A preferred alternative in a draft EA identifies to the reader the alternative at the time of the draft analysis that is deemed to be the most likely alternative to be implemented based on the results to date in the analysis. Identification of the preferred alternative focuses public comment on the most likely alternative, but comments from all members of the public regarding any proposed rule, FMP amendment, and the supporting draft analyses for both are carefully reviewed and considered before a final decision is made. Public comments can and do influence the development of the final analyses and rules and play a critical role in NMFS' rulemaking process.

Comment 5. Quotas should be cut by 50 percent the first year and 10 percent each year after. Marine sanctuaries should be established.

Response. This action revises the administrative process used to establish harvest levels for a fishing year. The specification of harvest levels is done by separate rulemaking during the harvest specifications process. The decisions on the amount of harvest are based on the best available science and socioeconomic considerations. Whether quotas should be reduced or not is a decision made during the development of harvest specifications and is not germane to this action.

Additionally, this action does not address the creation of marine sanctuaries. The concept of establishing marine reserves is explored in the draft environmental impact statement (EIS) for essential fish habitat (EFH) dated January 2004. Further information on the draft EIS may be found at the NMFS Alaska Region website at *www.fakr.noaa.gov*.

Comment 6. The Pew Foundation reports on overfishing and regional fishery management council bias and the United Nations report on overfishing are incorporated into the comments from this commentor.

Response. This action has no relationship to overfishing concerns or the membership of regional fishery management councils. The specific concerns and relationship to this action that are represented by these reports are not presented by the commentor. Because no further details are provided by the commentor, NMFS is unable to respond further to this comment.

Comment 7. The proposed rule is written to confuse the public and should be rewritten so that a 12 year old may understand the rule. The proposed rule should be written in compliance with the law that requires the use of plain English.

Response. NMFS strives to use plain language in all documents it creates, including this rule. NMFS has reviewed the language of this rule and believes it is clearly written.

Comment 8. The term ''maximizing'' is the same as ''overfishing.'' A two year schedule is an invitation to overfish.

Response. Maximizing the harvest of managed species is not the same as overfishing. Overfishing is defined in section 3 of the Magnuson-Stevens Act as a rate or level of fishing mortality that jeopardizes the capacity of a fishery to produce the maximum sustainable yield on a continuing basis. None of the groundfish species managed in Alaska are known to be experiencing overfishing or are overfished. Maximizing harvest is an important goal related to the Magnuson-Stevens Act and the FMPs. The final rule ensures that harvest levels set for a two-year time period are adjusted through the harvest specifications process to prevent overfishing and to provide for the optimum yield on a continuing basis.

Comment 9. The preamble of the proposed rule should explain the criteria used to determine ''good cause'' to waive the prior public review and comment on changes made in the harvest specifications between the proposed and final rule under the APA. The criteria should include the use of the best scientific information and consideration of achieving the optimum yield, as described in national standards 1 and 2 of the Magnuson-Stevens Act. This would ensure the ''good cause'' waiver may be used to adjust TACs either up or down.

Response. ''Good cause'' to waive prior public review and comment under APA during rulemaking will be determined specific to the relevant circumstances at the time the determination is to be made, and must be based upon specific criteria enumerated in the APA.

Comment 10. NMFS should not use the standard of a ''logical outgrowth'' in evaluating the differences between the proposed and final harvest specifications. Logical outgrowth is a legal test that is developed in common law. If a ''substantial relation'' test is used that applies technical expertise and evaluation, NMFS' decision may be accorded more deference in court.

Response. The notice and comment procedures of the APA provide for public participation in the development of rules and produce more informed agency decisionmaking. In order to accomplish these goals, notices of proposed rulemaking must inform the public of the issues in the rulemaking. If a final rule differs to such an extent from the proposed rule that the public was inadequately informed of the issues at stake in the rulemaking, a court may vacate that final rule on the ground that the notice of proposed rulemaking did not provide the public adequate notice. The question of providing the public with adequate notice in a particular rulemaking depends very much on the specific facts and circumstances of the rulemaking. Courts have developed the logical outgrowth test to evaluate the adequacy of notice by determining whether a particular final rule was a logical outgrowth of its notice of proposed rulemaking - that is, whether the purposes of notice and comment were adequately served in the proposed rule. NMFS believes that this is the appropriate standard to apply to notices of proposed and final specifications to ensure achievement of the APA's objectives and success in litigation over fishery specifications.

Comment 11. Harvest specifications should be effective for no more than 18 months rather than for up to two years. NMFS should not depart from using the most recent survey to calculate harvest specifications and should not abandon annual surveys or rulemaking proceedings for cost or other reasons. Allowing harvest specifications to be effective for up to two years was not contemplated during or analyzed in development of Amendments 48/48 and requires a new amendment process to implement.

Response. The rule does not require NMFS to change the current frequency of surveys or to abandon the annual harvest specifications process; however, it does allow NMFS and the Council to implement harvest specifications that will be effective for up to two years when the best available science indicates that a fishery should be managed on a biennial basis.

Alternative 4 of the EA/RIR/IRFA analyzed the impact of two year harvest specifications for all species. Alternative 5 analyzed using an annual harvest specifications process to set harvest specifications for up to two fishing years, with the understanding that the second fishing year's TACs would be replaced each year by a new set of TACs for the current and following fishing year. In addition to the most recent stock assessments, the EA/RIR/IRFA for Amendments 48/48 provides information on the impacts of a decision to move a species from an annual harvest specifications process to a biennial process. Amendments 48/48 fall within the scope of the analysis, and no additional analysis is needed.

Classification

The Regional Administrator determined that Amendments 48/48 are necessary for the conservation and management of the BSAI and GOA groundfish fisheries and that they are consistent with the Magnuson-Stevens Act and other applicable laws.

This final rule has been determined to be not significant for the purposes of Executive Order 12866.

NMFS prepared an FRFA which incorporates the IRFA and a summary of the analyses completed to support the action. A copy of these analyses is available from NMFS (see **ADDRESSES**). The FRFA did not reveal any Federal rules that duplicate, overlap, or conflict with the action. The following summarizes the FRFA.

Need for and Objectives of This Action

The need and objectives for this action are described above in the preamble to this final rule.

Issues Raised by Public Comments on the IRFA

The proposed rule was published in the **Federal Register** on July 27, 2004 (69 FR 44634) with comments on the proposed rule invited through September 10, 2004. An IRFA was prepared for the proposed rule and described in the Classification section of the preamble to that rule. One public comment was received that may have been in response to the IRFA. See Comment 3 in the preamble to this rule for more information. No changes were made to the final rule from the proposed rule in response to this comment.

Number and Description of Small Entities Affected by the Rule

The entities directly regulated by this action are those that commercially harvest federally managed groundfish in the BSAI and GOA. These entities include the groundfish catcher vessels and catcher/processor vessels active in these areas. They also include organizations to which direct allocations of groundfish are made. In the BSAI, this includes the Western Alaska Community Development Quota (CDQ) groups and the American Fisheries Act fishing cooperatives.

Pursuant to the Small Business Administration criteria and NMFS guidelines, fishing vessels, including catcher vessels and catcher/processors, are considered ''small entities'' if they gross less than $3.5 million in a year, when all their affiliated elements are taken together. Catcher vessel gross revenues are measured at the ex-vessel level. Catcher/processor revenues are the first wholesale value of the processed product. About 840 catcher vessels, 33 catcher/processors, and six CDQ groups were estimated to be small entities under this criterion.

Alternatives to the Proposed Action

Four alternatives to the preferred alternative were considered. Alternative 1 would require NMFS to publish proposed specifications, followed by interim and final specifications, under the status quo schedule. Alternative 1 may result in larger harvests than Alternatives 2 through 4 and, thus, potentially higher average revenues for small entities. This alternative is the most constraining of the alternatives with respect to small businesses' access to the decision-making process. This alternative fails to achieve the objectives of the proposed action in that it does not provide opportunity for prior public review and comment on interim specifications and does not guarantee meaningful opportunity for public comment on the proposed specifications to the Secretary. For this reason, this alternative was not chosen.

Alternative 2 would eliminate interim harvest specifications and would require NMFS to issue proposed and final harvest specifications before the start of the fishing year. This alternative would improve opportunities for small businesses' access to the decision making process. However, this alternative would introduce an additional year's lag between the time fishery survey data become available and the time harvest specifications based on those data are implemented. The alternative may result in reductions in groundfish harvests and revenues and increased year-to-year variation in harvests. These changes could reduce small entities' revenues, but disproportionate impacts on small entities are not identified. These potential adverse effects to small entities outweigh the benefits from an enhanced rulemaking process. The potential for revenue reductions caused this alternative to be rejected.

Alternative 3 would postpone the start of the fishing year by six months to provide enough time for proposed and final harvest specifications. An option to this alternative would postpone the start of the fishing year for most species by six months, but would not change the fishing year for sablefish IFQ fisheries. This option would protect the IFQ management of the sablefish fisheries. This alternative would have revenue impacts very similar to those for Alternative 5, the preferred alternative. Alternative 5 was preferred to this one due to the administrative problems for managers and fishermen that might be associated with a change in the fishing year.

Alternative 4 would use stock assessment projections to prepare biennial harvest specifications, while setting PSC limits annually. This alternative would improve opportunities for small business access to the decision making process. The two options for this alternative are likely to result in larger potential reductions in harvests and revenues than Alternative 2 and in more potential for year-to-year variation in harvests. The changes could reduce small entities' revenues, but disproportionate impacts on small entities are not identified. The potential adverse effects outweigh the enhanced rulemaking process in this alternative and are no better for directly regulated small entities than Alternative 5.

Alternative 5 is the preferred alternative. Under this alternative, harvest specifications would be set for up to two years. Harvest specifications would be superseded by new harvest specifications typically published between March and June of the second year. This alternative would provide increased opportunities for notice and comment under the APA. This alternative would introduce relatively modest lags between biological surveys and subsequent harvest specifications, thus creating relatively modest adverse revenue impacts compared with Alternatives 2 and 4. If a second proposed rule is required, the revenue effects would be similar to Alternative 3; if not, they may be similar to those for Alternative 1.

Recordkeeping and Reporting Requirements

Nothing in the action would result in changes in reporting or recordkeeping requirements.

Small Entity Compliance Guide

This action revises 50 CFR part 679 which describes the procedures for the harvest specifications process for the Alaska groundfish fisheries. This action does not require any additional compliance from small entities as it provides an administrative change to the process for establishing harvest specifications. Copies of this final rule are available from NMFS (see **ADDRESSES**) and at the following website: *http://www.fakr.noaa.gov*.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: November 2, 2004.

Rebecca Lent,

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

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

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

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

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*; 16 U.S.C. 1540(f); Pub. L. 105–277, Title II of Division C; Pub L. 106–31, Sec. 3027; and Pub. L.106–554, Sec. 209.

■ 2. In § 679.1, the introductory heading of paragraph (b) is revised to read as follows:

§ 679.1 Purpose and scope.

* * * * *

(b) *Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area.* * * *

* * * * *

■ 3. In § 679.20, paragraphs (c)(1), (c)(3), (c)(5), (c)(6), and the introductory paragraph to (c)(2) are revised to read as follows:

§ 679.20 General limitations.

* * * * *

(c) *Annual specifications*—(1) *Proposed specifications*—(i) *Notification.* As soon as practicable after consultation with the Council, NMFS will publish proposed specifications for the groundfish fisheries in the BSAI and the GOA.

(ii) *Public comment.* NMFS will accept public comment on the proposed specifications established by this section and by § 679.21 for a period specified in the notice of proposed specifications published in the **Federal Register**.

(iii) *GOA.* The proposed specifications will specify for up to two fishing years the annual TAC for each target species and the ''other species'' category and apportionments thereof, halibut prohibited species catch amounts, and seasonal allowances of pollock and Pacific cod.

(iv) *BSAI.* The proposed specifications will specify for up to two fishing years the annual TAC for each target species and the ''other species'' category and apportionments thereof, PSQ reserves and prohibited species catch allowances, seasonal allowances of pollock, Pacific cod, and Atka mackerel TAC (including pollock, Pacific cod, and Atka mackerel CDQ), and CDQ reserve amounts.

(2) *Interim specifications.* (Applicable until April 1, 2005.) Interim harvest specifications will be in effect on January 1 and will remain in effect until superseded by the filing of the final specifications by the Office of the **Federal Register**. Interim specifications will be established as follows:

* * * * *

(3) *Final specifications*—(i) *Procedure and notification.* NMFS will consider comments received on the proposed specifications and, after consultation with the Council, will publish a notice of final specifications in the **Federal Register** unless NMFS determines that the final specifications would not be a logical outgrowth of the notice of proposed specifications. In that event, NMFS will either:

(A) Publish a revised notice of proposed specifications in the **Federal Register** for public comment, and after considering comments received on the revised proposed specifications, publish a notice of final specifications in the **Federal Register**; or

(B) Publish a notice of final specifications in the **Federal Register** without an additional opportunity for public comment based on a finding that good cause pursuant to the Administrative Procedure Act justifies waiver of the requirement for a revised notice of proposed specifications and opportunity for public comment thereon.

(ii) *GOA.* The final specifications will specify for up to two fishing years the annual TAC for each target species and the ''other species'' category and apportionments thereof, halibut prohibited species catch amounts, and seasonal allowances of pollock and Pacific cod.

(iii) *BSAI.* The final specifications will specify for up to two fishing years the annual TAC for each target species and the ''other species'' category and apportionments thereof, PSQ reserves and prohibited species catch allowances, seasonal allowances of pollock, Pacific cod, and Atka mackerel TAC (including pollock, Pacific cod, and Atka mackerel CDQ), and CDQ reserve amounts.

* * * * *

(5) *BSAI Pacific cod gear allocations.* (Effective April 1, 2005) The proposed and final specifications will specify the allocation of BSAI Pacific cod among gear types as authorized under paragraph (a)(7) of this section.

(6) *BSAI Atka mackerel allocations.* (Effective April 1, 2005) The proposed and final specifications will specify the allocation of BSAI Atka mackerel among gear types and HLA fisheries as authorized under paragraph (a)(8) of this section.

* * * * *

■ 4. In § 679.21, paragraphs (d)(1)(i), (d)(2), and (e)(6), and introductory paragraphs to (e)(1)(ii) and (e)(1)(iii), are revised to read as follows:

§ 679.21 Prohibited species bycatch management.

* * * * *

(d) * * *

(1) * * *

(i) *Proposed and final limits and apportionments.* NMFS will publish in the **Federal Register** proposed and final halibut PSC limits, and apportionments thereof, in the notification required under § 679.20.

* * * * *

(2) *Public comment.* NMFS will accept public comment on the proposed halibut PSC limits, and apportionments thereof, for a period specified in the notice of proposed halibut PSC limits published in the **Federal Register**. NMFS will consider comments received on proposed halibut PSC limits and, after consultation with the Council, will publish notification in the **Federal Register** specifying the final halibut PSC limits and apportionments thereof.

* * * * *

(e) * * *

(1) * * *

(ii) *Red king crab in Zone 1.* The PSC limit of red king crab caught by trawl vessels while engaged in directed fishing for groundfish in Zone 1 during any fishing year will be specified for up to two fishing years by NMFS, after consultation with the Council, based on abundance and spawning biomass of red king crab using the criteria set out under paragraphs (e)(1)(iii)(A) through (C) of this section. The following table refers to the PSC limits for red king crab that you must follow in Zone 1:

* * * * *

(iii) *Tanner crab (C. bairdi).* The PSC limit of *C. bairdi* crabs caught by trawl

vessels while engaged in directed fishing for groundfish in Zones 1 and 2 during any fishing year will be specified for up to two fishing years by NMFS under paragraph (e)(6) of this section, based on total abundance of *C. bairdi* crabs as indicated by the NMFS annual bottom trawl survey, using the criteria set out under paragraphs (e)(1)(iii)(A) and (B) of this section.

* * * * *

(6) *Notification*—(i) *General.* NMFS will publish in the **Federal Register**, for up to two fishing years, the annual red king crab PSC limit, and, if applicable, the amount of this PSC limit specified for the RKCSS, the annual *C. bairdi* PSC limit, the annual *C. opilio* PSC limit, the proposed and final PSQ reserve amounts, the proposed and final bycatch allowances, the seasonal apportionments thereof, and the manner in which seasonal apportionments of nontrawl fishery bycatch allowances will be managed, as required by paragraph (e) of this section.

(ii) *Public comment.* Public comment will be accepted by NMFS on the proposed annual red king crab PSC limit and, if applicable, the amount of this PSC limit specified for the RKCSS, the annual *C. bairdi* PSC limit, the annual *C. opilio* PSC limit, the proposed and final bycatch allowances, seasonal apportionments thereof, and the manner in which seasonal apportionments of nontrawl fishery bycatch allowances will be managed, for a period specified in the notice of proposed specifications published in the **Federal Register**.

* * * * *

■ 5. In § 679.62, paragraph (a)(3) is revised to read as follows:

§ 679.62 Inshore sector cooperative allocation program.

(a) * * *

(3) *Conversion of quota share percentage to TAC allocations.* (Effective April 1, 2005) Each inshore pollock cooperative that receives a quota share percentage for a fishing year will receive an annual allocation of Bering Sea and/or Aleutian Islands pollock that is equal to the cooperative's quota share percentage for that subarea multiplied by the annual inshore pollock allocation for that subarea. Each cooperative's annual pollock TAC allocation may be published in the proposed and final BSAI harvest specifications notice.

* * * * *

[FR Doc. 04–24856 Filed 11–5–04; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 69, No. 215
Monday, November 8, 2004

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

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1717

RIN 0572–AB97

Elimination of Operational Controls

AGENCY: Rural Utilities Service, USDA.

ACTION: Proposed rule.

SUMMARY: Rural Utilities Service (RUS), an agency delivering the United States Department of Agriculture's Rural Development utilities programs, proposes to amend 7 CFR Part 1717, Subpart M, Operational Controls (Subpart M), by eliminating the provisions thereof.

Subpart M was promulgated as a compliment to the ''new'' distribution borrower loan documents established in 1995, and was intended to cut back the broad reach of certain of the operational controls contained in the loan documents executed prior to 1995. Since 1995, approximately 88 percent of distribution borrowers have transitioned to the new forms of mortgage and loan contract, either by receiving new loans from RUS or by executing new documents for existing loans. Operational controls for these borrowers are contained in the new forms of loan contract and mortgage, and in other RUS regulations. Operational controls for the remaining distribution borrowers are contained in the pre-1995 loan documents, Subpart M, and other RUS regulations.

This amendment will eliminate the provisions of Subpart M, thereby removing a confusing and cumbersome dual system of operational controls. Distribution borrowers subject to the pre-1995 documents may transition to the new loan documents. For those borrowers that do not transition, operational control decision making will be made on a case-by-case basis, using, to the extent possible, the level of control contained in the new loan contract and mortgage.

DATES: Written comments must be received by RUS or carry a postmark or equivalent no later than January 7, 2005.

ADDRESSES: Submit comments by any of the following methods:

- Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instruction for submitting comments.
- Agency Web site: *http://www.usda.gov/rus/index2.Comments.htm.* Follow the instructions for submitting comments.
- E-mail: *RUSComments@usda.gov.* Include in the subject line of the message ''7 CFR 1717.''
- Mail: Addressed to Richard Annan, Acting Director, Program Development and Regulatory Analysis, Rural Utilities Service, United States Department of Agriculture, 1400 Independence Avenue, STOP 1522, Washington, DC 20250–1522. RUS requests a signed original and three copies of all comments (7 CFR 1700.4).
- Hand Delivery/Courier: Addressed to Richard Annan, Acting Director, Program Development and Regulatory Analysis, Rural Utilities Service, United States Department of Agriculture, 1400 Independence Avenue, SW., Room 5168–S, Washington, DC 20250–1522.
- All comments received will be made available for public inspection at room 5168, South Building, Washington, DC, between the 8 a.m. and 4 p.m. (7 CFR part 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Doris A. Nolte, Chief, Policy Analysis and Loan Management Staff, Rural Utilities Service, Electric Program, Room 5155 South Building, Stop 1560, 1400 Independence Ave., SW., Washington, DC 20250–1560, Telephone: 202–720–0424, FAX: 202–690–0717, E-mail: *doris.nolte@usda.gov.*

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

Executive Order 12372

This rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which may require consultation with State and local officials. See the final rule related notice titled ''Department Programs and Activities Excluded from Executive Order 12372'' (50 FR 47034) advising that RUS loans and loan guarantees were not covered by Executive Order 12372.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. RUS has determined that this rule meets the applicable standards provided in section 3 of the Executive Order. In addition, all state and local laws and regulations that are in conflict with this rule will be preempted; no retroactive effect will be given to this rule, and, in accordance with section 212(e) of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 6912 (e)), administrative appeals procedures, if any are required, must be exhausted before an action against the Department or its agencies may be initiated.

Regulatory Flexibility Act Certification

Pursuant to 5 U.S.C. 553(a)(2), this proposed rule related to loans is exempt from the rulemaking requirements of the Administrative Procedure Act, 5 U.S.C. 551 *et seq.*, including the requirement to provide prior notice and an opportunity for public comment. Because this proposed rule is not subject to a requirement to provide prior notice and an opportunity for public comment pursuant to 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* are inapplicable.

Information Collection and Recordkeeping Requirements

This rule contains no additional information collection or recordkeeping requirements that require approval under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Unfunded Mandates

This rule contains no Federal mandates (under the regulatory provision of title II of the Unfunded Mandates Reform Act of 1995) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the Unfunded Mandates Reform Act.

National Environmental Policy Act Certification

The Administrator of RUS has determined that this rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment.

Catalog of Federal Domestic Assistance

The program described by this rule is listed in the Catalog of Federal Domestic Assistance Programs under No. 10.850, Rural Electrification Loans and Loan Guarantees. This catalog is available on a subscription basis from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402–9325, telephone number (202) 512–1800.

Executive Order 13132, Federalism

The policies contained in this rule do not have any substantial direct effect on states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Nor does this rule impose substantial direct compliance costs on state and local governments. Therefore, consultation with states is not required.

Background: On July 18, 1995, RUS published a final rule (60 FR 36882) establishing new RUS policies and requirements for mortgages used to secure direct and guaranteed loans made to electric distribution borrowers. The final rule became effective on August 17, 1995. On December 29, 1995, RUS published a final rule (60 FR 67396) to establish new RUS policies and requirements for loan contracts ordinarily required for loans made to electric distribution borrowers; this rule became effective on January 29, 1995. These new policies and requirements reduced RUS oversight of borrowers' operational decisions, allowing RUS to tailor its operational control to a borrower's individual lending circumstances and credit risks.

The ''new'' forms of mortgages and loan contracts (Current Documents) used by RUS for distribution loans and loan guarantees made after January 29, 1996 reflect these policies and requirements. Distribution borrowers (Legacy Borrowers) with loans and loan guarantees made prior to January 29, 1996 under the ''old'' forms of mortgages and loan contracts (Legacy Documents) have been encouraged to execute the Current Documents, and to date approximately 88% of Legacy Borrowers have replaced their Legacy Documents with Current Documents, either by obtaining a new loan or loan guarantee from RUS or by substituting New Documents for Legacy Documents.

The December 29, 1995 rulemaking also established Subpart M. The purpose of Subpart M was to cut back the broad reach of certain operational controls contained in the Legacy Documents through waivers and exemptions, thereby bringing the operational controls applicable to Legacy Borrowers more in line with those applicable to distribution borrowers under the Current Documents.

RUS believes that maintaining two sources of operational controls (i.e. the Current Documents, and the Legacy Documents supplemented by Subpart M) creates a confusing dual system that is no longer necessary to provide RUS with an appropriate level of operational control over its distribution loans and loan guarantees. As stated above, the vast majority of RUS electric borrowers have transitioned to the Current Documents, and all future loans and loan guarantees to Legacy Borrowers will be made using the Current Documents. Legacy Borrowers who do not anticipate new RUS loans may, by request, execute the Current Documents for their existing loans, and are encouraged to do so. For those Legacy Borrowers who chose to retain the Legacy Documents, RUS will conduct operational control decision making on a case-by-case basis, taking into consideration the unique characteristics of each Legacy Borrower and, in most cases, applying that level of operational controls contemplated in the Current Documents. For these reasons, RUS proposes to eliminate the provisions of, and reserve, Subpart M.

List of Subjects in 7 CFR Part 1717

Administrative practice and procedure, Electric power, Electric power rates, Intergovernmental relations, Investments, Loan programs-energy, Reporting and recordkeeping requirements, Rural areas.

For the reasons set forth in the preamble, chapter XVII of title 7 of the Code of Federal Regulations, is proposed to be amended as follows:

PART 1717—POST-LOAN POLICIES AND PROCEDURES COMMON TO INSURED AND GUARANTEED ELECTRIC LOANS

1. The authority citation for part 1717 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.*, 1921 *et seq.*, 6941 *et seq.*

Subpart M—Operational Controls

2. Subpart M is removed and reserved.

Dated: October 29, 2004.

Curtis M. Anderson,

Acting Administrator, Rural Utilities Service.

[FR Doc. 04–24789 Filed 11–5–04; 8:45 am]

BILLING CODE 3410–15–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 73

[Docket No. PRM–73–12]

Committee To Bridge the Gap, Receipt of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; notice of receipt.

SUMMARY: The Nuclear Regulatory Commission (NRC) is publishing for public comment a notice of receipt of a petition for rulemaking, dated July 23, 2004, which was filed with the Commission by Daniel Hirsch, President, Committee to Bridge the Gap (CBG). The petition was docketed by the NRC on September 29, 2004, and has been assigned Docket No. PRM–73–12. The petitioner requests that the NRC amend its regulations to upgrade the ''design basis threat'' regulations ((DBT), or the magnitude of threat that the facility's security systems must be capable of defeating) and associated requirements for protection of domestic reactors from nuclear terrorism to a level that encompasses, with a sufficient margin of safety, the terrorist capabilities evidenced by the attacks of September 11, 2001.

DATES: Submit comments by January 24, 2005. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any one of the following methods. Please include the following number PRM–73–12 in the subject line of your comments. Comments on petitions submitted in writing or in electronic form will be made available for public inspection. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.

E-mail comments to: SECY@nrc.gov. If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at (301) 415–1966. You may also submit comments via the NRC's rulemaking Web site at *http://ruleforum.llnl.gov.* Address questions about our rulemaking Web site to Carol Gallagher (301) 415–5905; e-mail *cag@nrc.gov.* Comments can also be submitted via the Federal eRulemaking Portal *http://www.regulations.gov.*

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. Federal workdays. (Telephone (301) 415–1966).

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

Publicly available documents related to this petition may be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. The PDR reproduction contractor will copy documents for a fee. Selected documents, including comments, may be viewed and downloaded electronically via the NRC rulemaking Web site at *http://ruleforum.llnl.gov.*

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

FOR FURTHER INFORMATION CONTACT: Michael T. Lesar, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–7163 or toll free: 800–368–5642.

SUPPLEMENTARY INFORMATION:

Background

The petitioner states that CBG has been active in attempting to increase protection at nuclear facilities against the risk of nuclear terrorism for a quarter of a century. The NRC's current DBT regulations for nuclear power plants were issued in the 1974–1976 period (February 24, 1977; 42 FR 10836), with only one substantive modification in the ensuring thirty years, the truck bomb rule (August 1, 1994; 59 FR 38889). The petitioner states that DBT regulations established in the mid-seventies do not require nuclear plant security be designed to protect against:

(a) More than one insider;

(b) More than several external attackers;

(c) Attackers capable of operating as more than one team (*i.e.*, capable of employing ''effective team maneuvering tactics''); and

(d) A group or individual using weapons of greater sophistication than hand-held automatic weapons.

The petitioner states that the original DBT regulations essentially required the attacks to be on foot, by not requiring protection from truck bombs, or attacks by boat or air.

The petitioner asserts that despite the facts that the original September 11, 2001, plot considered attacking U.S. nuclear plants, that the terrorist risk has increased since September 11, 2001, and that U.S. authorities warn that Al Quaeda is planning even more spectacular and deadly attacks in the U.S., nearly three years after the September 11, 2001, attacks, U.S. nuclear reactor facilities remain unprotected against air attacks or against ground attacks involving the September 11, 2001, number of attackers. The petitioner believes something must be done promptly to protect these facilities—and the American public. Increased threats, however, can be countered by measures that can be implemented for modest cost but which will provide substantial protection against events with such potentially catastrophic consequences.

The Petitioner's Request

NRC Security Requirements for Protection of Nuclear Power Plants From Terrorist Attack

The petitioner requests that 10 CFR 73.1(a) be revised to encompass attacking forces equal to those of the terrorist attack on September 11, 2001, plus a margin of safety, in numbers, teams, capabilities, planning, willingness to die, and other characteristics. The terrorist attack on September 11, 2001, involved 19 attackers in 4 teams. The DBT regulations should be changed to include at least 19 attackers, plus a margin of safety above that level.

The NRC should also take into consideration the inclusion of multiple coordinated teams. The petitioner believes that the attackers should be presumed to use a full range of potential weapons of which a group such as Al Qaeda would be capable, to include shaped charges, shoulder-fired rockets, mortars, anti-tank weapons, large quantities of explosives, *etc.* The explosives, weapons, and equipment need not be limited to hand-carried items, as stated in the current regulations (10 CFR 73.1(a)(1)(i)(D)). The attackers should be presumed to be ruthless, highly motivated, willing and even intent on dying, very creative, thorough, and capable of extended planning and preparation. The DBT regulations should include a minimum of three insiders, in addition to the 19 external attackers, rather than the current 1 insider as stated at 10 CFR 73.1(a)(1)(i)(B) and (ii). The insiders should be presumed to play both a passive role (*e.g.*, supplying information) and active capacity (*e.g.*, directly participating in a coordinated attack or separate sabotage actions), a land vehicle should not be limited to a four-wheel drive car or truck, as is now the case at 10 CFR 73.1(a)(1)(i)(E) and (iii), but include the full range of trucks and other vehicles that a group like Al Qaeda might employ for such an attack.

The petitioner states that the DBT regulations should include attacks by foot or by land vehicle (*e.g.*, vehicle bombs), as well as by boat and by air. The DBT regulations addressing air attack should include a fully loaded jumbo jet of maximum size in commercial service and full fuel tanks, and more maneuverable smaller planes and helicopters. The petitioner states that the NRC should consider explosives potentially present in the aircraft as well as the mass of the plane and the effect of its fuel when igniting. The DBT regulations should protect both against direct impact of the aircraft on sensitive facilities at the nuclear plant and against use of the aircraft or helicopter for dropping explosives on those facilities. The petitioner also states that the NRC should consider the coordination of an air attack with assistance from insiders at the plant and/or external attackers (*i.e.*, damage to systems from the air attack coupled with failure of backup systems due to coordinated action on the ground).

Mandate Security Plans, Systems, Inspections, and Force-on-Force Exercises Protect Against the Amended DBT

The petitioner states that the security plans and physical systems implementing those plans, inspections and force-on-force Operational Safeguards Response Evaluation (OSRE) program exercises must be upgraded to conform to the proposed DBT regulations. The petitioner believes they must demonstrate high confidence to be able to repel a September 11, 2001, level assault.

Require Prompt Construction of Shields From Air Attack at Standoff Distances From Key Support Structures at Nuclear Plants ''Beamhenge''

The petitioner states that nuclear power plants were not designed to withstand the attack by a fully loaded jumbo jet nor the intentional use of airplanes for terrorist purposes.

The petitioner proposes the construction of shields composed of I-beams with steel or other cabling and netting between them at standoff distances around the key structures at nuclear plants. Airplanes or jets attempting to attack sensitive structures would instead crash into the surrounding Beamhenge shield, leaving intact the reactor, spent fuel pool, and support facilities, thus protecting the public from damage that could result in substantial radioactivity releases. The Beamhenge concept may also provide some measure of protection against such weapons as shoulder-launched rockets, causing them to detonate before reaching their intended target.

The petitioner states that I-beams are relatively inexpensive, and their installation can be done quickly and with modest expenditures. The petitioner estimates that Beamhenge shields could be constructed for a fraction of one percent of the original construction cost of the nuclear plant. The petitioner believes that with such a low price and relative ease of deployment, the burden is on the Commission to justify why implementation of the Beamhenge approach should not be mandated immediately. This petitioner requests that the shields against air attack be required to be promptly constructed at the nation's nuclear plants, on a time urgent basis.

Conclusion

The petitioner states that the Commission's DBT regulations remained essentially unchanged, with one exception, for nearly thirty years, despite dramatic increases in terrorist incidents, casualties, and capabilities. The petitioners seek a revision of the threat basis to include attack from the air by airplanes and jets, and attacking forces by land, water, or air—at least equal to the nineteen terrorists involved in the September 11, 2001, attacks in numbers, capacity, ruthlessness, dedication, skills, planning, and willingness to die and create large numbers of casualties. Additionally, the petitioners propose that the security requirements in part 73 be upgraded to provide high confidence in the ability of the security system to protect against the proposed upgraded September 11, 2001-equivalent DBT. In particular, the petitioners propose requiring, under a time-urgent schedule, construction at reactor sites of shields consisting of I-beams and cabling (Beamhenge) at stand-off distances from buildings and other assets important to safety at reactor sites so that airplanes or jets attempting to attack sensitive structures would instead crash into the surrounding Beamhenge shield, leaving intact the reactor, spent fuel pool, and support facilities, thus protecting the public from damage that could result in substantial radioactivity releases.

Dated in Rockville, Maryland, this 1st day of November, 2004.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,

Secretary of the Commission.

[FR Doc. 04–24803 Filed 11–5–04; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–CE–65–AD]

RIN 2120–AA64

Airworthiness Directives; Glaser-Dirks Flugzeugbau GmbH Model DG–800B Sailplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking (NPRM); Reopening of the comment period.

SUMMARY: The FAA proposes to revise an earlier proposed airworthiness directive (AD) that applies to all Glaser-Dirks Flugzeugbau GmbH (DG Flugzeugbau) Model DG–800B sailplanes equipped with a SOLO 2625 engine or a Mid-West AE 50T engine. The earlier NPRM would have required you to modify the coolant pump and fuel pump electrical circuits, replace the non-resettable circuit breaker with a resettable circuit breaker, and (for a version of the Mikuni carburetor) secure the choke butterfly valve axis. The earlier NPRM resulted from mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. This proposed AD is the result of further analysis by FAA of the service information and FAA determining that important actions were omitted in the NPRM and should be incorporated. Since these required actions impose an additional burden over that proposed in the NPRM, we are reopening the comment period to allow the public the chance to comment on these additional actions.

DATES: We must receive any comments on this proposed AD by December 13, 2004.

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

- *By mail:* FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–CE–65–AD, 901 Locust, Room 506, Kansas City, Missouri 64106.
- *By fax:* (816) 329–3771.
- *By e-mail: 9–ACE–7–Docket@faa.gov.* Comments sent electronically must contain ''Docket No. 2003–CE–65–AD'' in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII.

You may get the service information identified in this proposed AD from DG Flugzeugbau, Postbox 41 20, D–76625 Bruchsal, Federal Republic of Germany; telephone: 011–49 7257–890; facsimile: 011–49 7257–8922.

You may view the AD docket at FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–CE–65–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. Office hours are 8 a.m. to 4 p.m., Monday through Friday, except Federal holidays.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

How do I comment on this proposed AD? We invite you to submit any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES.** Include ''AD Docket No. 2003–CE–65–AD'' in the subject

line of your comments. If you want us to acknowledge receipt of your mailed comments, send us a self-addressed, stamped postcard with the docket number written on it. We will date-stamp your postcard and mail it back to you.

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

Discussion

What events have caused this proposed AD? The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, recently notified FAA that an unsafe condition may exist on DG Flugzeugbau Model DG–800B sailplanes. The LBA reports both electrical circuits of the fuel pump and the coolant pump (on a SOLO 2625 engine or a Mid-West AE 50T engine) are protected by a non-resettable digital engine indicator (DEI) circuit breaker. The pumps will stop running if the non-resettable circuit breaker activates.

What is the potential impact if FAA took no action? If a non-resettable circuit breaker trips, this could result in power loss with the inability to restart the fuel pump during a critical phase of flight (for example, takeoff under own power).

Has FAA taken any action to this point? We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all DG Flugzeugbau Model DG–800B sailplanes equipped with a SOLO 2625 engine or a Mid-West AE 50T engine. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on April 12, 2004 (69 FR 19135). The NPRM proposed to require you to:

—Modify the coolant pump and fuel pump electrical circuits;
—Replace the non-resettable circuit breaker with a resettable circuit breaker, and
— Secure the choke butterfly valve axis (for a version of the Mikuni carburetor).

Was the public invited to comment? The FAA encouraged interested persons to participate in developing this amendment. We did not receive any comments on the proposed rule or on our determination of the cost to the public.

What events have caused FAA to issue a supplemental NPRM? The FAA has done further analysis of the service information and determined that important actions were omitted in the NPRM. The omitted actions include installing edge protection at the sharp edges of the circuit breaker and making revisions to the flight manual.

FAA's Determination and Requirements of This Proposed AD

What has FAA decided? After examining the circumstances and reviewing all available information related to the incidents described above, we have determined that:

—The unsafe condition referenced in this document exists or could develop on other Glaser-Dirks Flugzeugbau GmbH (DG Flugzeugbau) Model DG–800B sailplanes equipped with a SOLO 2625 engine or a Mid-West AE 50T engine of the same type design that are on the U.S. registry;
—We should change the NPRM to include the omitted actions; and
—We should take AD action to correct this unsafe condition.

The Supplemental NPRM

How will the changes to the NPRM impact the public? Proposing the additional actions that you install edge protection at the sharp edges of the circuit breaker and revise the flight manual goes beyond the scope of what was originally proposed in the NPRM. Therefore, we are reopening the comment period and allowing the public the chance to comment on these additional actions.

What are the provisions of the supplemental NPRM? The proposed AD would require you to:

—Modify the coolant pump and fuel pump electrical circuits;
—Remove the non-resettable digital engine indicator (DEI) circuit breaker (4-ampere) and replace with a resettable 5-ampere circuit breaker;
—Secure the choke butterfly valve axis that is on the SOLO 2625 engine (New version Mikuni carburetor);
—Install edge protection at the sharp edges of the resettable 5-ampere DEI circuit breaker; and
—Incorporate ''Flight Manual'' changes that are listed in the service information.

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

Costs of Compliance

How many sailplanes would this proposed AD impact? We estimate that this proposed AD affects 25 sailplanes in the U.S. registry.

What would be the cost impact of this proposed AD on owners/operators of the affected sailplanes? We estimate the following costs to do this proposed modification:

Labor cost	Parts cost	Total cost per sailplane	Total cost on U.S. operators
6 workhours at $65 per hour = $390	$100	$490	25 × $490 = $12,250

Regulatory Findings

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

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

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

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

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities

under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this proposed AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include ''AD Docket No. 2003–CE–65–AD'' in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Glaser-Dirks Flugzeugbau GmbH: Docket No. 2003–CE–65–AD.

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

(a) We must receive comments on this proposed airworthiness directive (AD) by December 13, 2004.

What Other ADs Are Affected by This Action?

(b) None.

What Sailplanes Are Affected by This AD?

(c) This AD affects all Model DG–800B sailplanes, all serial numbers, that are:

(1) Certificated in any category; and

(2) Equipped with a SOLO 2625 engine or a Mid-West AE 50T engine.

What Is the Unsafe Condition Presented in This AD?

(d) This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. The actions specified in this AD are intended to prevent electrical failure of the fuel and coolant pumps if a non-resettable circuit breaker trips. This could result in power loss with the inability to restart the fuel pump during a critical phase of flight (for example, takeoff under own power).

What Must I Do To Address This Problem?

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

Actions	Compliance	Procedures
(1) Modify the coolant pump and fuel pump electrical circuits.	Within the next 50 hours time-in-service (TIS) after the effective date of this AD, unless already done.	*For sailplanes with a SOLO 2625 engine:* Follow DG Flugzeugbau GmbH Technical Note No. 873/26, dated November 12, 2001; *For sailplanes with a Mid-West AE 50T engine:* Follow DG Flugzeugbau GmbH Technical Note No. 873/27, dated November 29, 2001.
(2) Remove the non-resettable digital engine indicator (DEI) circuit breaker (4-ampere) replace with a resettable 5-ampere circuit breaker.	Before further flight after the modification of the coolant pump and fuel pump and electrical circuits required by paragraph (e)(1) of this AD.	*For sailplanes with a SOLO 2625 engine:* Follow DG Flugzeugbau GmbH Technical Note No. 873/26, dated November 12, 2001; *For sailplanes with a Mid-West AE 50T engine:* Follow DG Flugzeugbau GmbH Technical Note No. 873/27, dated November 29, 2001.
(3) *For sailplanes with engine SOLO 2625 (New version Mikuni carburetor):* Secure the choke butterfly valve axis.	Before further flight after the modification of the coolant pump and fuel pump electrical circuits required by paragraph. (e)(1) of this AD and the removal and replacement required by paragraph (e)(2) of this AD.	*For sailplanes with a SOLO 2625 engine:* Follow DG Flugzeugbau GmbH Technical Note No. 873/26, dated November 12, 2001.
(4) Install edge protection at the sharp edges of the resettable 5-ampere DEI circuit breaker.	Before further flight after the modification of the coolant pump and fuel pump electrical circuits required by paragraph (e)(1) of this AD and the removal and replacement required by paragraph (e)(2) of this AD.	*For sailplanes with a SOLO 2625 engine:* Follow DG Flugzeugbau GmbH Technical Note No. 873/26, dated November 12, 2001; *For sailplanes with a Mid-West AE 50T engine:* Follow DG Flugzeugbau GmbH Technical Note No. 873/27, dated November 29, 2001.
(5) Incorporate changes in the FAA-approved sailplane flight manual (SFM). (i) The owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7) may do the flight manual changes requirement of this AD. (ii) Make an entry in the aircraft records showing compliance with this portion of the AD following section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).	Before further flight after the modifications required by paragraphs (e)(1), (e)(2), (e)(3), and (e)(4) of this AD.	For sailplanes with a SOLO 2625 engine: Follow DG Flugzeugbau GmbH Technical Note No. 873/26, dated November 12, 2001; *For sailplanes with a Mid-West AE 50T engine:* Follow DG Flugzeugbau GmbH Technical Note No. 873/27, dated November 29, 2001.
(6) Do not install any SOLO 2625 engine or Mid-West AE 50T engine unless the modifications required by paragraphs (e)(1), (e)(2), (e)(3), and (e)(4) of this AD have been done.	As of the effective date of this AD	Not Applicable.

May I Request an Alternative Method of Compliance?

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

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

(g) You may get copies of the documents referenced in this AD from DG Flugzeugbau, Postbox 41 20, D–76625 Bruchsal, Federal Republic of Germany; telephone: 011–49 7257–890; facsimile: 011–49 7257–8922. You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Is There Other Information That Relates to This Subject?

(h) German AD Number 2002–083, dated April 4, 2002, also addresses the subject of this AD.

Issued in Kansas City, Missouri, on November 2, 2004.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–24818 Filed 11–5–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–19442; Directorate Identifier 2004–CE–31–AD]

RIN 2120–AA64

Airworthiness Directives; Gippsland Aeronautics Pty. Ltd. Model GA8 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 Gippsland Aeronautics Pty. Ltd. Model GA8 airplanes. This proposed AD would require you to inspect the pilot and co-pilot control column wheels and aileron cable operating arm shafts for damage and, if damage is found, to repair the shafts or to replace the steel shafts with bronze shafts. This proposed AD results from mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Australia. We are issuing this proposed AD to detect and correct damage of the pilot and co-pilot control wheels and aileron cable operating arm shafts. This damage could result in the aileron controls becoming stiff or locking, which could lead to loss of control of the airplane.

DATES: We must receive any comments on this proposed AD by December 15, 2004.

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

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

To get the service information identified in this proposed AD, contact Gippsland Aeronautics Pty. Ltd., Latrobe Regional Airport, P.O. Box 881, Morwell, Victoria 3840, Australia; telephone: 61 (0) 3 5172 1200; facsimile: 61 (0) 3 5172 1201.

To view the comments to this proposed AD, go to *http://dms.dot.gov.* This is docket number FAA–2004–19442.

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aerospace Engineer, Small Airplane Directorate, ACE–112, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: 816–329–4059; facsimile: 816–329–4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

How do I comment on this proposed AD? We invite you to submit any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES.** Include the docket number, ''FAA–2004–19442; Directorate Identifier 2004–CE–31–AD'' at the beginning of your comments. We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed rulemaking. Using the search function of our docket web site, anyone can find and read the comments received into any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). This is docket number FAA–2004–19442. You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://dms.dot.gov.*

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

Docket Information

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

Discussion

What events have caused this proposed AD? The Civil Aviation Safety Authority (CASA), which is the airworthiness authority for Australia, recently notified FAA that an unsafe condition may exist on certain Gippsland Aeronautics Pty. Ltd. Model GA8 airplanes. CASA reports three occurrences of aileron control stiffness and one occurrence of aileron control locking during taxi. Rubbing between the control wheel shaft and the bush in the control column may cause wear or damage to the control wheel shaft where the shaft connects to the control column. This damage may lead to the

aileron control becoming stiff or locking.

What is the potential impact if FAA took no action? Damage of the pilot and co-pilot control wheels and aileron cable operating arm shafts could result in the aileron controls becoming stiff or locking, which could lead to loss of control of the airplane.

Is there service information that applies to this subject? Gippsland Aeronautics Pty. Ltd. has issued Service Bulletin SB–GA8–2004–11, dated August 25, 2004.

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

—Inspecting control wheel and aileron cable operating arm shafts for damage;
—Repairing damage; and
—Replacing damaged shafts with the bronze shafts.

What action did the CASA take? The CASA classified this service bulletin as mandatory and issued Australian AD Number AD/GA8/2, dated September 17, 2004, to ensure the continued airworthiness of these airplanes in Australia.

Did the CASA inform the United States under the bilateral airworthiness agreement? These Gippsland GA8 airplanes are manufactured in Australia and are type-certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

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

FAA's Determination and Requirements of This Proposed AD

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

Since the unsafe condition described previously is likely to exist or develop on other Gippsland Aeronautics GA8 airplanes of the same type design that are registered in the United States, we are proposing AD action to detect and correct damage of the pilot and co-pilot control wheels and aileron cable operating arm shafts that could result in the aileron controls becoming stiff or locking, which could lead to loss of control of the airplane.

What would this proposed AD require? This proposed AD would require you to inspect the pilot and co-pilot control wheels and aileron cable operating arm shafts for damage and, if damage is found, to repair the shafts or to replace the steel shafts with bronze shafts.

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

Costs of Compliance

How many airplanes would this proposed AD impact? We estimate that this proposed AD affects 5 airplanes in the U.S. registry.

What would be the cost impact of this proposed AD on owners/operators of the affected airplanes? We estimate the following costs to accomplish this proposed inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
2 work hours × $65 per hour = $130	N/A	$130	$650

We estimate the following costs to accomplish any necessary replacements that would be required based on the results of this proposed inspection. We have no way of determining the number of airplanes that may need this repair/replacement:

Labor cost	Parts cost	Total cost per airplane
Labor cost per side (either pilot or co-pilot) — 8 work hours × $65 per hour = $520.	Warranty	Per side = $520. For both sides = $1,040.

Regulatory Findings

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

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

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

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

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

We prepared a summary of the costs to comply with this proposed AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**. Include ''AD Docket FAA–2004–19442; Directorate Identifier 2004–CE–31–AD'' in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Gippsland Aeronautics Pty. Ltd.: Docket No. FAA–2004–19442; Directorate Identifier 2004–CE–31–AD.

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

(a) We must receive comments on this proposed airworthiness directive (AD) by December 15, 2004.

What Other ADs Are Affected by This Action?

(b) None.

What Airplanes Are Affected by This AD?

(c) This AD affects model GA8 airplanes, serial numbers GA8–00–004 through GA8–04–056, that are certificated in any category.

What Is the Unsafe Condition Presented in This AD?

(d) This AD is the result of rubbing between the control wheel shaft and the bush in the control column, which may cause wear or damage to the control wheel shaft where the shaft connects to the control column. This damage may lead to the aileron control becoming stiff or locking. The actions specified in this AD are intended to detect and correct damage of the pilot and co-pilot control wheels and aileron cable operating arm shafts that could result in the aileron controls becoming stiff or locking, which could lead to 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) Inspect the pilot and co-pilot control column wheel and aileron cable operating arm shafts for damage.	Perform the initial inspection within 50 hours time-in-service (TIS) after the effective date of this AD.	Follow Gippsland Aeronautics Pty. Ltd. Service Bulletin SB–GA8–2004–11, Issue 2, dated August 25, 2004.
(2) If no damage is found, continue repetitive inspections.	Perform repetitive inspections every 300 hours TIS until steel operating arm shafts are replaced with bronze operating arm shafts. Replacement of steel operating arm shafts with bronze operating arm shafts is terminating action for this AD on the side that was replaced. If one steel shaft requires replacement, all of the shafts on that side (pilot or co-pilot) must be replaced with bronze shafts. If only one side (pilot or co-pilot) is replaced, repetitive inspections are still required for the side that was not replaced.	Follow Gippsland Aeronautics Pty. Ltd. Service Bulletin SB–GA8–2004–11, Issue 2, dated August 25, 2004.
(3) For airplanes where damage is found: (i) If damage can be repaired by polishing out marks or scratches so that material removed does not exceed 0.005 inches, repair the shaft. You can not repair by polishing out marks or scratches more than one time. (ii) If damage can not be repaired by polishing out marks or scratches so that material removed does not exceed 0.005 inches or you have already repaired the damage by polishing out the marks or scratches previously, the damaged steel operating arm shaft must be replaced with a bronze operating arm shaft. When a shaft (pilot or co-pilot) requires replacement, you must install new bronze shafts in all areas of the affected side.	If damage is found, repair or replace operating arm shafts prior to further flight. If airplane is repaired, repetitively inspect every 300 hours TIS after repair until replacement of the operating arm shafts. Replacement of the steel operating arm shafts with bronze operating arm shafts is terminating action for this AD. If only one side (pilot or co-pilot) is replaced with bronze shafts, you must still repetitively inspect the other side that was not replaced.	Follow Gippsland Aeronautics Pty. Ltd. Service Bulletin SB–GA8–2004–11, Issue 2, dated August 25, 2004.
(4) As of the effective date of this AD, do not install shafts that are not bronze on any affected Model GA8 airplane.	As of the effective date of this AD	Follow Gippsland Aeronautics Pty. Ltd. Service Bulletin SB–GA8–2004–11, Issue 2, dated August 25, 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, Standards Office, Small Airplane Directorate, FAA. For information on any already approved alternative methods of compliance, contact Doug Rudolph, Aerospace Engineer, Small Airplane Directorate, ACE–112, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: 816–329–4059; facsimile: 816–329–4090.

Is There Other Information That Relates to This Subject?

(g) Australian Civil Aviation Safety Authority Airworthiness Directive AD/GA8/2, dated September 17, 2004, and Gippsland Aeronautics Pty., Ltd., Service Bulletin SB–GA8–2004–11, dated August 25, 2004, also address the subject of this AD.

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

(h) To get copies of the documents referenced in this AD, contact Gippsland Aeronautics Pty. Ltd., Latrobe Regional Airport, P.O. Box 881, Morwell, Victoria 3840, Australia; telephone: 61 (0) 3 5172 1200; facsimile: 61 (0) 3 5172 1201. To view the AD docket, go to the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC, or on the Internet at *http://dms.dot.gov.* This is docket number FAA–2004–19442.

Issued in Kansas City, Missouri, on November 2, 2004.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–24819 Filed 11–5–04; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL TRADE COMMISSION

16 CFR Chapter I

[RIN 3084–AA94]

Fair and Reasonable Fee for Credit Score Disclosure

AGENCY: Federal Trade Commission (FTC).

ACTION: Advance notice of proposed rulemaking, request for comment.

SUMMARY: Section 212(b) of the Fair and Accurate Credit Transactions Act of 2003 (''FACT Act'') amends the Fair Credit Reporting Act (''FCRA'') by adding a new section 609(f), which mandates that consumer reporting agencies make available upon request a consumer's credit score, together with other information. Section 609(f)(8) provides that a consumer reporting agency may charge a ''fair and reasonable fee, as determined by the [Federal Trade] Commission'' for such disclosure.

In this document, the Federal Trade Commission (''FTC'' or ''Commission'') is publishing for comment an advance notice of proposed rulemaking that would implement the requirement in section 609(f)(8) of the FCRA that it determine a fair and reasonable fee to be charged by a consumer reporting agency for providing the information required under FCRA section 609(f).

DATES: Comments must be received by January 5, 2005.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to ''FACTA Credit Score Fee, Project No. R411004'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed to the following address: Federal Trade Commission/ Office of the Secretary, Room H–159 (Annex O), 600 Pennsylvania Avenue, NW., Washington, DC 20580. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions.

Comments containing confidential material must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with Commission Rule 4.9(c). 16 CFR 4.9(c) (2004).[1]

Comments filed in electronic form should be submitted by clicking on the following Web link: *https://secure.commentworks.com/ftc-CreditScoreFee* and following the instructions on the Web-based form. To ensure that the Commission considers an electronic comment, you must file it on the Web-based form at the *https://secure.commentworks.com/ftc-CreditScoreFee* weblink. You may also visit *http://www.regulations.gov* to read this advance notice of proposed rulemaking, and may file an electronic comment through that Web site. The Commission will consider all comments that regulations.gov forwards to it.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments received by the Commission, whether filed in paper or in electronic form, will be considered by the Commission, and will be available to the public on the FTC Web site, to the extent practicable, at *http://www.ftc.gov.* As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/privacy.htm.*

FOR FURTHER INFORMATION CONTACT: Christopher Keller, Attorney, (202) 326–3224, Division of Financial Practices, Federal Trade Commission, 601 New Jersey Avenue, NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

I. Background

The FCRA, enacted in 1970, sets standards for the collection, communication, and use of information bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living that is collected and communicated by consumer reporting agencies. 15 U.S.C. 1681–1681x. Since its inception in 1970, the FCRA has provided generally that a consumer may learn of the information that consumer reporting agencies maintain concerning the consumer. As originally enacted, the FCRA provided that a consumer could obtain disclosure of the ''nature and substance'' of the information in his or her file at the consumer reporting agency.

In 1996, the Consumer Credit Reporting Reform Act, Pub. L. 104–208, 110 Stat. 3009, amended the FCRA to provide that a consumer may obtain disclosure of ''[a]ll information in the consumer's file at the time of the request * * *,'' as well as a summary of consumer rights under the FCRA. However, the 1996 amendment specifically excluded from the information required to be disclosed to consumers ''any information concerning credit scores or any other risk scores or predictors relating to the consumer.''

The Fair and Accurate Credit Transactions Act of 2003, Pub. L. 108–159, 117 Stat. 1952, amends the FCRA to add a new subsection 609(f) to the FCRA, giving consumers the right to obtain disclosure of credit scores and related information.[2] The requirement to disclose a credit score applies to consumer reporting agencies that ''distribute scores that are used in connection with residential real property loans,'' or ''develop scores that assist credit providers in understanding the general credit behavior of a consumer and predicting the future credit behavior of the consumer.''[3] The provision requires only the disclosure of a ''mortgage score'' or ''educational score,'' and does not require disclosure of other risk scores based on credit information, such as those used to underwrite auto loans, personal loans, credit cards, or insurance products.[4]

[1] The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. See Commission rule 4.9(c), 16 CFR 4.9(c).

[2] In relevant part, Section 212(b) of the FACT Act provides:

(b) DISCLOSURE OF CREDIT SCORES—Section 609 of the Fair Credit Reporting Act (15 U.S.C. 1681g), as amended by this Act, is amended by adding at the end the following:

''(f) DISCLOSURE OF CREDIT SCORES—

''(1) IN GENERAL—Upon the request of a consumer for a credit score, a consumer reporting agency shall supply to the consumer a statement indicating that the information and credit scoring model may be different than the credit score that may be used by the lender, and a notice which shall include—

''(A) the current credit score of the consumer or the most recent credit score of the consumer that was previously calculated by the credit reporting agency for a purpose related to the extension of credit;

''(B) the range of possible credit scores under the model used;

''(C) all of the key factors that adversely affected the credit score of the consumer in the model used, the total number of which shall not exceed 4 * * *;

''(D) the date on which the credit score was created; and

''(E) the name of the person or entity that provided the credit score or credit file upon which the credit score was created.''

[3] FCRA section 609(f)(4).

[4] Section 609(f)(7)(A) provides that ''In complying with this subsection, a consumer reporting agency shall supply the consumer with [1] a credit score

New subsection 609(f)(8) provides that the consumer reporting agency may charge a ''fair and reasonable fee, as determined by the Commission'' for such disclosure.

New section 609(f)(2)(A) of the FCRA defines a credit score as ''a numerical value or a categorization derived from a statistical tool or modeling system used by a person who makes or arranges a loan to predict the likelihood of certain credit behaviors, including default.'' Generally, the higher the score, the lower the predicted risk.[5]

Currently, there appears to be an extensive and dynamic market for credit score products. In addition, several sellers are developing and introducing diverse new scoring products. Many of these sellers are not consumer reporting agencies, and thus would not be subject to the Commission's fee determination under FCRA section 609(f)(8). Consumers can buy scores from several companies, including subsidiaries of nationwide consumer reporting agencies and Fair Isaac and Company (FICO), the company that initially developed credit scoring. Other companies have also entered the market.[6]

Scores are available to consumers in a wide variety of forms and delivery methods, both directly from the companies that provide the scores and score products themselves, and indirectly through entities that have existing relationships with consumers (*e.g.*, credit card issuers) who ''partner'' with the score suppliers. Some companies that offer consumer credit scores also provide a variety of educational material, including tutorials and interactive exercises that allow consumers to see how modifications in credit behavior (such as closing an account or making a larger payment) might affect their credit score.[7]

Most credit score products available to consumers include not only a score, but also a copy of the consumer's complete credit report and educational materials.[8] Some products include additional features, such as a monitoring function—*e.g.*, a service that alerts the consumer when new or negative information is added to the consumer's file or new accounts are opened in the consumer's name.[9] The ''bundled'' services are available at prices that range from $14 to $90, depending on the duration of the service and the range of options offered with the package. For those packages that include only the consumer's full report plus a score, the incremental cost of the score component of the product appears to be in the range of $4 to $7.[10]

Stand-alone scores, such as those required by section 609(f), appear to be available in those states that mandate free credit reports, and particularly in California and Colorado, where state laws require the disclosure of credit scores.[11] In California and Colorado, the laws requiring disclosure of scores also permit a consumer reporting agency to charge a ''reasonable'' fee.[12] In those states where a score-only product is available, the cost range is approximately $5 to $8.[13]

II. Possible Approaches for Commission Determination

Section 609(f)(8) of the FCRA states that consumer reporting agencies may charge a fair and reasonable fee ''as determined by the Commission.'' The law does not specify the manner in which that fee is to be determined. The Commission invites comments from all interested parties on any aspect of a proposed determination of a fair and reasonable fee for score disclosure. In setting out its background discussion above, and in reviewing various potential approaches to its determination below, the Commission does not wish to preclude comment on any alternatives, or the submission of appropriate background information. The Commission invites comment on approaches and factors that should be considered in determining a fee for the disclosures required under FCRA section 609(f), as well as comment on underlying premises that it should employ in considering various approaches and factors.

There are several possible approaches that the Commission could take to make the required determination. One approach would be to establish a single mandatory price that regulated entities must charge for a score disclosure. Such an approach could provide clarity and certainty for both the industry and consumers. On the other hand, a fixed price might result in a higher fee than a consumer would be asked to pay in a competitive market; where the price is set above the level the regulated seller would otherwise charge, consumers could pay more than they would without intervention. If the fee is set too low, however, it may discourage competition on other terms of the transaction. For example, the seller may choose to cut corners elsewhere, such as quality, service, or willingness to innovate. In a market such as this—with both regulated sellers (consumer reporting agencies who distribute mortgage scores or develop their own scoring models) and unregulated sellers (non-consumer reporting agencies and consumer reporting agencies that do not sell mortgage scores or develop proprietary scores)—a fixed price may place regulated sellers at a competitive disadvantage to unregulated sellers.

A maximum fee is another potential approach (setting a ''cap'' or upper limit on the fee that could be charged). A maximum fee may be preferable to a mandatory fee because it would allow

that is derived from a credit scoring model that is widely distributed to users by that consumer reporting agency in connection with residential real property loans or [2] with a credit score that assists the consumer in understanding the credit scoring assessment of the credit behavior of the consumer and predictions about the future credit behavior of the consumer.'' Section 609(f)(7), 15 U.S.C. 1681g(f)(7). Thus, consumer reporting agencies may provide consumers with a score derived from an actual model used to calculate scores for mortgage underwriting, or may opt to provide consumers with a so-called ''educational score,'' which shows a consumer how scoring works and the perceived credit risk that the consumer presents relative to other consumers.

[5] *See http://www.ftc.gov/bcp/creditscoring/present/index.htm* (describing the development and application of scoring models). Section 212(c) of the FACT Act (''Disclosure of Credit Scores by Certain Mortgage Lenders''), which adds subsection (g) to section 609 of the FCRA, specifies the text of an educational disclosure notice that mortgage lenders are required to supply to consumers. The notice describes how scores are derived and explains their significance to the consumer. Section 609(g)(1)(A) and (D); 15 U.S.C. 1681g(g)(1)(A), (D).

[6] For example, in April 2004, Intersections, Inc., a company specializing in providing various credit information products direct to consumers, made an initial public offering of common stock. *See American Banker,* ''Young Credit Monitoring Firm Gets Cap One Feather in Cap,'' Sept. 15, 2004.

[7] *See, e.g., http://www.myfico.com/.*

[8] *See, e.g., http://www.transunion.com/; http://www.experian.com/; https://www.econsumer.equifax.com/; http://www.freecreditadvice.com/; http://www.consumerinfo.com/; http://www.truecredit.com/.*

[9] *See, e.g., http://www.freecreditreport.com/.*

[10] We look only at report-plus-score products because where the ''bundle'' includes added services or products, the cost of the additional items would be difficult to ascertain. The score component calculation is based on an assumption that, of the total fee for the package, the basic cost of the full credit report accounts for approximately $9, which is the price generally charged by consumer reporting agencies for a stand-alone copy of a consumer report.

[11] Sections 1785.10 and 1785.15.1 of the California Civil Code, effective July 1, 2001; Section 12–14.3–104.3 of the Colorado Revised Statues. Section 212(b) of the FACT Act is based on the California statute.

[12] Section 1785.15.2(b) of the California Civil Code, and section 12–14.3–104.3(5) of the Colorado Revised Statutes, respectively. Although the statutes permit consumer reporting agencies to charge a ''reasonable fee,'' they do not specify a fee or a mechanism for determining one.

[13] TransUnion offers a stand-alone score for $4.95 through its Web site. *See http://www.transunion.com/Personal/CreditReportandScoreFees.jsp.* Based on telephone inquiries in California made in mid-2004, Experian sells a score alone for $6, and Equifax charges $8.

regulated entities to compete on price.[14] If the price cap is set below the level the regulated seller would otherwise charge, however, it shares many of the drawbacks of a mandatory price. Furthermore, as academic commenters have recognized, a maximum price can become a de facto mandatory price.[15] For example, the nine-dollar maximum fee specified in the Fair Credit Reporting Act's section 609(f) for the disclosure of consumer report information to consumers has become, in practice, the industry norm: the three major nationwide consumer reporting agencies all charge $9 for consumer file disclosures, despite the opportunity to compete on price below the statutory limit.

Moreover, any set fee, whether mandatory or maximum, runs the risk of becoming obsolete.[16] A set fee may become too low—*e.g.*, if the costs of producing or delivering a score rise; or it may become too high—*e.g.*, if new technology lowers the costs of selling a score or if market participants would compete on price absent the regulation.

Some of these problems may be addressed by adjusting the set price periodically by a preannounced external factor—*e.g.*, the consumer price index. There is a variety of ways in which such adjustments might be undertaken—they could be automatic and required within any rule that the Commission adopts as its determination, or they could be initiated by the Commission in the context of periodic review of its determination. If the adjustments were automatic, the Commission could itself make the adjustment based on preannounced criteria,[17] or it could provide a formula for periodic adjustment that those subject to the rule would be required to apply and implement.

One limitation to the usefulness of an externally-derived price adjustment is the fact that it would not take into account possible changes, *e.g.*, in technology or costs, that are internal to a specific firm or the industry. In order to account for such changes, the Commission could readjust fees based on an examination of the internal operations of each individual firm. In the public utility context, this is typically done by a detailed examination of a firm's operating costs and profits, capital employed, cost of capital, and rate of return on capital. Of course, this would be a potentially difficult and complex inquiry for the Commission to undertake in this proceeding, especially because it may be difficult to specify which cost elements should be included in the calculations or how to allocate fixed costs, such as the cost of developing the scoring model.

Another approach that the Commission might consider would be to make a determination that looks to those charges produced by a competitive market as the basis for a fair and reasonable fee. Such a determination might be done with varying degrees of Commission involvement. For example, the Commission might conduct a periodic market survey to determine the range of prices charged and whether those prices are the product of competition, and set a price or a range of prices.

A market-based approach is attractive because a competitive market generally provides the most rational, responsive, and efficient form of pricing. Typically, the market is able to produce and account for relevant factors: prices, quality, service, costs, encouragement of investment, and promotion of competition. The government often sets cost-based fees in the public utility context, because regulators often have no competitive market to which they can refer. In the case of direct-to-consumer credit scores, however, there currently exists a market with many buyers and sellers on which the Commission might base a determination. In its consideration of whether a market-based determination is appropriate and feasible, the Commission seeks comment on whether there is reason to believe that the fees being charged consumers for credit scores today are not fair and reasonable, that there is not active price competition, or that the market is not producing appropriate pricing incentives.[18]

More specifically, the Commission seeks comment on an appropriate methodology for determining a fair and reasonable fee if it elected a market-based approach. One method that the Commission might consider would take advantage of the market in credit scores by determining a fee that fluctuates based on that market. For example, the Commission's survey of the market to be regulated shows that prices between $5 and $8 currently are charged.[19] A determination that reflects a dynamic, competitive market might include a set or maximum fee based on a calculated weighted mean figure. This approach could require the fee to be readjusted as the weighted mean price for credit scores rises and falls. If the Commission adopted such an approach, it would need to specify whether the Commission itself would make such market-based readjustments, or whether affected parties would be required to determine and apply readjustments based on a Commission-supplied formula.

The Commission also seeks comment on whether a fee determination based on ongoing assessment of the market might be an appropriate method on which to base its determination, and also whether such an approach might have drawbacks. Any market-based approach assumes that the market in direct-to-consumer credit scores will persist. The Commission seeks comment on both the current state of the market for credit scores and anticipated changes in the market. For example, a factor that could lead to changes in market forces is consumers' new right under the FACT Act to obtain a free annual copy of their consumer reports from each of the nationwide consumer

[14] ''[C]utting prices in order to increase business is often the very essence of competition.'' Matsushita Elec. Industrial Co. v. Zenith Radio Corp., 475 U.S. 574, 594 (1986).

[15] *See, e.g.*, Scherer, *Industrial Market Structure and Economic Performance* at 190–93, 204 (1980); Scherer, ''Focal Point Pricing and Conscious Parallelism,'' in Scherer, *Competition Policy, Domestic and International,* at 89–97 (2000). Although uniform prices might be the result of collusion, the outcome also can be due more innocently to a phenomenon sometimes referred to as ''focal point pricing.'' In this situation, competitors in a market coalesce around an externally imposed ''focal point,'' such as a government price control. *See also Arizona* v. *Maricopa County Med. Soc.,* 457 U.S. 332, 348 (1982) (stating that a maximum price fixing agreement ''may be a masquerade for an agreement to fix uniform prices, or it may in the future take on that character'').

[16] 'The reasonable price fixed today may through economic and business changes become the unreasonable price of tomorrow.'' *United States* v. *Trenton Potteries Co.,* 273 U.S. 392, 397 (1927).

[17] Such an adjustment procedure would be analogous to the statutory adjustment, undertaken annually by the Commission, to the fee that consumer reporting agencies can charge consumers for disclosure of their credit files. (In 1996, Congress specified an $8 ''cap'' on the fee that consumer reporting agencies can charge for full-file disclosure to consumers. Section 612(a)(1)(A)(i) of the FCRA, 15 U.S.C. 1681j(f)(1)(A)(i). FCRA section 612(f)(2) provides that the Federal Trade Commission shall increase the amount based proportionally on changes in the Consumer Price Index. The current limit is $9. See *http://www.ftc.gov/os/2002/12/fedcreditstatutesfrn.htm.).*

[18] While there seems to be little variation in the price of the underlying consumer credit file that is being scored, which as noted is capped currently at $9, the several participants in the market appear to compete vigorously in other aspects of the direct-to-consumer score package (*e.g.*, the score itself, accompanying educational materials, and follow-up services). Furthermore, there is price dispersion in the market for bundled scores, as well as the market for stand-alone scores. *See supra* notes 7–13 and accompanying text (the current range for bundled scores is $4 to $7 and the current range for stand-alone scores is $5 to $8).

[19] Prices for credit scores appear to range between $4 and $7 in the unregulated market.

reporting agencies through a ''centralized source.''[20] Nationwide consumer reporting agencies may choose to market scores to consumers (and may choose to fulfill their statutory obligation under section 609(f)) through the centralized source.[21] The centralized source may increase demand for scores by promoting consumer awareness of score availability, and might further competition among the nationwide consumer reporting agencies that sell scores through the centralized source. On the other hand, the centralized source might provide a competitive advantage to these consumer reporting agencies vis-a-vis other sellers of scores due to the ''captive'' audience of consumers that it supplies.[22]

The Commission is seeking to make a determination that would preserve for consumers the benefits of competition in both the regulated and unregulated market, while protecting consumers from the non-competitive prices that might occur in these markets in the event that competition deteriorates. Optimally, the Commission seeks to identify and implement an approach that will result in a fee that is fair to consumers; will provide regulated entities with a sufficient level of certainty; will encourage regulated entities to compete on price, quality, and service; will encourage innovation and cost-cutting; will avoid unduly interfering with the unregulated market for credit scores; and does not involve a lengthy rate-making proceeding or reliance upon proprietary cost or revenue data.

The Commission seeks comment on the relative merits of each approach, as well as comments and suggestions on other appropriate factors to take into account in determining a fair and reasonable fee or periodically adjusting that fee.

Effective Date

The Commission proposes an effective date of thirty days after promulgation of its final determination.

The Commission recognizes that the provisions of FCRA section 609(f) will become effective on December 1, 2004 without regard to whether the Commission has made a determination or given guidance on how it will determine whether a particular fee is fair and reasonable.[23] Although Congress has directed credit scores be available for a fair and reasonable fee as determined by the Commission, it did not impose a deadline for a determination nor has it required that the determination be made in any particular manner. Furthermore, there is no indication that Congress meant to require regulated entities to make the required disclosures free of charge. For these reasons, the Commission interprets section 609(f) to allow regulated entities to charge a fee for required disclosures in advance of any specific Commission determination or other guidance, so long as that fee is fair and reasonable. Thus, absent additional Commission action on or before December 1, 2004, consumer reporting agencies must disclose mortgage or educational scores to consumers and may charge a fair and reasonable fee for those disclosures. Indeed, this process is currently used in the states that require similar disclosure.

The Commission's enforcement of the ''fair and reasonable'' requirement will be by reference to the extant market in credit scores. Thus, at present the Commission may question any fee that significantly exceeds the current market rates for credit scores, which are currently in the range of $4 to $8.

III. Request for Comments

The Commission welcomes comment on all aspects of the determination it will make, including policy and pragmatic considerations associated with any potential approach to determining a fair and reasonable fee for credit score disclosure, costs and benefits to all affected parties, implementation considerations, and any other issues bearing on the Commission's determination. Specifically, the Commission seeks comment on the range of approaches outlined above, as well as suggestions for alternative approaches to fee determination, and comments prompted by the following considerations and questions. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received by January 5, 2005.

(1) The Commission believes that the current market in direct-to-consumer scores is competitive and healthy—there appears to be price dispersion, innovation, and a variety of products and sellers. Is this an accurate characterization of the market? If so, why? If not, why? The Commission believes that one nationwide consumer reporting agency—TransUnion—sells stand-alone credit scores to consumers for $4.95 in states that mandate free file disclosures. Three nationwide consumer reporting agencies sell stand-alone scores in California and Colorado for prices ranging from $4.95 to $8. Is this accurate? Are these the only circumstances under which consumers can obtain stand-alone credit scores? The Commission believes that most scores are sold as part of a package or are bundled with a consumer report and other information or services. Is this accurate? What is the range of prices for these products? By what method should the score component of a package or bundle or goods and services be valued?

(2) The Commission recognizes that its determination under FCRA Section 609(f) will apply only to a portion of the market—consumer reporting agencies that distribute ''mortgage'' scores or develop their own credit scores—and only to two scoring products currently offered to consumers—''mortgage'' scores and ''educational'' scores. How many consumer reporting agencies would be subject to this requirement? What percentage of the credit score market would be regulated, and what percentage unregulated?

(3) The Commission is aware that many non-consumer reporting agencies offer scores and related products to consumers. What is the relevant market for purposes of the Commission determination? What would be the competitive effects of the imposition of a maximum price requirement that applies only to a part of the market for scores? Would a maximum price requirement in the limited market for ''statutory'' scores (*i.e.*, mortgage or educational scores provided by consumer reporting agencies) have effects on the broader, unregulated market for scores?

(4) It is the Commission's understanding that many consumer reporting agencies do not currently provide scores directly to consumers, but do so through non-consumer reporting agency subsidiaries. Will consumer reporting agencies choose to fulfill the statutory requirement in

[20] Section 211(d) of the FACT Act. Under the Commission's rule implementing this requirement, this centralized source will first be available to some consumers beginning December 1, 2004, with full implementation by September 1, 2005. *See* 16 CFR 610, 69 FR 35468 (June 24, 2004). *See also http://www.ftc.gov/os/2004/05/040520factafrn.pdf and http://www.ftc.gov/os/2004/06/040624factafreeannualfrn.pdf.*

[21] *Id.*

[22] The FACT Act also contains a new requirement that mortgage lenders disclose a credit score to home loan applicants, along with an explanatory notice. Section 212(c) of the FACT Act adds new FCRA section 609(g), effective December 1, 2004, mandating score disclosure and providing the text of the educational ''Notice to the home loan applicant.'' This mandated disclosure and notice may increase consumer awareness of credit scores, which might increase consumer demand for scores, but also could diminish demand for score purchases, because those consumers who apply for home loans will receive scores for free.

[23] See 16 CFR 602.1(c)(3)(x) (establishing December 1, 2004 as the effective date for FACTA Section 212(b)).

FCRA Section 609 through non-consumer reporting agency subsidiaries?

(5) Consumer reporting agencies can fulfill FCRA Section 609's requirement by providing consumers with mortgage or educational scores. How will consumer reporting agencies choose to fulfill this requirement and what type of score are they most likely to provide to consumers? Why?

(6) Among the potential approaches available to the Commission is determining a fee based on the market for scores. In that context, what is the appropriate market to consider: the market for stand-alone mortgage and educational scores sold by consumer reporting agencies, or the market for all credit scores sold by consumer reporting agencies and non-consumer reporting agencies? If a market-based approach is appropriate, are these two markets appropriate reference points? Are there other markets that should be considered? Overall, what is the appropriate market, and what are the factors that the Commission should consider in determining the appropriate market?

(7) The Commission welcomes comment on whether other factors, in addition to prices charged in a competitive market, should be taken into account in determining a fair and reasonable fee for required disclosures (*e.g.*, cost data, revenue data, other market conditions). Comments should discuss the pragmatic aspects of each factor advanced for consideration; for example, whether data underlying a given factor are readily available or difficult to obtain.

(8) For any determination involving a specified dollar amount for a fair and reasonable fee, should the Commission include within a final determination a mechanism for periodic adjustment of the specified amount? If so, what approach is desirable for such adjustment and what entity or entities should determine the specific adjustment? Should the Commission initiate new assessments of all of the factors underlying its determination at a fixed time interval, or only when a factor changes significantly? Should the Commission's determination include an ''automatic'' adjustment keyed to the consumer price index or similar economic index? Should periodic adjustments be required to be both determined and implemented by the regulated entities based on a formula set forth within the Commission's determination? Are there other bases for periodic adjustment that might be appropriate?

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 04–24841 Filed 11–5–04; 8:45 am]

BILLING CODE 6750–01–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 404

[Regulation No. 4]

RIN 0960–AF28

Revised Medical Criteria for Evaluating Impairments of the Digestive System

AGENCY: Social Security Administration.

ACTION: Proposed rules; limited reopening of comment period.

SUMMARY: We are reopening for limited purposes the comment period for the notice of proposed rulemaking (NPRM) that we published in the **Federal Register** on November 14, 2001 (66 FR 57009). We have decided to reopen the comment period for 60 days to solicit additional public comments on our proposal to revise and remove several of the chronic liver disease listings from the Listing of Impairments (the listings) because we believe that the revisions we propose are significant. We are reopening the comment period only to accept comments about chronic liver disease. Due to the limited reopening of the NPRM, we will not consider any comments on other aspects of the proposed listings for the digestive system.

DATES: To be sure your comments are considered, we must receive them by January 7, 2005.

ADDRESSES: You may give us your comments by: using our Internet site facility (*i.e.*, Social Security Online) at: *http://policy.ssa. gov/pnpublic.nsf/LawsRegs* or the Federal eRulemaking Portal at *http://www.regulations.gov;* e-mail to regulations@ssa.gov; telefax to (410) 966–2830; or by letter to the Commissioner of Social Security, P.O. Box 17703, Baltimore, Maryland 21235–7703. You may also deliver them to the Office of Regulations, Social Security Administration, 107 Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, between 8 a.m. and 4:30 p.m. on regular business days. Comments are posted on our Internet site, at *http://policy.ssa. gov/pnpublic.nsf/LawsRegs* or you may inspect them on regular business days by making arrangements with the contact person shown in this preamble.

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

FOR FURTHER INFORMATION CONTACT: Suzanne DiMarino, Social Insurance Specialist, Office of Regulations, Social Security Administration, 107 Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, (410) 965–1767 or TTY (410) 966–5609. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet Web site, Social Security Online, at *www.socialsecurity.gov.*

SUPPLEMENTARY INFORMATION: On November 14, 2001, we published ''Revised Medical Criteria for Evaluating Impairments of the Digestive System'' as an NPRM in the **Federal Register** (66 FR 57009). You may find this document at our Web site: *http://policy.ssa.gov/erm/rules.nsf/5da82b031 a6677dc85256b41006b7f8d/a37bb476cb 227bdd85256b410067a74d?OpenDocument.*

This NPRM proposed to revise the criteria in the Listings that we use to evaluate claims involving impairments of the digestive system. We explained in the proposed rules that we were revising and removing several of the chronic liver disease listings because of the progress in medical and surgical advancements in treating these diseases. When we published the NPRM, we provided a 60-day comment period that ended January 14, 2002. We have reviewed and considered all the comments we received during the comment period. However, we received few comments regarding our proposed revisions to the listings that specifically involve chronic liver disease. Because we believe that the revisions we propose are significant, we want to ensure that the public has another opportunity to review and comment on those proposals involving the evaluation of chronic liver disease. In order to allow the public sufficient time to review and comment on our proposals, we have decided to provide an additional 60-day comment period within which to comment on our proposal to revise and remove several of the listings for evaluating chronic liver disease. If you have already provided comments on the proposals, your comments will be considered and you do not need to resubmit them.

Dated: November 1, 2004.

Jo Anne B. Barnhart,

Commissioner of Social Security.

[FR Doc. 04–24782 Filed 11–5–04; 8:45 am]

BILLING CODE 4191–02–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R05–OAR–2004–IN–0004; FRL–7820–5]

Approval and Promulgation of Implementation Plans; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve revisions to volatile organic compound (VOC) requirements for Eli Lilly and Company (Eli Lilly). This facility is in Marion County, Indiana. The Indiana Department of Environmental Management (IDEM) submitted a Commissioner's Order requesting the revision on February 11, 2004 as an amendment to the Indiana State Implementation Plan (SIP).

Eli Lilly operates a synthesized pharmaceutical manufacturing facility in Marion County. This SIP revision covers new and existing sources in Eli Lilly's Building 110 pilot plant. Eli Lilly is seeking an exemption from 326 Indiana Administrative Code (IAC) 8–5–3, control requirements for synthesized pharmaceutical manufacturing, under the site-specific reasonably available control technology (RACT) rule, 326 IAC 8–1–5. Eli Lilly is seeking this exemption for reactors, filters, centrifuges, and vacuum dryers. Other Building 110 sources such as air dryers, in-process tanks, and storage tanks comply with 326 IAC 8–5–3. The total VOC annual emissions from Building 110 are limited to less than 10 tons per year (TPY).

DATES: The EPA must receive written comments by December 8, 2004.

ADDRESSES: Submit comments, identified by Docket ID No. R05–OAR–2004–IN–0004 by one of the following methods: Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the on-line instructions for submitting comments. E-mail: *bortzer.jay@epa.gov.,* Fax: (312) 886–5824. Mail: You may send written comments to: J. Elmer Bortzer, Chief, Air Programs Branch, (AR–18J), Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Hand delivery: Deliver your comments to: J. Elmer Bortzer, Chief, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, 18th floor, Chicago, Illinois 60604.

Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. R05–OAR–2004–IN–0004. EPA's policy is that all comments received will be included in the public docket without change, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov, or e-mail. The Federal regulations.gov Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional instructions on submitting comments, go to Section I of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket.* Although listed in the index, some information is not publicly available, *i.e.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (We recommend that you telephone Matt Rau, Environmental Engineer, at (312) 886–6524 before visiting the Region 5 office.) This Facility is open from 8:30 AM to 4:30 PM, Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Matt Rau, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, Telephone: (312) 886–6524.

SUPPLEMENTARY INFORMATION: Throughout this document wherever ''we,'' ''us,'' or ''our'' are used we mean the EPA.

Table of Contents

I. What Actions Are the EPA Taking Today?
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I. What Actions Are the EPA Taking Today?

EPA is proposing to approve revisions to VOC requirements for the Eli Lilly pharmaceutical manufacturing facility in Marion County, Indiana. The revisions include an exemption from the control requirements of 326 IAC 8–5–3 for reactors, centrifuges, filters, and vacuum dryers in Building 110, the pilot plant for Eli Lilly. This exemption can be approved under Indiana's site-specific RACT rule, 326 IAC 8–1–5. Another revision is that Eli Lilly can now add research and development equipment to Building 110 without a new SIP revision. Eli Lilly will follow the appropriate RACT plan for any new equipment and keep the total annual VOC limit for Building 110 to less than 10 TPY.

II. General Information

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

1. *Submitting CBI.* Do not submit this information to EPA through EDOCKET, regulations.gov, or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

I. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).

II. Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

III. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

IV. Describe any assumptions and provide any technical information and/or data that you used.

V. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

VI. Provide specific examples to illustrate your concerns, and suggest alternatives.

VII. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

VIII.Make sure to submit your comments by the comment period deadline identified.

III. Where Can I Find More Information About This Proposal and the Corresponding Direct Final Rule?

For additional information see the direct final rule published in the rules section of this **Federal Register.**

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Ozone, Volatile organic compounds.

Dated: September 16, 2004.

Norman Niedergang,

Acting Regional Administrator, Region 5.

[FR Doc. 04–24822 Filed 11–5–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 136

[OW–2003–0003; FRL–7834–8]

Guidelines Establishing Test Procedures for the Analysis of Pollutants; Procedures for Detection and Quantitation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of document availability.

SUMMARY: EPA uses method detection limit (MDL) and minimum level of quantitation (ML) procedures to establish detection and quantitation capabilities of test procedures (*i.e.*, analytical methods) under the Clean Water Act (CWA). The MDL is used to determine the lowest concentration at which a substance is detected or is ''present'' in a sample. The ML is used to describe the lowest concentration of a substance in a sample that can be measured with a known level of confidence. Today's notice announces the availability of a document entitled *Revised Assessment of Detection and Quantitation Approaches*. This document presents EPA's revised assessment of MDL, ML and other detection and quantitation procedures for use under the CWA, and EPA's consideration of public comment received on an assessment document published by EPA in 2003.

ADDRESSES: The docket for today's action is available under Docket ID No. OW–2003–0003. All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket.* Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Water Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426.

FOR FURTHER INFORMATION CONTACT: William Telliard; Engineering and Analysis Division (4303T); Office of Science and Technology; Office of Water; U.S. Environmental Protection Agency; Ariel Rios Building; 1200 Pennsylvania Avenue, NW.; Washington, DC 20460, or call (202) 566–1061 or E-mail at *telliard.william@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. How Can I Get Copies of This Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this notice under Docket ID No. OW–2003–0003. The official public docket consists of the documents specifically referenced in this notice, public comments received on EPA's assessment presented in the February 2003 Technical Support Document, and other supporting information related to this assessment. Information claimed as CBI and other information whose disclosure is restricted by statute, or which is not included in the official public docket, will not be available for public viewing in EPA's public docket. The official public docket is available for public viewing at the Water Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC 20460. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet under the Federal Register listings at *http://www.epa.gov/fedrgstr/*. An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''Search,'' then key in the appropriate docket identification number. Information claimed as CBI and other information whose disclosure is restricted by statute, or which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in I.A.1.

II. Background

A. Test Procedures Used for Clean Water Act Programs

EPA proposes and promulgates test procedures at 40 CFR part 136 in accordance with Section 304(h) of the CWA, which requires that the EPA Administrator ''promulgate guidelines establishing test procedures for the analysis of pollutants'' to be monitored and regulated under the National Pollutant Discharge Elimination System (NPDES). Test procedures are also

known as analytical methods. EPA draws the analytical methods from a variety of sources, including methods developed by commercial vendors, EPA and other government agencies, as well as methods from voluntary consensus standards bodies such as the American Public Health Association, the Water Environment Federation, and the American Water Works Association, which jointly publish *Standard Methods for the Examination of Water and Wastewater*; the Association of Official Analytical Chemists; and the American Society for Testing and Materials (ASTM) International. An analytical method promulgated by EPA under CWA section 304(h) is considered approved by EPA for purposes of EPA's NPDES permitting regulations.

Among considerations for approval of an analytical method at 40 CFR part 136 are the demonstrated performance characteristics of precision, bias, and sensitivity (*i.e.*, detection and quantitation). EPA generally evaluates each of these characteristics to determine if the analytical method will yield results at concentrations of concern that are reliable enough to meet Agency needs for permitting and compliance monitoring under the Clean Water Act (CWA). Detection and quantitation limits have been the most controversial of these characteristics, particularly among members of the regulated community.

The method detection limit (MDL), which is specified at 40 CFR part 136, appendix B, is used to determine the lowest concentration at which a substance is detected or is ''present'' in a sample. The minimum level of quantitation (ML) is used to describe the lowest concentration in a sample of a substance that can be measured with a known level of confidence. The existing MDL procedure has been in place since 1984. Individual MDLs and MLs are included in many EPA-approved methods at 40 CFR part 136, and have provided laboratories and data users with limits for evaluating results of analytical measurements or analytical method selection.

B. EPA's Initial Assessment

In 2003, EPA completed an initial assessment of approaches for determining detection and quantitation capabilities of analytical methods and their application to CWA programs, and published the results in the *Technical Support Document for the Assessment of Detection and Quantitation Approaches* (EPA–821–R–03–005, February 2003). This assessment examined EPA's current MDL and ML procedures, as well as alternative detection and quantitation concepts and procedures.

A draft of the initial assessment document was peer-reviewed in August 2002. EPA revised the document to incorporate comments from the peer review. On March 12, 2003 (68 FR 11791), EPA made *Technical Support Document for the Assessment of Detection and Quantitation Approaches* available to the public and provided for 150 days for public comment, including a 30-day extension of the comment period (68 FR 41988, July 16, 2003).

C. EPA's Revised Assessment

Today's notice announces the availability of the document entitled *Revised Assessment of Detection and Quantitation Approaches* (the Revised Assessment Document), EPA–821–B–04–005, October 2004. The revised assessment examines the procedures currently used by the Agency for determining detection and quantitation levels. It also evaluates alternative concepts and procedures, including two detailed procedures submitted by the U.S. Geological Survey (USGS) and the American Council of Independent Laboratories (ACIL). ACIL is an organization representing a large group of independent commercial laboratories.

This revised assessment evaluates several alternative concepts and procedures, some of which were submitted during the comment period on EPA's previous assessment. The Revised Assessment Document consists of the following parts:

- Chapter 1 provides background information regarding EPA's assessment of detection and quantitation procedures.
- Chapter 2 includes a discussion of additional concepts and procedures not included in *Technical Support Document for the Assessment of Detection and Quantitation Approaches*, February 2003.
- Chapter 3 contains a summary of and general response to public comments received on chemical, regulatory, and statistical issues.
- Chapter 4 addresses public comment on the six evaluation criteria that EPA used to evaluate each of the detection and quantitation procedures.
- Chapter 5 contains an evaluation of detection and quantitation procedures. It includes an evaluation of procedures suggested by ACIL, USGS, and the Inter-industry Analytical Group.
- Chapter 6 summarizes EPA's findings and outlines steps for a continuing dialogue about detection and quantitation issues.
- Appendix A contains a list of documents used in the assessment.
- Appendices B and C present analyses of the detection and quantitation limit procedures. These analyses have been updated to include data and comments submitted during the comment period on *Technical Support Document for the Assessment of Detection and Quantitation Approaches*, February 2003.

The Revised Assessment Document addresses comments and concerns from stakeholders and peer reviewers. Based on this new information, EPA plans to continue consideration of alternatives or improvements to current detection and quantitation procedures and uses. It is clear that there is a broad interest in improving current procedures and uses, but no consensus for a specific procedure or procedures has emerged among the laboratory, industry, regulatory or regulated communities. EPA currently is soliciting stakeholders to participate in further considerations of alternatives or improvements to current detection and quantitation procedures.

D. Settlement Agreement

EPA conducted this revised assessment, and took comment on the 2003 assessment, to partially fulfill the requirements of a settlement agreement with the Alliance of Automobile Manufacturers, *et al.* The settlement agreement required that EPA assess existing Agency and alternative procedures for determining detection and quantitation limits and sign a notice for publication in the **Federal Register** on or before February 28, 2003, and to invite comment on the assessment. On March 12, 2003, EPA published: (1) A **Federal Register** notice announcing the availability of, and requesting comment on, a document describing EPA's assessment (68 FR 11791); and (2) a **Federal Register** notice proposing and requesting comment on revisions to the MDL definition and procedure at 40 CFR part 136, appendix B (68 FR 11770), and a definition and procedure for calculation of an ML. EPA is discharging its settlement agreement obligation today by making available a Revised Assessment Document.

E. Proposed Rule; Withdrawal

In a separate notice published elsewhere in today's **Federal Register**, EPA is withdrawing the March 12, 2003, proposal to revise the MDL definition and procedure and to add a definition and procedure for calculation of an ML. While EPA believes that some revisions to the MDL definition and procedure are appropriate, the Agency also believes that further work, including a stakeholder consultation process, is

needed before EPA can determine how best to address the concerns that have been raised. EPA is exploring the feasibility and design of a process through which stakeholders could provide their suggestions, ideas and recommendations on procedures for the development of detection and quantitation limits and uses of these limits in CWA programs. The Agency believes that the body of public comment on the proposed rule provides a strong starting point for a continued consultation with stakeholders representing constituencies such as citizens, environmental organizations, permit writers, regulators and regulated industries. In a **Federal Register** notice published on September 15, 2004 (69 FR 55547), EPA announced that a neutral party is seeking a broad group of stakeholders willing to work together to define and address concerns about the way detection and quantitation values are calculated and used to support CWA programs. Such a process, if feasible, could begin as early as December 2004.

III. Summary of Major Comments

EPA received many comment letters raising issues, concerns or suggestions on *Technical Support Document for the Assessment of Detection and Quantitation Approaches*. Commenters included laboratories, wastewater treatment plants, Federal agencies, State and county agencies, industrial firms, instrument manufacturers, trade organizations, and others. A summary of public comments and EPA's responses are included in the Response-to-Comments Document, which is in the public docket supporting this notice (*see* Section I.A of this notice).

A. EPA's Assessment

Although several commenters stated that EPA clearly put a great deal of effort and thought into preparation of the initial assessment document and commended EPA for its efforts, many commenters disagreed with certain aspects of the assessment. Some specific concerns by commenters are briefly discussed in the following paragraphs. A more detailed discussion of commenters' concerns and suggestions is in the Response-to-Comments Document or in the Revised Assessment Document.

1. Peer Review

In August 2002, a draft assessment document was peer-reviewed in accordance with EPA's peer review policies, which are described in the Science Policy Council Handbook (EPA 100–B–00–001). The draft document was reviewed by a panel of four peer reviewers, who were selected because of their expertise in the fields of statistics and/or analytical chemistry and absence of conflicts of interest. The peer review panel did not include any experts that directly or indirectly contributed to the development of EPA's MDL or ML. The peer review panel was generally supportive of EPA's approach and criteria, and made some suggestions that were incorporated into the February 2003 document.

2. Evaluation of Data

Some commenters questioned EPA's analysis of the data used to evaluate levels of detection and quantitation. They stated that they were unable to replicate EPA's data evaluations and expressed confusion regarding certain aspects of EPA's data handling (*e.g.*, analytical sequence, data censoring, and calculations using their suggested quantitation procedure). In response to the comments that EPA's data evaluations could not be replicated or were confusing, EPA has revised or clarified the steps in its data evaluation in appendix B of the Revised Assessment Document and/or in the Response-to-Comments Document.

Some commenters submitted their evaluation of the data used by EPA, while others submitted data and evaluations from other studies to support the premise that their evaluations demonstrate that EPA's MDL does not do what it purports to do, *i.e.*, provide a one percent (1%) false positive rate. In conducting the revised assessment, EPA considered this new information and agrees that the one percent false positive rate appears not to be achieved in some circumstances. EPA will continue to study this issue and notes that other commenters submitted a blank correction approach that could potentially improve false positive rate performance under certain conditions, and which we will explore in future consultations with stakeholders.

3. Evaluation and Selection of Alternative Concepts and Procedures

Several commenters stated that EPA inappropriately evaluated or rejected the International Union of Pure and Applied Chemistry and the International Standards Organization (IUPAC/ISO) critical value, and ASTM's Committee D19 on Water Interlaboratory Estimate of Detection (IDE) and Interlaboratory Estimate of Quantitation (IQE). Commenters also criticized EPA's choice of evaluation criteria. EPA agrees that some revisions to the evaluation criteria may be appropriate and will explore this in future discussions with stakeholders.

EPA used the same evaluation criteria to evaluate all detection and quantitation approaches, including the IUPAC/ISO and ASTM IDE/IQE approaches. EPA did not reject either ASTM's approach or the concepts adopted by IUPAC and ISO. As described in the *Technical Support Document for the Assessment of Detection and Quantitation Approaches*, EPA identified many approaches that have been used to describe the sensitivity (*i.e.*, the detection and quantitation capabilities) of analytical methods. EPA had focused the 2003 assessment on four sets of approaches that were either widely referenced or provided detailed instructions for use in the laboratory. The four approaches were: (1) ASTM's D19 committee IDE and IQE; (2) the LOD (limit of detection) and LOQ (limit of quantitation) adopted by the American Chemical Society; (3) the critical value, minimum detectable value, and limit of quantitation adopted by IUPAC and ISO; and (4) EPA's MDL and ML procedures. For the revised assessment, the Agency has expanded this evaluation to include three additional approaches. These three approaches were respectively submitted by the Inter-industry Analytical Group, U.S. Geological Survey, and the American Council of Independent Laboratories. The Revised Assessment Document also describes a quantitation procedure that is being developed by EPA's Office of Ground Water and Drinking Water. This quantitation procedure is known as the minimum reporting level or MRL. The Agency anticipates proposing the details of the MRL procedure in a rulemaking for public comment by mid-2005.

Several commenters requested that EPA continue its assessment by working with stakeholders to improve procedures for determining the detection and quantitation capabilities of analytical methods. EPA believes that there is benefit in continuing discussions and, in section II.E. of this notice, describes the beginning of a process for a series of discussions about these issues with stakeholders, such as permitees, permit writers, state regulators, nongovernmental organizations, and environmental groups.

B. Consensus Principles

Stakeholders commenting on EPA's 2003 assessment of detection and quantitation approaches expressed their support of a set of ''consensus principles'' submitted by 36 signatories.

The ''consensus principles'' described in this letter include the following:

• The definition of ''quantitation'' should account for both precision and bias.

• EPA should consider different uses of the MDL and ML in the Clean Water Act program (as a start-up test for a single laboratory, as a figure of merit to characterize an analytical method, as a permit compliance level, *etc.*), and evaluate the applicability of the MDL and ML to these uses.

• Definitions of and procedures for determining quantitation levels should take into account their use as regulatory compliance levels in NPDES permits, and the effects of routine variability within a laboratory on the results generated by the laboratory.

EPA notes that some of these ''consensus principles'' highlight existing aspects of approaches to detection and quantitation and provide a framework for future discussions with stakeholders. A more detailed description and additional discussion of these ''consensus principles'' is in Chapter 4 of the Revised Assessment Document.

C. Technical Issues

EPA considered, and is continuing to consider, several technical issues related to the development of detection and quantitation approaches. These issues are discussed in chapter 3 of the Revised Assessment Document. Commenters expressed concern regarding EPA's consideration of several of these technical issues, specifically how these issues are, or are not, addressed by EPA's MDL and ML. Specific concerns or suggestions expressed by commenters dealt with technical aspects of EPA's assessment, such as treatment of sample blanks, instrument data censoring, false positive and false negative rates, and calculation of MLs. EPA addressed these comments in the Revised Assessment Document and/or the Response-to-Comments Document, and the Agency expects to further address these issues in a continued consultation with stakeholders.

IV. Next Steps

It is clear that there is a strong interest in improving current procedures and uses, but no consensus for a specific procedure or procedures has emerged among the laboratory, industry, regulatory or regulated communities. The Agency looks forward to working with stakeholders. Based on an analysis of comments received on the 2003 assessment and proposed revisions to the MDL procedure, issues for consideration in future stakeholder consultations may include, but are not limited to, development of detection and quantitation procedures that:

• Vary in the nature and extent of statistical rigor and laboratory performance checks depending on the end use of a calculated limit in CWA programs;

• Account for more sources of variability, such as the variability between and within laboratories;

• Require more then seven samples and collect samples over a long period of time; and

• Use routine blank samples collected over long periods of time to account for background signals and temporal variability.

EPA has engaged a neutral third party to ask stakeholders for suggestions for additional issues, and about their interest in working with EPA to revise existing procedures and/or adopt one or more alternative procedures.

Dated: November 1, 2004.

Benjamin H. Grumbles,

Acting Assistant Administrator for Water.

[FR Doc. 04–24824 Filed 11–5–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 136

[OW–2003–0002; FRL–7834–9]

RIN 2040–AD53

Guidelines Establishing Test Procedures for the Analysis of Pollutants; Procedures for Detection and Quantitation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; withdrawal.

SUMMARY: On March 12, 2003, EPA published a document in the **Federal Register** that proposed revisions to the regulations for the definition and procedure for EPA's method detection limit (MDL). The document also proposed to add to these regulations a definition of minimum level of quantitation (ML) and a procedure for developing it. The proposed rule requested comment on the revisions and additions. The MDL and ML are used to characterize the capabilities of analytical test procedures applied under the Clean Water Act (CWA). The proposed revisions were based on EPA's 2003 assessment of approaches to determining detection and quantitation capabilities of analytical methods.

Today's document withdraws the proposed revisions. The proposed revisions were disfavored by the vast majority of commenters on the March 2003 proposed rule, and the Agency has determined that these proposed revisions do not represent the most effective way to address the public's and EPA's concerns regarding approaches to, and use of, detection and quantitation values. The Agency believes, preliminarily, that new approaches submitted in comments to the proposed rule might better address the issues EPA sought to address in its proposed revisions and that these new approaches warrant further consideration and refinement. Hence, EPA plans to work with stakeholders to evaluate one or more approaches to detection and quantitation that will satisfy the needs of programs, regulations, and initiatives at the Federal level for use of detection and quantitation procedures, and to revise its existing procedures, as appropriate.

DATES: For judicial review purposes, this action is considered issued as of November 8, 2004. Under section 509(b)(1) of the Clean Water Act, judicial review of the Administrator's action regarding guidelines establishing test procedures for analysis of pollutants can only be had by filing a petition for review in the United States Court of Appeals within 120 days after the decision is considered issued for purposes of judicial review. Under 40 CFR 23.12, if within ten days of the issuance date of this action for purposes of judicial review EPA's General Counsel receives two or more petitions filed in two or more United States Courts of Appeals, the General Counsel will notify the United States Judicial Panel of Multidistrict Litigation of all petitions received within the ten day period.

ADDRESSES: The docket for today's action is available for public inspection under Docket ID No. OW–2003–0002 at the Water Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: William A. Telliard; Engineering and Analysis Division (4303T); Office of Science and Technology; Office of Water; U.S. Environmental Protection Agency; Ariel Rios Building; 1200 Pennsylvania Avenue, NW., Washington, DC 20460, or call (202) 566–1061 or E-mail at *telliard.william@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. What Entities Are Potentially Interested in This Action?

Because EPA is withdrawing proposed regulatory changes, this action should not have any concrete effects on any entity. Various groups may, however, be interested in today's decision. EPA regions, as well as States, Territories and Tribes authorized to implement the National Pollutant Discharge Elimination System (NPDES) program, issue permits that comply with the technology-based and water quality-based requirements of the Clean Water Act (CWA). In doing so, NPDES permitting authorities, including authorized States, Territories, and Tribes, make a number of discretionary choices associated with permit writing, including the selection of pollutants to be measured and, in many cases, limited in permits. If EPA has ''approved'' standardized testing procedures under 40 CFR part 136 for the measurement of a given pollutant, the NPDES permit must require such analysis to be done in accordance with one of the approved testing procedures or an approved alternate test procedure. Many of the testing procedures approved by EPA include a specification for detection and quantitation levels that laboratories can be expected to achieve. Therefore, entities with NPDES permits may be interested in EPA's withdrawal of the proposed revisions to the detection and quantitation procedures. In addition, States, Territories and Tribes must use the standardized testing procedures and achieve the associated detection and quantitation levels when providing certification of Federal licenses under Clean Water Act section 401. Categories and entities that may be interested in today's decision include:

Category	Examples of potentially interested entities
State, Territorial, and Indian Tribal Governments	States, Territories, and Tribes authorized to administer the NPDES permitting program; States, Territories, and Tribes providing certification under Clean Water Act section 401.
Industry	Facilities that must conduct monitoring to comply with NPDES permits.
Public	Individuals and groups that follow, comment on, or otherwise participate in NPDES permit proceedings.
Municipalities	POTWs that must conduct monitoring to comply with NPDES permits.
Environmental Laboratories	Public or private laboratories that conduct compliance-monitoring analyses for NPDES permits.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be interested in this decision. This table lists the types of entities that EPA believes may potentially be interested in this decision. Other types of entities not listed in the table may also be interested. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

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

1. Docket. We have established an official public docket for this document under Docket ID No. OW–2003–0002. The official public docket consists of the documents specifically referenced in this action, any public comments received, the March 12, 2003, document, and other supporting information related to this action. Information claimed as CBI and other information whose disclosure is restricted by statute, or which is not included in the official public docket, will not be available for public viewing in EPA's public docket. The official public docket is the collection of materials that is available for public viewing at the Water Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC 20460. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426. To view docket materials, please call ahead to schedule an appointment. Every user is entitled to copy 266 pages per day before incurring a charge. The Docket may charge 15 cents for each page over the 266-page limit plus an administrative fee of $25.00.

2. Electronic Access. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*. An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket identification number. Information claimed as CBI and other information whose disclosure is restricted by statute, or which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in I.B.1.

C. What Other Information Is Available To Support This Action?

You can obtain electronic copies of this document as well as copies of major supporting documents at EPA Dockets at *http://www.epa.gov/edocket/* and *http://www.epa.gov/waterscience.*

II. Legal Authority

This action withdraws EPA's March 12, 2003, proposed revisions to 40 CFR part 136 and the proposed addition to 40 CFR part 136.2. We take this action pursuant to sections 301(a), 304(h), and 501(a) of the Clean Water Act, 33 U.S.C. 1311(a), 1314(h) and 1361(a).

III. Background

A. Test Procedures Used for Clean Water Act Programs

EPA proposes and promulgates test procedures at 40 CFR part 136 in accordance with section 304(h) of the CWA, which requires that the EPA Administrator ''promulgate guidelines establishing test procedures for the analysis of pollutants'' to be monitored and regulated under the National Pollutant Discharge Elimination System (NPDES). Test procedures are also known as analytical methods. EPA draws the analytical methods from a variety of sources, including methods developed by commercial vendors, EPA, and other government agencies, as well as methods from voluntary consensus

standards bodies (VCSBs) such as the American Public Health Association (APHA), the Water Environment Federation (WEF), and the American Water Works Association (AWWA), which jointly publish Standard Methods for the Examination of Water and Wastewater, the Association of Official Analytical Chemists (AOAC-International); and the American Society for Testing and Materials (ASTM International). An analytical method promulgated by EPA under CWA section 304(h) is considered approved by EPA for purposes of EPA's NPDES permitting regulations.

Among considerations for approval of an analytical method at 40 CFR part 136 are the demonstrated performance characteristics of precision, bias, and sensitivity (*i.e.*, detection and quantitation). EPA generally evaluates each of these characteristics to determine if the analytical method will yield results at concentrations of concern that are reliable enough to meet Agency needs for permitting and compliance monitoring under the CWA. Detection and quantitation limits have been the most controversial of these characteristics, particularly among members of the regulated community.

B. Settlement Agreement

Following promulgation of a new EPA analytical method at 40 CFR part 136 on June 8, 1999 (64 FR 30417), the Alliance of Automobile Manufacturers, the Chemical Manufacturers Association, and the Utility Water Act Group (''Petitioners'') and the American Forest and Paper Association (''Intervenor'') filed a lawsuit challenging the method. This lawsuit challenged specific aspects of the analytical method and the procedures used to establish method detection limits (MDLs) and minimum levels of quantitation (MLs) in all chemical analytical methods under the CWA. On October 19, 2000, EPA entered into a settlement agreement, with the Petitioners and Intervenor (*Alliance of Automobile Manufacturers, et al.* v. *EPA*, No. 99–1420 (D.C. Cir.); the ''settlement agreement'').

Under the settlement agreement, EPA agreed to assess the procedures currently used by the Agency for determining detection and quantitation limits, as well as consider alternate procedures. EPA agreed to sign a notice for publication in the **Federal Register** on or before February 28, 2003, and to invite public comment on its assessment. The settlement agreement also stated that EPA may propose modifications to the existing procedures for detection and quantitation. EPA signed the notice by the agreed date and, on March 12, 2003 (68 FR 11791), published a notice announcing the availability of its assessment. The document was entitled Technical Support Document for the Assessment of Detection and Quantitation Approaches (EPA–821–R–03–005, February 2003). In a separate document on the same day, EPA proposed revisions to the Agency's existing MDL procedure at 40 CFR part 136 (68 FR 11770). EPA provided a 120-day public comment period on both documents, and reopened the comment period for an additional 30 days, in response to requests from the Petitioners. Today's document announces EPA's final action withdrawing the revisions to 40 CFR part 136 that were proposed on March 12, 2003.

Under the settlement agreement, as amended, EPA also agreed to sign a notice taking final action on the assessment described above on or before November 1, 2004. In a separate **Federal Register** notice, EPA is also announcing the availability of a revised assessment document that addresses comments and procedures submitted in response to the 2003 assessment.

IV. Summary of Proposed Rule

In the March 2003 proposed rule, EPA proposed to revise certain aspects of the existing procedure for determining the MDL in 40 CFR part 136, appendix B (Definition and Procedure for the Determination of the Method Detection Limit). EPA also requested comment on whether to add a definition of quantitation limit to part 136, and whether to add a procedure for determining the ML to appendix B. Details of the proposed revisions are presented and discussed in section VII of the March 2003 proposed rule, and include: (1) Proposed revisions to the definition of the MDL; (2) proposed technical revisions to the MDL procedure; (3) proposed clarifications and other minor editorial changes to the MDL procedure codified in part 136; and (4) a proposed definition of quantitation limit (ML) and a proposed procedure to calculate the ML.

In section VII.E of the preamble to the March 2003 proposed rule, EPA explained that the Agency continues to approve analytical methods from organizations that do not necessarily use EPA's MDL and ML procedures. EPA also recognized that there are alternative detection and quantitation approaches that may be used by method developers to determine analytical method sensitivity, and noted that the Agency includes analytical methods at 40 CFR part 136 that employ alternative approaches. In the preamble to the proposed rule, EPA specifically stated that ''the use of detection and quantitation approaches from voluntary consensus standards bodies and other organizations is encouraged under the National Technology Transfer and Advancement Act.'' EPA also included in the proposed revisions to appendix B the statement that ''an alternative procedure may be used (*e.g.*, from a voluntary consensus standards body) to establish the sensitivity of an analytical method, provided the resulting detection limit meets the sensitivity needs for the specific application.''

V. Summary of Major Comments

EPA received more than one hundred comment letters raising issues, concerns or suggestions on the proposed rule. EPA received comments from 23 laboratories, 31 wastewater treatment plants, three Federal agencies, 11 State and county agencies, 23 industrial firms, three instrument manufacturers, 19 trade organizations, four consultants, eight individuals, and one law firm representing the Petitioners. A summary of public comments and EPA's responses are included in the Response to Comments document, which is in the official public docket supporting this action.

Although a few commenters suggested that EPA adopt the revisions as proposed, most commenters noted that the proposed modifications are minor and do not attempt to make the fundamental changes that these commenters believe would be more appropriate. For example, some commenters stated that EPA's proposed MDL revisions do not sufficiently account for all sources of routine inter- and intra-laboratory variability. Many of these commenters expressed support for concepts that were included with comments submitted by the U.S. Geological Survey and the American Council of Independent Laboratories. Other commenters suggested that EPA adopt detection and quantitation procedures published by ASTM International's Committee D19 on Water (*i.e.*, interlaboratory detection and quantitation estimates, known by the acronyms IDE and IQE.)

Commenters also questioned the appropriateness of the MDL and ML for all of the different uses for which the MDL and ML are employed in Clean Water Act programs. Commenters asserted that a single procedure is not appropriate for determining detection or quantitation limits that can appropriately support all CWA uses, such as a start-up test in a single laboratory, a value characterizing a given analytical method, a benchmark

for approval of a method modification or alternate test procedure, and a reporting or compliance limit. Several commenters stated that EPA, permit holders, and laboratories would be better served if detection and quantitation were determined through approaches quite different from those proposed.

Some commenters encouraged EPA to allow use of alternative procedures for determining detection and quantitation levels. Some commenters suggested that, like EPA's MDL and ML, other available concepts fall short of providing optimal procedures. For example, comments submitted by some laboratories indicated that the proposal submitted by the Inter-industry Analytical Group, which was discussed in the preamble to the March 2003 proposed rule, would be useful only during initial phases of method development, but not as a routine laboratory tool to assess lab performance. Other commenters noted that the IDE and IQE procedures published by ASTM's D19 committee, which were discussed in the 2003 assessment of detection and quantitation approaches, also are intended only for interlaboratory use and are not appropriate for use in a single laboratory.

Other commenters recommended that EPA contact the editorial committees of voluntary consensus standards bodies to begin a process of developing detection and quantitation procedures. Several commenters requested that EPA reconsider the proposal and work with stakeholders to devise an approach that meets the Agency's needs, rather than proceeding with the proposed revisions to the MDL.

In response to these comments, EPA has decided to withdraw the proposed rule and has initiated a process to work with stakeholders on revisions to MDL and ML procedures. See Potential Stakeholder Process for Detection and Quantitation Procedures, 69 FR 55547, September 15, 2004.

VI. Decision To Withdraw Proposal

In today's action, EPA is withdrawing the March 12, 2003, proposal to revise the MDL definition and procedure and to add a definition and procedure for determining the ML. EPA has decided to withdraw these proposed revisions because the Agency has concluded that approaches other than those set forth in the 2003 proposal have the potential for addressing concerns regarding development and use of detection and quantitation limits, and that those approaches warrant further consideration and refinement. The Agency generally sees merit in comments suggesting that EPA should continue to work collaboratively with stakeholders on these issues. EPA also notes that the comments generally disfavored the proposed revisions, and that there is no agreement among critics of the existing MDL and ML procedures about what changes should be adopted by the Agency for use in CWA programs.

VII. Effect of Today's Action on Existing MDL Procedure

EPA plans to explore alternative concepts and approaches submitted in response to the two March 2003 **Federal Register** documents. These comments included sometimes detailed alternative approaches or other revisions to current EPA detection and quantitation procedures. EPA intends to further evaluate issues and detection and quantitation approaches suggested by commenters, and to solicit additional stakeholder input through consultations. The Agency believes that the body of public comment on the proposed rule provides a strong starting point for a continued collaborative consultation with stakeholders representing constituencies such as citizens, environmental organizations, permit writers, regulators and regulated industries. In a **Federal Register** notice published on September 15, 2004 (69 FR 55547), EPA announced that a neutral party is seeking a broad group of stakeholders willing to work together to define and address concerns about the way detection and quantitation values are calculated and used to support CWA programs. Such a process, if feasible, could begin as early as December 2004.

The existing MDL procedure has been in place since 1984. Individual MDLs and MLs are included in many EPA-approved methods at 40 CFR part 136, and have provided laboratories and data users with limits for evaluating results of analytical measurements or analytical method selection. Although several commenters expressed concern with a number of technical and applicability issues regarding EPA's current MDL and ML procedures (and EPA finds merit in this concern), other commenters supported their continued use because, in their experience, the MDL and ML values published in many of the approved EPA methods have served acceptably as default detection and quantitation levels for permits. By today's action, EPA leaves the existing MDL procedure unchanged while it further considers the concerns raised by commenters.

VIII. Statutory and Executive Order Reviews

Today's action does not constitute a rule under section 551 of the Administrative Procedure Act, 5 U.S.C. 551. Hence, requirements of other regulatory statutes and Executive Orders that generally apply to rulemakings (*e.g.*, the Unfunded Mandate Reform Act) do not apply to this action.

Dated: November 1, 2004.

Michael O. Leavitt,

Administrator.

[FR Doc. 04–24823 Filed 11–5–04; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AH40

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for the Sacramento Mountains Checkerspot Butterfly and Proposed Designation of Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of public comment period, notice of availability of draft economic analysis and draft environmental assessment.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of the draft economic analysis and draft environmental assessment for the proposal to designate critical habitat for the Sacramento Mountains checkerspot butterfly (*Euphydryas anicia cloudcrofti*) (butterfly) under the Endangered Species Act of 1973, as amended (Act). We are reopening the public comment period for the proposal to list this species as endangered with critical habitat to allow all interested parties to comment on the proposed listing and critical habitat designation, as well as the associated draft economic analysis and draft environmental assessment. Comments previously submitted on the September 6, 2001 (66 FR 46575), proposed rule to list the butterfly as endangered with critical habitat need not be resubmitted as they have been incorporated into the public record and will be fully considered in preparation of the final listing and critical habitat determination. We invite all interested parties to submit comments on this proposal.

DATES: Comments must be submitted directly to the Service (*see* **ADDRESSES**

section) on or before November 29, 2004.

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

1. You may submit written comments and information to the Field Supervisor, New Mexico Ecological Services Field Office, 2105 Osuna Road NE., Albuquerque, New Mexico 87113.

2. You may hand-deliver written comments and information to our New Mexico Ecological Services Field Office, at the above address, or fax your comments to 505–346–2542.

3. You may send your comments by electronic mail (e-mail) to *R2FWE_AL@fws.gov.* For directions on how to submit electronic filing of comments, see the ''Public Comments Solicited'' section below.

You may obtain copies of the draft economic analysis and draft environmental assessment by mail, review comments and materials received, and review supporting documentation used in preparation of this proposed rule, by appointment, during normal business hours, at the above address.

FOR FURTHER INFORMATION CONTACT: Susan MacMullin, Field Supervisor, New Mexico Ecological Services Field Office (telephone 505–761–4706, facsimile 505–346–2542).

SUPPLEMENTARY INFORMATION:

Public Comments Solicited

We intend that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, we solicit comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule, the draft economic analysis, and the draft environmental assessment. On the basis of public comment, during the development of our final determination we may find that areas proposed are not essential, are appropriate for exclusion under section 4(b)(2), or not appropriate for exclusion; in all of these cases, this information would be incorporated into our final determination. We particularly seek comments concerning:

(1) The reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act, including whether the benefits of designation will outweigh any threats to the species resulting from designation;

(2) Specific information on the distribution of the butterfly, the amount and distribution of the species' habitat, and which habitat is essential to the conservation of the species, and why;

(3) Land use designations and current or planned activities in the subject area and their possible impacts on the species or proposed critical habitat;

(4) Whether our approach to listing or critical habitat designation could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concerns and comments;

(5) Any foreseeable economic, environmental, or other impacts resulting from the proposed designation of critical habitat or coextensively from the proposed listing, and in particular, any impacts on small entities or families;

(6) Whether the economic analysis identifies all State and local costs. If not, what other costs should be included;

(7) Whether the economic analysis makes appropriate assumptions regarding current practices and likely regulatory changes imposed as a result of the listing of the species or the designation of critical habitat;

(8) Whether the economic analysis correctly assesses the effect on regional costs associated with land use controls that derive from the designation;

(9) Whether the designation will result in disproportionate economic impacts to specific areas that should be evaluated for possible exclusion from the final designation; and

(10) Whether the economic analysis appropriately identifies all costs that could result from the designation or coextensively from the listing.

If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods (*see* **ADDRESSES** section). Please submit electronic comments in ASCII file format and avoid the use of special characters or any form of encryption. Please also include ''Attn: RIN 1018–AH40'' in your e-mail subject header and your name and return address in the body of your message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly by calling our New Mexico Ecological Services Field Office at (505) 346–2525.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home addresses from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

Background

The butterfly is restricted to meadows within the mixed-conifer forest at approximate elevations between 2,450 and 2,750 meters (m) (8,000 and 9,000 feet (ft)) in the vicinity of the Village of Cloudcroft, Otero County, New Mexico. Our proposed critical habitat designation includes the area found within an approximate 140 square km (54 square mi) polygon centered around the Village of Cloudcroft, Otero County, New Mexico, south of the Mescalero Apache Nation boundary. In the proposed rule, we determined that the butterfly was in danger of extinction throughout all or a significant portion of its range because much of the remaining suitable habitat and the long term persistence of the butterfly were threatened. At that time, the known threats included: commercial and private development, Forest Service (FS) projects, fire suppression activities, highway reconstruction, off-highway vehicle use, and overgrazed range conditions. Additional background information is available in the September 6, 2001, proposed rule (66 FR 46575).

On September 8, 2003, the Center for Biological Diversity (Center) filed a complaint pursuant to the Act, challenging the failure of the Service to publish a final listing rule for the butterfly within the 1-year statutory deadline set by section 4 of the Act. The Service and the Center reached settlement in this case that was adopted as an order by the District Court for the District of New Mexico on June 3, 2004. The terms of the settlement agreement require us to submit a final listing and critical habitat determination for the butterfly to the **Federal Register** on or before December 15, 2004.

Section 4 of the Act requires that we consider economic and other relevant impacts prior to making a final decision on what areas to designate as critical habitat. We have developed a draft

economic analysis and draft environmental assessment for the proposal to designate certain areas as critical habitat for the butterfly. We solicit data and comments from the public on these draft documents, as well as on all aspects of the proposal (*see* ''Public Comments Solicited'' section above).

Our draft economic analysis suggests that the present value of future conservation measures associated with the butterfly is expected to range from $5.6 million to $8.6 million over 20 years, or $533,000 to $816,000 annually. Approximately 55 percent of these costs result from anticipated project modifications primarily associated with utility projects, agriculture and ranching, and U.S. Forest Service land management. The remaining costs are generally administrative in nature.

The Service, Otero County, New Mexico, Village of Cloudcroft, New Mexico, FS, and other stakeholders have completed a conservation plan for the butterfly. A notice of availability of this draft document published in the **Federal Register** on October 7, 2004 (69 FR 60178). The goal of this strategy is to establish conservation measures needed for the conservation of the butterfly. Section 4 of the Act (16 U.S.C. 1533) and implementing regulations at 50 CFR part 424 set forth procedures for adding species to the Federal List of Endangered and Threatened Wildlife. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1) of the Act. Our final listing determination will analyze these factors and their application to the butterfly to evaluate whether the species meets the definition of an endangered or threatened species.

Authority: The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: November 2, 2004.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 04–24869 Filed 11–5–04; 8:45 am]

BILLING CODE 4310–55–U

Notices

Federal Register

Vol. 69, No. 215

Monday, November 8, 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

Agricultural Marketing Service

[Docket # FV–04–334]

United States Standards for Grades of Olive Oil

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: The Agricultural Marketing Service (AMS), prior to undertaking research and other work associated with revising an official grade standard, is soliciting comments on the petition to change the United States Standards for Grades of Olive Oil. AMS received a petition from olive oil producers asking USDA to consider revising the current U.S. grade standard to conform to current industry standards commonly accepted in the United States and abroad.

DATES: Comments must be submitted on or before December 8, 2004.

ADDRESSES: Interested persons are invited to submit written comments concerning this notice. Comments must be sent to Chere L. Shorter, Standardization Section, Processed Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Avenue SW., Room 0709, South Building; STOP 0247, Washington, DC 20250; telephone (202) 720–4693; fax (202) 690–1527, e-mail *Chere.Shorter@usda.gov.* The United States Standards for Grades of Olive Oil is available either through the address cited above or by accessing the AMS Web site on the Internet at *http://www.ams.usda.gov/fv/ppb.html.* Any comments received regarding the notice will be posted at that site. Comments also will be available for public inspection in the above office during regular business hours.

FOR FURTHER INFORMATION CONTACT: Chere L. Shorter, telephone (202) 720–4693.

SUPPLEMENTARY INFORMATION:

Background

AMS received a petition from California Olive Oil Council, an association of olive oil producers, requesting the revision of the United States Standards for Grades of Olive Oil. These standards are issued under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 etc.).

The petitioners are requesting the USDA to revise the terminology employed in connection with grades of olive oil. The current standard, effective since March 22, 1948, uses grades of ''fancy,'' ''choice,'' and ''substandard.'' These terms are not consistent with today's terminology for the olive oil industry. The petitioners are requesting that the new proposed standard, which would be first published as a proposal with a request for public comment, employ the terms used commercially in the marketplace.

These terms are divided into two major groups: ''olive oil,'' and ''olive-pomace oil.'' ''Olive oil,'' is defined as oil obtained exclusively from the fruit of the olive tree, produced without solvents or re-esterification processes. The broad term olive oil includes ''virgin olive oil,'' ''refined olive oil,'' and ''blended olive oil.'' Virgin olive oil is further delineated into two more categories: ''virgin oils fit for consumption as they are'' and ''virgin olive oil not fit for human consumption.'' ''Virgin oils fit for consumption as they are,'' include ''extra virgin olive oil,'' ''virgin olive oil,'' and ''ordinary olive oil.'' ''Virgin olive oil not fit for human consumption,'' is caused by ''rancidity,'' and is intended to be refined or used for other technical purposes.

The second major group of olive oil is Olive pomace oil and includes ''crude olive-pomace oil,'' ''refined olive-pomace oil,'' and ''olive pomace oil.'' Olive pomace oil is obtained by treating olive pomace with solvents or other physical treatments, excluding oils of other kinds or oils obtained by re-esterification.

The petitioners have detailed identity characteristics comprising purity criteria applicable to olive oils and olive-pomace oil based on internationally accepted standards.

Domestic olive oil production occurs primarily in California (approximately 99%), with lesser amounts produced in Texas and Arizona. U.S. olive oil production in 1998 was 325,000 gallons (approx. 2,400,000 pounds). The U.S. share of world production is 0.1 percent. In 2003, the U.S. domestic consumption of olive oil was 454 million pounds. The U.S. imports more than 360 million pounds a year [1]. According to the petitioner, there are more than 400 producers and growers of olive oil domestically.

The petitioners believe that changing the standard would enhance the ability of U.S. olive oil producers to compete domestically and internationally. A copy of the petitioners' request is located on the AMS Web site at *http://www.ams.usda.gov/fv/ppb.html* along with the current U.S. Standards for Grades of Olive Oil.

Agricultural Marketing Service

Prior to undertaking detailed work to develop a proposed revised standard, AMS is soliciting comments on the petition requesting the revision of the U.S. Standards for Grades of Olive Oil. In particular, AMS would welcome comments and information regarding the likely utility of revised terminology to include types of olive oil, namely ''Extra-Virgin Olive Oil,'' ''Virgin Olive Oil,'' ''Refined Olive Oil,'' ''Olive Oil,'' and ''Olive-Pomace Oil'' and the probable impact on processors, and growers. AMS is requesting comments on the petitioners proposed standard regarding the quality, purity, and identity characteristics, *i.e.*, color, defects, flavor, methods of analysis, fatty acid composition, or any other pertinent criteria. Further details of the proposed standard are provided in the petition and are available from Chere L. Shorter at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section or can be found on the AMS Web site at *http://www.ams.usda.gov/fv/ppb.html* under the ''**Federal Register** Notices'' link.

This notice provides for a 30-day comment period for interested parties to comment on the petition to develop a proposed revision of the standard.

[1] Foreign Trade Division, U.S. Bureau. Office of Trade and Analysis (OTEA), International Trade Administration, U.S. Department of Commerce.

Should AMS conclude that there is a need for changes to the standard, detailed work would be undertaken and the eventual proposed standard would be published in the **Federal Register** with a request for comments in accordance with 7 CFR part 36.

Authority: 7 U.S.C. 1621–1627.

Dated: November 2, 2004.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 04–24826 Filed 11–5–04; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 04–119–1]

National Animal Identification System; Public Meeting

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of public meeting.

SUMMARY: We are advising the public that the Veterinary Services program of the Animal and Plant Health Inspection Service, U.S. Department of Agriculture, will host a meeting to provide stakeholders in the Department's National Animal Identification System (NAIS), particularly manufacturers and distributors of animal identification devices and technologies, with an opportunity to offer comments on the administration of animal identification numbers under the NAIS. Specifically, the session will focus on the anticipated roles and requirements for individuals, organizations, and companies that wish to become authorized animal identification number managers or distributors of approved animal identification devices.

DATES: The public meeting will be held Friday, November 19, 2004, from 9 a.m. to 3 p.m.

ADDRESSES: The public meeting will be held at the Kansas City Airport Marriott, 775 Brasilia Avenue, Kansas City, MO.

FOR FURTHER INFORMATION CONTACT: Mr. Neil Hammerschmidt, Animal Identification Officer, National Center for Animal Health Programs, VS, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737–1231, (301) 734–5571.

SUPPLEMENTARY INFORMATION: On December 30, 2003, the Secretary of Agriculture announced that the U.S. Department of Agriculture (USDA) would expedite the implementation of a National Animal Identification System (NAIS) for all animal species after the discovery of bovine spongiform encephalopathy in a cow in Washington State. On April 27, 2004, following several months of development, the Secretary announced the framework for implementation of a NAIS designed to provide a unique identification number for agricultural premises and animals so that diseases can be more quickly contained and eradicated. The Secretary also announced that $18.8 million would be transferred from the Department's Commodity Credit Corporation to provide initial funding for the program during fiscal year (FY) 2004. The FY 2004 funding has been earmarked for the initial infrastructure development and implementation of the national system, but both private and public support will be required to make it fully operational. The Administration's proposed FY 2005 budget includes another $33 million for the effort.

The NAIS will be implemented in several phases over time. Currently, the registration of premises, *i.e.*, the locations where livestock are raised or held, is the primary activity of the NAIS. The second phase will involve the identification of animals. Certain species, such as cattle, will require individual identification, which will be accomplished by attaching to the animal an approved identification tag or device bearing an animal identification number (AIN). The AIN may be cross-referenced or linked to other technologies (*e.g.*, radio frequency identification, retinal image, DNA, etc.) to automate the collection of the animal's number or to verify the animal's identification. Other species, such as swine and poultry, typically move through the production chain in groups or lots. These animals may be eligible for identification as a group.

In order to facilitate the implementation of the NAIS, we are publishing an interim rule in the Rules and Regulations section of this issue of the **Federal Register** (APHIS Docket No. 04–052–1, ''Livestock Identification; Use of Alternative Numbering Systems'') that, among other things, amended the regulations to recognize additional numbering systems for the identification of animals in interstate commerce and State/Federal/industry cooperative disease control and eradication programs and to redefine the numbering system to identify premises where animals are managed or held. The interim rule recognizes numbering systems for individual animals, as well as groups or lots of animals within the same production system. Use of the new numbering systems will not, however, be required as a result of the interim rule.

Various non-producer participants will be involved in administering the NAIS. One group of non-producer participants is the AIN managers, who will manufacture or provide distributors with approved identification devices or technologies containing the AIN. Another group is the AIN distributors, who will provide AIN tags or devices to premises that hold or manage livestock.

The design and development of an AIN management system will be initiated in the near future. This system will require a method to approve entities to become authorized AIN managers and distributors and to evaluate performance. In addition, the system will need a method for the allocation and distribution of AINs and the approval of official animal identification devices.

For implementation to be successful, it is imperative that we share our plans for the AIN management system with potential AIN managers and distributors and provide a forum for them to present their views. Therefore, we plan to conduct a public meeting on Friday, November 19, 2004, at the Kansas City Airport Marriott, Kansas City, MO, for industry stakeholders, in particular those that manufacture and/or distribute animal identification devices. The focus of the session will be on the anticipated roles and responsibilities of AIN managers and distributors under the NAIS.

The meeting will be open to the public and is intended to provide a forum for the exchange of information regarding the administration of AINs under the NAIS. The meeting is not intended to serve as an opportunity for the submission of comments regarding the interim rule published in this issue of the **Federal Register** (APHIS Docket No. 04–052–1, ''Livestock Identification; Use of Alternative Numbering Systems''). Persons wishing to submit comments on that interim rule should refer to the commenting instructions contained in that document.

Done in Washington, DC, this 2nd day of November 2004.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E4–3052 Filed 11–5–04; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Madison-Beaverhead Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of change in meeting date.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393), the Beaverhead-Deerlodge National Forest's Madison-Beaverhead Resource Advisory Committee's meeting date has been changed to Wednesday, December 1, 2004, from 10 a.m. until 4 p.m., in Ennis, Montana, for a business meeting. The meeting is open to the public.

DATES: Wednesday, December 1, 2004 (changed from November 9).

ADDRESSES: The meeting will be held at the Forest Service office at 5 Forest Service Road, Ennis, MT 59729.

FOR FURTHER INFORMATION CONTACT: Thomas K. Reilly, Designated Forest Official (DFO), Forest Supervisor, Beaverhead-Deerlodge National Forest, at (406) 683–3973.

SUPPLEMENTARY INFORMATION: Agenda topics for these meetings include hearing and deciding on proposals for projects to fund under Title II of Pub. L. 106–393, hearing public comments, and other business. If the meeting location changes, notice will be posted in local newspapers, including the Dillon Tribune and The Montana Standard.

Dated: October 29, 2004.

Thomas K. Reilly,

Forest Supervisor.

[FR Doc. 04–24808 Filed 11–5–04; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1358]

Grant of Authority for Subzone Status; Hazen Paper Company (Laminated Paper Products), Holyoke, MA

Pursuant to its authority under the Foreign-Trade Zones Act, of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones Act provides for ''* * * the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and when the activity results in a significant public benefit and is in the public interest;

Whereas, the Holyoke Economic Development & Industrial Corporation, grantee of Foreign-Trade Zone 201, has made application to the Board for authority to a establish special-purpose subzone at the manufacturing and warehousing facilities of Hazen Paper Company, located in Holyoke, Massachusetts (FTZ Docket 7–2004, filed 3/9/2004);

Whereas, notice inviting public comment was given in the **Federal Register** (69 FR 12300–12301, 3/16/2004); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, Therefore, the Board hereby grants authority for subzone status at the warehousing and manufacturing facilities of Hazen Paper Company, located in Holyoke, Massachusetts (Subzone 201A), at the location described in the application, and subject to the FTZ Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 29th day of October 2004.

James J. Jochum,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 04–24860 Filed 11–5–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 48–2004]

Foreign-Trade Zone 38—Spartanburg County, SC; Application for Expansion

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board), by the South Carolina State Ports Authority, grantee of FTZ 38, requesting authority to expand its zone in Spartanburg County, South Carolina, within the Greenville/Spartanburg Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on October 29, 2004.

FTZ 38 was approved on May 4, 1978 (Board Order 131, 43 FR 20526, 5/12/78) and expanded on June 24, 1994 (Board Order 697, 59 FR 35096, 7/8/94); on November 9, 1994 (Board Order 715, 59 FR 59992, 11/21/94); on July 23, 1997 (Board Order 910, 62 FR 40797, 7/30/97); on January 8, 1999 (Board Order 1015, 64 FR 3064, 1/8/99); on June 3, 1999 (Board Order 1038, 64 FR 32845, 6/18/99); on March 27, 2000 (Board Order 1084, 65 FR 18283, 4/7/00); and, on August 21, 2003 (Board Order 1283, 68 FR 52385, 9/3/03).

The general-purpose zone project currently consists of five sites (1,408 acres) in Spartanburg County/Laurens County: *Site 1* (20 acres)—U.S. Highway 29 Industrial Park, Wellford; *Site 2* (681 acres)—International Transport Center (111 acres) and Gateway International Business Center (570 acres), Greer; *Site 3* (116 acres)—Highway 290 Commerce Park (111 acres) and a warehouse facility (5 acres) located at 150 Parkway West, Duncan; *Site 4* (473 acres)—Wingo Corporate Park, Spartanburg; and, *Temporary Site* 5 (118 acres)—TNT Logistics/Michelin North America, Inc., facility located at 101 Michelin Drive, Laurens (expires 1/1/06).

The applicant is now requesting authority to expand the general-purpose zone to include an additional site in the area: *Proposed Site 6* (20 acres)—Lakeside Business Center located at 961 Berry Shoals Road in Greer. The applicant is also requesting that 118 acres at *Site 2* (Gateway International Business Center) be restored to zone status and that *Temporary Site 5* (118 acres) be granted zone status on a permanent basis. (A minor boundary modification was approved on March 5, 2004 (A(27f)–11–2004), removing 118 acres from Site 2 (Gateway) to establish the temporary site.) The sites will be used primarily for warehousing and distribution activities. The owners of the site are the Greenville-Spartanburg Airport Commission (Site 2), Acquiport-Laurens, LLC (Temporary Site 5) and MM BG, LLC and William Diangikes (Proposed Site 6). No specific manufacturing authority is being requested at this time. Such requests would be made on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following addresses:

1. *Submissions via Express/Package Delivery Services*: Foreign-Trade Zones Board, U.S. Department of Commerce, Franklin Court Building-Suite 4100W, 1099 14th Street, NW., Washington, DC 20005; or,

2. *Submissions via the U.S. Postal Service*: Foreign-Trade Zones Board, U.S. Department of Commerce, FCB–Suite 4100W, 1401 Constitution Avenue, NW., Washington, DC 20230.

The closing period for their receipt is January 7, 2005. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to January 24, 2005).

A copy of the application and accompanying exhibits will be available during this time for public inspection at address Number 1 listed above, and at the U.S. Department of Commerce Export Assistance Center, 555 North Pleasantburg Drive, Building 1, Suite 109, Greenville, SC 29607.

Dated: October 29, 2004.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 04–24859 Filed 11–5–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–832]

Notice of Preliminary Results of Antidumping Duty Administrative Review: Carbon and Certain Alloy Steel Wire Rod From Brazil

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

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on carbon and certain alloy steel wire rod (steel wire rod) from Brazil. We preliminarily determine that sales of subject merchandise by Companhia Siderúrgica Belgo Mineira, Belgo Mineira Participação Indústria e Comércio S.A. and BMP Siderúrgica S.A. (collectively, Belgo), have been made below normal value (NV). If these preliminary results are adopted in our final results, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on appropriate entries based on the difference between the export price (EP) and the NV.

Interested parties are invited to comment on these preliminary results. We will issue the final results no later than 120 days from the publication of this notice.

EFFECTIVE DATE: November 8, 2004.

FOR FURTHER INFORMATION CONTACT: Jesse Cortes or Constance Handley, at (202) 482–3986 or (202) 482–0631, respectively, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On October 29, 2002, the Department published an antidumping duty order on steel wire rod from Brazil. *See Notice of Antidumping Duty Orders: Carbon and Certain Alloy Steel Wire Rod from Brazil, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine*, 67 FR 65945 (October 29, 2002).

On October 1, 2003, the Department issued a notice of opportunity to request the first administrative review of this order. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 68 FR 56618 (October 1, 2003). On October 31, 2003, in accordance with 19 CFR 351.213(b), Belgo requested an administrative review and a deferral of initiation for one year. The petitioners [1] submitted an opposition to Belgo's deferral request on November 14, 2003. On November 18, 2003, the Department denied Belgo's deferral request and published the notice of initiation of this antidumping duty administrative review, covering the period April 15, 2002, through September 30, 2003 (the POR). *See, respectively, Memorandum to Gary Taverman from Constance Handley*, ''Request for Deferral of Initiation: First Antidumping Duty Administrative Review of Carbon and Certain Alloy Steel Wire Rod From Brazil,'' dated November 18, 2003, which is on file in the Central Records Unit (CRU) in Room B–099 of the main Commerce building; and, *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 68 FR 66799 (November 28, 2003).

On December 9, 2003, the Department issued its antidumping questionnaire to Belgo, specifying that the responses to Section A and Sections B–E would be due on December 30, 2003, and January 15, 2004, respectively.[2] Belgo requested, and the Department granted, various extensions of time to respond to the different sections of the questionnaire. We received timely responses, as extended, to Sections A–D of the initial antidumping questionnaire and associated supplemental questionnaires. Additionally, Belgo requested, and the Department denied, an exemption from reporting certain home market sales and costs of production. In the investigation, we initiated a COP inquiry; however, Belgo withdrew from the proceeding before the final determination. For that reason, the Department used adverse facts available (AFA) in calculating the margin for Belgo. Consequently, we find that there are reasonable grounds to believe or suspect that Belgo made sales below cost in this review.

In its January 13, 2004, Section A questionnaire response, Belgo indicated that it and a certain U.S. entity may be related under the Department's affiliation rules. Following the submission of comments by parties, and based on an initial review of the U.S. sales record submitted by Belgo, the Department determined that Belgo and the U.S. entity were affiliated within the meaning of section 771(33)(F) of the Tariff Act of 1930, as amended effective January 1, 1995 (the Act) by the Uruguay Round Agreements Act, and requested that Belgo submit data regarding the affiliated U.S. entity's downstream sales to the first unaffiliated U.S. customer. *See Memorandum to Susan Kuhbach from Constance Handley*, ''Antidumping Duty Review of Carbon and Certain Alloy Steel Wire Rod from Brazil: Affiliation,'' dated July 13, 2004, which is on file in the CRU. On July 26, 2004, Belgo requested an exemption from reporting the affiliated U.S. entity's downstream sales and related further-processing costs pursuant to the ''special rule'' for value added under section 772(e) of the Act and 19 CFR 351.402(c). On July 30, 2004, the petitioners submitted an opposition to the special rule request. Following

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[1] The petitioners in this investigation are Co-Steel Raritan, Inc., GS Industries, Inc., Keystone Consolidated Industries, Inc., and North Star Steel Texas, Inc.

[2] Section A of the questionnaire requests general information concerning a company's corporate structure and business practices, the merchandise under review that it sells, and the manner in which it sells that merchandise in all of its markets. Section B requests a complete listing of all home market sales, or, if the home market is not viable, of sales in the most appropriate third-country market (this section is not applicable to respondents in non-market economy cases). Section C requests a complete listing of U.S. sales. Section D requests information on the cost of production (COP) of the foreign like product and the constructed value of the merchandise under review. Section E requests information on further manufacturing.

further comment from the parties, the Department rejected Belgo's special rule request and requested Belgo's U.S. affiliate to respond to Section E. *See Memorandum to Susan Kuhbach from Jesse Cortes*, ''Antidumping Duty Review of Carbon and Certain Alloy Steel Wire Rod from Brazil: Special Rule to Exempt Reporting of Sales of Further Manufactured Products,'' dated September 9, 2004, which is on file in the CRU. On September 20, 2004, Belgo's U.S. affiliate requested an extension of time to respond to the Section E questionnaire through October 8, 2004, which the Department granted on September 21, 2004. However, on October 8, 2004, Belgo's U.S. affiliate informed the Department that it was declining to provide the requested response.

Use of Facts Available

Pursuant to section 782(e) of the Act, the Department shall not decline to consider submitted information if all of the following requirements are met: (1) The information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties. Section 776(a)(2) of the Act provides that, if an interested party (A) withholds information requested by the Department, (B) fails to provide such information by the deadline, or in the form or manner requested, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified, the Department shall use, subject to sections 782(d) and (e) of the Act, facts otherwise available in reaching the applicable determination. In selecting from among the facts otherwise available, section 776(b) of the Act authorizes the Department to use an adverse inference if the Department finds that an interested party failed to cooperate by not acting to the best of its ability to comply with the request for information. *See, e.g., Certain Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Duty Administrative Review*, 62 FR 53808, 53819–20 (October 16, 1997); *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Sweden*, 67 FR 47522, 47523 (July 19, 2002).

As noted above, Belgo's U.S. affiliate has refused to provide a response to the Department's Section E questionnaire. Belgo was notified by the Department in all of our correspondence, concerning the due dates for submitting data, that failure to submit the requested information by the date specified may result in use of the facts available, as required by section 776(c) of the Act and section 351.308 of the Department's regulations. *See* letters from the Department to Belgo and Belgo's U.S. affiliate dated September 10 and September 21, 2004, which are on file in the CRU. Consequently, pursuant to section 776(b) of the Act, for those sales made by Belgo to its U.S. affiliate, we are applying an AFA rate equal to the highest non-aberrational margin calculated for these preliminary results on Belgo's sales to unaffiliated U.S. customers. *See, e.g., Final Determination of Sales at Less Than Fair Value; Stainless Steel Sheet and Strip in Coils from Italy*, 64 FR 30750 (June 8, 1999). *See, also, Memorandum from Constance Handley to the File*, ''Analysis Memorandum for Companhia Siderúrgica Belgo Mineira, Belgo Mineira Participação Indústria e Comércio S.A. and BMP Siderúrgica S.A.,'' dated November 1, 2004, which is on file in the CRU.

We are also using AFA for certain sales in the home market made pursuant to consignment arrangements which had not been reported in the database. *See Memorandum to Susan Kuhbach from Carol Henninger*, ''Verification of the Sales Response of Companhia Siderúrgica Belgo Mineira, Belgo Mineira Participção Indústria e Comércio S.A. and BMP Siderúrgica S.A. in the Antidumping Duty Review of Carbon and Certain Alloy Steel Wire Rod from Brazil,'' dated October 1, 2004 (*Sales Verification Report*), at 14, which is on file in the CRU. Additionally, we are using AFA for the cost of coke, a major input supplied to Belgo by an affiliated supplier in Spain; at verification, company officials could not support the Spanish affiliate's COP of coke during the POR. *See Memorandum to Neal Harper from J. Laurens van Houten*, ''Cost of Production and Constructed Value Verification: Antidumping Duty Review of Carbon and Certain Alloy Steel Wire Rod from Brazil,'' dated November 1, 2004 (*Cost Verification Report*), which is on file in the CRU. Because the COP reported by the Spanish affiliate is higher than either the market or transfer price reported by Belgo, and higher than any market-economy prices the Department has found,[3] we have determined that, although the cost is unverified, it is appropriate for use as AFA.

Since we are using as AFA in this review calculated margins and cost information submitted by the respondent, no corroboration is necessary.

Scope Issues

On March 29, 2004, Belgo requested a scope inquiry with regard to the exclusion of grade 1080 tire cord quality wire rod and tire bead quality wire rod (1080 TCBQWR). We have preliminarily found that 1080 TCBQWR with inclusions greater than 20 microns in any direction, entered, or withdrawn from warehouse, for consumption prior to July 24, 2003, is included in the scope of the order. *See Memorandum to Jeffrey May from Jesse Cortes,* ''Carbon and Certain Alloy Steel Wire Rod from Brazil: Preliminary Scope Ruling on Grade 1080 Tire Cord Quality Wire Rod and Tire Bead Quality Wire Rod,'' dated October 27, 2004 (*Preliminary Scope Ruling*), which is on file in the CRU.

Scope of the Antidumping Duty Order

Effective July 24, 2003, in accordance with the Department's *Notice of Final Result of Changed Circumstances Review of the Antidumping Duty and Countervailing Duty Orders, and Intent to Revoke Orders in Part,* 68 FR 64079 (November 12, 2003), the scope of this order was amended. *See, also, Preliminary Scope Ruling.* Therefore, for purposes of this review, there were separate scopes in effect. These scopes are set forth below. Belgo had no entries of subject merchandise after the effective date of the scope revision.

Scope of Order from October 29, 2002, Through July 23, 2003

The merchandise subject to this order is certain hot-rolled products of carbon steel and alloy steel, in coils, of approximately round cross section, 5.00 mm or more, but less than 19.00 mm, in solid cross-sectional diameter.

Specifically excluded are steel products possessing the above-noted physical characteristics and meeting the *Harmonized Tariff Schedule of the United States* (HTSUS) definitions for (a) stainless steel; (b) tool steel; (c) high nickel steel; (d) ball bearing steel; and (e) concrete reinforcing bars and rods. Also excluded are (f) free machining steel products (*i.e.*, products that contain by weight one or more of the following elements: 0.03 percent or

[3] *See Memorandum to Neal Harper from Laurens van Houten*, ''Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results—Companhia Siderurgica Belgo-Mineira, Belgo-Mineira Participacao, Industria E Comercio S.A. and BMP Siderurgica S.A.,'' dated November 1, 2004 (*Cost Calculation Memo*), which is on file in the CRU.

more of lead, 0.05 percent or more of bismuth, 0.08 percent or more of sulfur, more than 0.04 percent of phosphorus, more than 0.05 percent of selenium, or more than 0.01 percent of tellurium).

Also excluded from the scope are 1080 grade tire cord quality wire rod and 1080 grade tire bead quality wire rod. This grade 1080 tire cord quality rod is defined as: (i) Grade 1080 tire cord quality wire rod measuring 5.0 mm or more but not more than 6.0 mm in cross-sectional diameter; (ii) with an average partial decarburization of no more than 70 microns in depth (maximum individual 200 microns); (iii) having no inclusions greater than 20 microns; (iv) having a carbon segregation per heat average of 3.0 or better using European Method NFA 04–114; (v) having a surface quality with no surface defects of a length greater than 0.15 mm; (vi) capable of being drawn to a diameter of 0.30 mm or less with 3 or fewer breaks per ton, and (vii) containing by weight the following elements in the proportions shown: (1) 0.78 percent or more of carbon, (2) less than 0.01 percent of aluminum, (3) 0.040 percent or less, in the aggregate, of phosphorus and sulfur, (4) 0.006 percent or less of nitrogen, and (5) not more than 0.15 percent, in the aggregate, of copper, nickel and chromium.

This grade 1080 tire bead quality rod is defined as: (i) Grade 1080 tire bead quality wire rod measuring 5.5 mm or more but not more than 7.0 mm in cross-sectional diameter; (ii) with an average partial decarburization of no more than 70 microns in depth (maximum individual 200 microns); (iii) having no inclusions greater than 20 microns; (iv) having a carbon segregation per heat average of 3.0 or better using European Method NFA 04–114; (v) having a surface quality with no surface defects of a length greater than 0.2 mm; (vi) capable of being drawn to a diameter of 0.78 mm or larger with 0.5 or fewer breaks per ton; and (vii) containing by weight the following elements in the proportions shown: (1) 0.78 percent or more of carbon, (2) less than 0.01 percent of soluble aluminum, (3) 0.040 percent or less, in the aggregate, of phosphorus and sulfur, (4) 0.008 percent or less of nitrogen, and (5) either not more than 0.15 percent, in the aggregate, of copper, nickel and chromium (if chromium is not specified), or not more than 0.10 percent in the aggregate of copper and nickel and a chromium content of 0.24 to 0.30 percent (if chromium is specified).

The designation of the products as ''tire cord quality'' or ''tire bead quality'' indicates the acceptability of the product for use in the production of tire cord, tire bead, or wire for use in other rubber reinforcement applications such as hose wire. These quality designations are presumed to indicate that these products are being used in tire cord, tire bead, and other rubber reinforcement applications, and such merchandise intended for the tire cord, tire bead, or other rubber reinforcement applications is not included in the scope. However, should petitioners or other interested parties provide a reasonable basis to believe or suspect that there exists a pattern of importation of such products for other than those applications, end-use certification for the importation of such products may be required. Under such circumstances, only the importers of record would normally be required to certify the end use of the imported merchandise.

All products meeting the physical description of subject merchandise that are not specifically excluded are included in this scope.

The products under review are currently classifiable under subheadings 7213.91.3010, 7213.91.3090, 7213.91.4510, 7213.91.4590, 7213.91.6010, 7213.91.6090, 7213.99.0031, 7213.99.0038, 7213.99.0090, 7227.20.0010, 7227.20.0020, 7227.20.0090, 7227.20.0095, 7227.90.6051, 7227.90.6053, 7227.90.6058, and 7227.90.6059 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

Scope of Order From July 24, 2003, Through the POR

The merchandise subject to this order is certain hot-rolled products of carbon steel and alloy steel, in coils, of approximately round cross section, 5.00 mm or more, but less than 19.00 mm, in solid cross-sectional diameter.

Specifically excluded are steel products possessing the above-noted physical characteristics and meeting the HTSUS definitions for (a) stainless steel; (b) tool steel; (c) high nickel steel; (d) ball bearing steel; and (e) concrete reinforcing bars and rods. Also excluded are (f) free machining steel products (*i.e.*, products that contain by weight one or more of the following elements: 0.03 percent or more of lead, 0.05 percent or more of bismuth, 0.08 percent or more of sulfur, more than 0.04 percent of phosphorus, more than 0.05 percent of selenium, or more than 0.01 percent of tellurium).

Also excluded from the scope are 1080 grade tire cord quality wire rod and 1080 grade tire bead quality wire rod. This grade 1080 tire cord quality rod is defined as: (i) Grade 1080 tire cord quality wire rod measuring 5.0 mm or more but not more than 6.0 mm in cross-sectional diameter; (ii) with an average partial decarburization of no more than 70 microns in depth (maximum individual 200 microns); (iii) having no non-deformable inclusions greater than 20 microns and no deformable inclusions greater than 35 microns; (iv) having a carbon segregation per heat average of 3.0 or better using European Method NFA 04–114; (v) having a surface quality with no surface defects of a length greater than 0.15 mm; (vi) capable of being drawn to a diameter of 0.30 mm or less with 3 or fewer breaks per ton, and (vii) containing by weight the following elements in the proportions shown: (1) 0.78 percent or more of carbon, (2) less than 0.01 percent of aluminum, (3) 0.040 percent or less, in the aggregate, of phosphorus and sulfur, (4) 0.006 percent or less of nitrogen, and (5) not more than 0.15 percent, in the aggregate, of copper, nickel and chromium.

This grade 1080 tire bead quality rod is defined as: (i) Grade 1080 tire bead quality wire rod measuring 5.5 mm or more but not more than 7.0 mm in cross-sectional diameter; (ii) with an average partial decarburization of no more than 70 microns in depth (maximum individual 200 microns); (iii) having no non-deformable inclusions greater than 20 microns and no deformable inclusions greater than 35 microns; (iv) having a carbon segregation per heat average of 3.0 or better using European Method NFA 04–114; (v) having a surface quality with no surface defects of a length greater than 0.2 mm; (vi) capable of being drawn to a diameter of 0.78 mm or larger with 0.5 or fewer breaks per ton; and (vii) containing by weight the following elements in the proportions shown: (1) 0.78 percent or more of carbon, (2) less than 0.01 percent of soluble aluminum, (3) 0.040 percent or less, in the aggregate, of phosphorus and sulfur, (4) 0.008 percent or less of nitrogen, and (5) either not more than 0.15 percent, in the aggregate, of copper, nickel and chromium (if chromium is not specified), or not more than 0.10 percent in the aggregate of copper and nickel and a chromium content of 0.24 to 0.30 percent (if chromium is specified).

For purposes of the grade 1080 tire cord quality wire rod and the grade 1080 tire bead quality wire rod, an inclusion will be considered to be deformable if its ratio of length (measured along the axis—that is, the direction of rolling—of the rod) over thickness (measured on the same inclusion in a direction perpendicular

to the axis of the rod) is equal to or greater than three. The size of an inclusion for purposes of the 20 microns and 35 microns limitations is the measurement of the largest dimension observed on a longitudinal section measured in a direction perpendicular to the axis of the rod. This measurement methodology applies only to inclusions on certain grade 1080 tire cord quality wire rod and certain grade 1080 tire bead quality wire rod that are entered, or withdrawn from warehouse, for consumption on or after July 24, 2003.

The designation of the products as ''tire cord quality'' or ''tire bead quality'' indicates the acceptability of the product for use in the production of tire cord, tire bead, or wire for use in other rubber reinforcement applications such as hose wire. These quality designations are presumed to indicate that these products are being used in tire cord, tire bead, and other rubber reinforcement applications, and such merchandise intended for the tire cord, tire bead, or other rubber reinforcement applications is not included in the scope. However, should petitioners or other interested parties provide a reasonable basis to believe or suspect that there exists a pattern of importation of such products for other than those applications, end-use certification for the importation of such products may be required. Under such circumstances, only the importers of record would normally be required to certify the end use of the imported merchandise.

All products meeting the physical description of subject merchandise that are not specifically excluded are included in this scope.

The products under review are currently classifiable under subheadings 7213.91.3010, 7213.91.3090, 7213.91.4510, 7213.91.4590, 7213.91.6010, 7213.91.6090, 7213.99.0031, 7213.99.0038, 7213.99.0090, 7227.20.0010, 7227.20.0020, 7227.20.0090, 7227.20.0095, 7227.90.6051, 7227.90.6053, 7227.90.6058, and 7227.90.6059 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.[4]

Verification

As provided in section 782(i) of the Act, in August and September 2004, we verified information provided by Belgo using standard verification procedures, including on-site inspection of the manufacturer's facilities, examination of relevant sales, cost and financial records, and selection of original documentation containing relevant information. The Department reported its findings from the sales and cost verification on October 1 and November 1, 2004. *See Sales Verification Report* and *Cost Verification Report,* which are on file in the CRU.

Fair Value Comparisons

To determine whether sales of steel wire rod from Brazil were made in the United States at less than fair value, we compared EP to NV, as described in the ''Export Price'' and ''Normal Value'' sections of this notice. Pursuant to section 777A(d)(2) of the Act, we compared the EPs of individual U.S. transactions to the weighted-average NV of the foreign like product where there were sales made in the ordinary course of trade, as discussed in the ''Cost of Production Analysis'' section below.

Product Comparisons

In accordance with section 771(16) of the Act, all products produced by the respondent covered by the description in the ''Scope of Order'' section, above, and sold in Brazil during the POR, are considered to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. In accordance with section 773(a)(1)(C)(ii) of the Act, in order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared the respondent's volume of home market sales of the foreign like product to the volume of its U.S. sales of the subject merchandise. For further details, *see* the ''Normal Value'' section, below.

We compared U.S. sales to sales made in the home market within the contemporaneous window period, which extends from three months prior to the POR until two months after the POR. In making the product comparisons, consistent with our preliminary determination in the original investigation, we have relied on eight criteria to match U.S. sales of subject merchandise to comparison-market sales of the foreign like product: grade, carbon content, surface quality, deoxidization, residual content, heat treatment, diameter, and coating. *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Carbon and Certain Alloy Steel Wire Rod from Brazil,* 67 FR 18165 (April 15, 2002). These characteristics have been weighted by the Department where appropriate.

Export Price

During the POR, Belgo made U.S. sales on an EP basis only.[5] Section 772(a) of the Act defines EP as the price at which the subject merchandise is first sold before the date of importation by the producer or exporter outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States, as adjusted under subsection 772(c) of the Act.

We made deductions to the starting price (gross unit price), where appropriate, for movement expenses and rebates to customers, and added duty drawback in accordance with section 772(c)(2)(A) of the Act. Movement expenses included inland freight, warehousing expenses, brokerage and handling fees, international freight, marine insurance, U.S. port expenses, extra discharge expenses, U.S. customs duty, sample fees, demurrage expenses, detention expenses, dead freight expenses, dispatch expenses and bunker surcharges.

Normal Value

A. Home Market Viability

Section 773(a)(1) of the Act directs that NV be based on the price at which the foreign like product is sold in the home market, provided that the merchandise is sold in sufficient quantities (or value, if quantity is inappropriate) and that there is no particular market situation that prevents a proper comparison with the EP. The statute contemplates that quantities (or value) will normally be considered insufficient if they are less than five percent of the aggregate quantity (or value) of sales of the subject merchandise to the United States.

We found that Belgo had a viable home market for steel wire rod. As such, Belgo submitted home market sales data for purposes of the calculation of NV. In deriving NV, we made adjustments as detailed in the ''Calculation of Normal Value Based on Home Market Prices'' section below.

B. Arm's-Length Test

Belgo reported sales of the foreign like product to affiliated customers. To test whether these sales to affiliated customers were made at arm's length, where possible, we compared the prices of sales to affiliated and unaffiliated customers, net of all movement charges,

[4] Effective January 1, 2004, CBP reclassified certain HTSUS numbers related to the subject merchandise. *See http://hotdocs.usitc.gov/tariff_chapters_current/toc.html.*

[5] Belgo reported sales to a U.S. affiliate, but we did not calculate margins for those sales.

direct selling expenses, and packing. To test whether the sales to affiliates were made at arm's-length prices, we compared the unit prices of sales to affiliated and unaffiliated customers net of all movement charges, direct selling expenses, and packing expenses. Where the price to that affiliated party was, on average, within a range of 98 to 102 percent of the price of the same or comparable merchandise sold to the unaffiliated parties at the same level of trade, we determined that the sales made to the affiliated party were at arm's length. *See Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Business*, 67 FR 69186 (November 15, 2002). As explained in the ''Level of Trade'' section of this notice, we were not able to run the arm's-length test because Belgo's sales to its affiliated customers were found to be at a different level of trade than its sales to its unaffiliated customers.

C. Cost of Production Analysis

Because we used AFA in calculating Belgo's margin in the investigation, and a COP inquiry had been initiated, we had reasonable grounds to believe or suspect that home market sales of the foreign like product by Belgo were made at prices below the COP during the POR. Therefore, pursuant to section 773(b)(2)(A)(ii) of the Act, we initiated a COP investigation of sales made by Belgo.

1. Calculation of Cost of Production

In accordance with section 773(b)(3) of the Act, we calculated the weighted-average COP, by model, based on the sum of materials, fabrication, and general and administrative (G&A) expenses. We relied on Belgo's submitted COP, except for the following adjustments:

(a) For the raw material coke, we used the COP of Belgo's Spanish affiliate and,

(b) We revised Belgo's G&A and financial expenses ratios. *See Cost Calculation Memo*.

2. Test of Comparison Market Sales Prices

We compared the weighted-average COPs for Belgo to its home market sales prices of the foreign like product, as required under section 773(b) of the Act, to determine whether these sales had been made at prices below the COP within an extended period of time (*i.e.*, a period of one year) in substantial quantities and whether such prices were sufficient to permit the recovery of all costs within a reasonable period of time.

On a model-specific basis, we compared the COP to the home market prices, less any applicable movement charges, discounts, rebates, and direct and indirect selling expenses.

3. Results of the COP Test

We disregard below-cost sales where (1) 20 percent or more of a respondent's sales of a given product during the POR were made at prices below the COP and thus were made within an extended period of time in substantial quantities in accordance with sections 773(b)(2)(B) and (C) of the Act, and (2) based on comparisons of price to weighted-average COPs for the POR, we determined that the below-cost sales of the product were at prices which would not permit recovery of all costs within a reasonable time period, in accordance with section 773(b)(2)(D) of the Act. We found that Belgo made sales below cost and we disregarded such sales where appropriate.

D. Calculation of Normal Value Based on Home Market Prices

We determined NV for Belgo as follows. We made adjustments for any differences in packing and deducted home market movement expenses pursuant to sections 773(a)(6)(A) and 773(a)(6)(B)(ii) of the Act. We also deducted taxes imposed directly on home market sales pursuant to section 773(a)(6)(B)(iii) of the Act.

In addition, we made adjustments for differences in circumstances of sale (COS) pursuant to section 773(a)(6)(C)(iii) of the Act. Specifically, we deducted direct selling expenses incurred for home market sales (credit expenses net of interest revenue) and added U.S. direct selling expenses (credit expenses). For matches of similar merchandise, we made adjustments, where appropriate, for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act.

Because Belgo paid commissions on its EP sales, in calculating NV, we deducted the lesser of either (1) the weighted-average amount of commission paid on a U.S. sale for a particular product, or (2) the weighted-average amount of indirect selling expenses paid on the home market sales for a particular product. *See* 19 CFR 351.410(e).

E. Level of Trade

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, the Department will calculate NV based on sales at the same level of trade (LOT) as the EP. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent). *See* 19 CFR 351.412(c)(2). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing. *Id.; see also Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731, 61732 (November 19, 1997). In order to determine whether the comparison sales were at different stages in the marketing process than the U.S. sales, we reviewed the distribution system in each market (*i.e.*, the ''chain of distribution''),[6] including selling functions,[7] class of customer (customer category), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying LOTs for EP and comparison market sales (*i.e.*, NV based on either home market or third country prices), we consider the starting prices before any adjustments. *See Micron Technology, Inc.* v. *United States, et al.*, 243 F. 3d 1301, 1314–1315 (Fed. Cir. 2001) (affirming this methodology).

When the Department is unable to match U.S. sales to sales of the foreign like product in the comparison market at the same LOT as the EP, the Department may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing EP sales at a different LOT in the comparison market, where available data show that the difference in LOT affects price comparability, we make an LOT adjustment under section 773(a)(7)(A) of the Act.

Belgo reported all of its sales were to end users in both the home market and in the United States. Belgo reported a single channel of distribution in the United States.

In Brazil, Belgo reported three channels of distribution, direct sales to unaffiliated customers, sales through warehouses to unaffiliated customers and direct sales to affiliated customers. Belgo claims that its home market sales to affiliates are made at a different LOT than its home market sales to unaffiliated customers.

[6] The marketing process in the United States and comparison markets begins with the producer and extends to the sale to the final user or customer. The chain of distribution between the two may have many or few links, and the respondents' sales occur somewhere along this chain. In performing this evaluation, we considered the narrative responses of each respondent to properly determine where in the chain of distribution the sale appears to occur.

[7] Selling functions associated with a particular chain of distribution help us to evaluate the LOTs in a particular market. For purposes of these preliminary results, we have organized the common selling functions into four major categories: sales process and marketing support, freight and delivery, inventory and warehousing, and quality assurance/warranty services. Other selling functions unique to specific companies were considered, as appropriate.

We examined the information reported by the respondent regarding its marketing process for making the reported home market and U.S. sales, including the type and level of selling activities performed and customer categories. Specifically, we considered the extent to which sales process, freight services, warehouse/inventory maintenance, and warranty services varied with respect to the different customer categories (*i.e.*, distributors and end users) within each market and across the markets.

Based on our analyses, we found two LOTs in the home market, because Belgo performed all selling activities to a lesser degree for its sales to its affiliates in the home market than for U.S. sales to unaffiliated purchasers. We found a single LOT in the United States, which was comparable to the LOT of Belgo's sales to its unaffiliated customers in the home market. We note that, with no sales to unaffiliated parties at the same LOT, it was impossible for any of Belgo's home market sales to affiliates to pass the arm's-length test. Therefore, all comparisons to home market sales were made at the same LOT and no adjustment was necessary.

Currency Conversion

The Department's preferred source for daily exchange rates is the Federal Reserve Bank. However, the Federal Reserve Bank does not track or publish exchange rates for the Brazilian Real. Therefore, we made currency conversions based on the daily exchange rates from Factiva, a Dow Jones & Reuters Retrieval Service.

Preliminary Results of the Review

As a result of this review, we preliminarily determine that the following weighted-average margin exists for the period April 15, 2002, through September 30, 2003:

Exporter/manufacturer	Weighted-average margin percentage
Companhia Siderúrgica Belgo Mineira, Belgo Mineira Participação Industria e Comercio S.A. and BMP Sideúrgica S.A.	98.69%

Disclosure

The Department will disclose calculations performed in accordance with 19 CFR 351.224(b).

Public Comment

Interested parties are invited to comment on the preliminary results. Interested parties may submit case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than 35 days after the date of publication of this notice. The Department will issue the final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, within 120 days of publication of the preliminary results.

In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Interested parties who wish to request a hearing, or to participate in a hearing if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the date of publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. At the hearing, oral presentations will be limited to issues raised in the briefs. *See* 19 CFR 351.310(c). If a request for a hearing is made, we will tentatively hold the hearing two days after the deadline for submission of rebuttal briefs at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, at a time and in a room to be determined. Parties should confirm by telephone the date, time, and location of the hearing 48 hours before the scheduled date.

Assessment Rates

Pursuant to 19 CFR 351.212(b), the Department calculates an assessment rate for each importer or customer of the subject merchandise. The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of the final results of this review. Upon issuance of the final results of this administrative review, if any importer-or customer-specific assessment rates calculated in the final results are above *de minimis* (*i.e.*, at or above 0.5 percent), the Department will instruct CBP to assess antidumping duties on appropriate entries by applying the assessment rate to the entered quantity of the merchandise. For assessment purposes, we calculated importer-or customer-specific assessment rates for the subject merchandise by aggregating the dumping duties due for all U.S. sales to each importer or customer and dividing the amount by the total entered quantity of the sales to that importer or customer.

Cash Deposit Requirements

The following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of steel wire rod from Brazil entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed company will be the rate established in the final results of this administrative review (except no cash deposit will be required if its weighted-average margin is *de minimis*, *i.e.*, less than 0.5 percent); (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in the original less-than-fair-value investigation, the cash deposit rate will continue to be the rate published in the final determination if the manufacturer or exporter received an individual rate; (3) if the exporter is not a firm covered in this review or the original investigation, 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) if neither the exporter nor the manufacturer is a firm covered in this review or the original investigation, the cash deposit rate will be 74.45 percent, the ''all others'' rate established in the *Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil*, 67 FR 55792 (August 30, 2002).

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entities 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 double antidumping duties.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: November 1, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. E4–3073 Filed 11–5–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–830]

Preliminary Results of Antidumping Duty Administrative Review of the Antidumping Duty: Carbon and Alloy Steel Wire Rod from Mexico

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

ACTION: Notice of Preliminary Results of Antidumping Duty Administrative Review.

SUMMARY: In response to requests by interested parties, the Department of Commerce (''the Department'') is conducting an administrative review of the antidumping duty order on carbon and alloy steel wire rod (''wire rod'') from Mexico for the period of review (''POR'') April 10, 2002, through September 30, 2003.

We preliminarily determine that during the POR, Hylsa Puebla, S.A. de C.V. (''Hylsa Puebla'') and Siderurgica Lazaro Cardenas Las Truchas S.A. de C.V., and its affiliate, CCC Steel GmbH (''CCC Steel''), collectively (''SICARTSA'') sold subject merchandise at less than normal value (''NV''). If these preliminary results are adopted in the final results of this administrative review, we will instruct U.S. Customs and Border Protection (''CBP'') to assess antidumping duties equal to the difference between the export price (''EP'') and NV. Interested parties are invited to comment on these preliminary results. Parties who submit comments in this segment of the proceeding should also submit with them: (1) a statement of the issues and (2) a brief summary of the comments. Further, parties submitting written comments are requested to provide the Department with an electronic version of the public version of any such comments on diskette. The due date of the case briefs and the date of the hearing (if required) will be announced at a later date.

EFFECTIVE DATE: November 8, 2004.

FOR FURTHER INFORMATION CONTACT: Mark Young or Tipten Troidl at (202) 482–6397 or (202) 482–1767, respectively; AD/CVD Operations, Office 3, Import Administration, Room 1870, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On October 29, 2002, the Department published in the **Federal Register** the antidumping duty order on wire rod from Mexico; *see Notice of Antidumping Duty Orders: Carbon and Certain Alloy Steel Wire Rod from Brazil, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine,* 67 FR 65945. On October 1, 2003, we published in the **Federal Register** the notice of *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation: Opportunity To Request Administrative Review,* 68 FR 56618.

By October 31, 2003, we had received requests for review from petitioners,[1] SICARTSA, and Hylsa Puebla and its parent company Hylsamex, S.A. de C.V. (''Hylsamex''),[2] in accordance with 19 CFR 351.213(b)(2).

On November 28, 2003, we published the notice of initiation of this antidumping duty administrative review covering the period April 10, 2002, through September 30, 2003. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 68 FR 66799 (November 28, 2003) (''*Initiation Notice*'').

During the most recently completed segment of the proceeding in which SICARTSA participated, the Department found and disregarded sales that failed the cost test.[3] Pursuant to section 773(b)(2)(A)(ii) of the Tariff Act of 1930, as amended (''the Act''), we had reasonable grounds to believe or suspect that sales by SICARTSA of the foreign like product under consideration for the determination of NV in this review were made at prices below the cost of production (''COP''). Therefore, we initiated a cost investigation of SICARTSA, and instructed the company to fill out sections A–D[4] of our initial questionnaire which was issued on December 9, 2003. SICARTSA submitted its response, in toto, by January 30, 2004.

On February 18, 2004, petitioners submitted a sales–below-cost allegation against Hylsa Puebla. We determined that petitioners' cost allegations provided a reasonable basis to initiate a COP investigation of Hylsa Puebla's sales. See the company–specific COP initiation memorandum, dated February 25, 2004, in the case file in the Central Records Unit (''CRU''), main Commerce building, room B–099. Also, on February 27, 2004, we informed Hylsa Puebla that it was required to respond to section D of the antidumping questionnaire. *See* letter from the Department to Hylsa Puebla requiring a section D questionnaire response, dated February 27, 2004, in the CRU. On March 31, 2004, Hylsa Puebla submitted its response to the section D questionnaire.

On June 14, 2004, the Department published an extension of preliminary results for this review, extending the preliminary results until October 30, 2004.[5] *See Carbon and Certain Alloy Steel Wire Rod From Mexico and Trinidad and Tobago: Extension of Preliminary Results of 2002/2003 Antidumping Duty Administrative Reviews*, 69 FR 32979 (June 14, 2004).

On September 9, 2004, the Department issued a supplemental section A–C questionnaire to SICARTSA. On September 24, 2004, we issued the company a supplemental section D questionnaire. We received SICARTSA's response to the section A–C supplemental questionnaire on September 15, 2004, and a response to the section D supplemental questionnaire on October 8, 2004. On September 16, 2004, the Department issued a supplemental section A–C questionnaire to Hylsa Puebla. On October 8, 2004, we issued the company a supplemental section D questionnaire. We received the response to Hylsa Puebla's section A–C supplemental questionnaire on October 7, 2004, and a response to the section D supplemental questionnaire on October 22, 2004.

Scope of Review

Effective July 24, 2003, in accordance with the Department's *Notice of Final Result of Changed Circumstances Review of the Antidumping Duty and Countervailing Duty Orders, and Intent To Revoke Orders in Part*, 68 FR 64079 (November 12, 2003), the scope of this order was amended. Therefore, for

[1] The petitioners are Gerdau Ameristeel U.S., Inc., Georgetown Steel Co., Keystone Consolidated Industries, Inc., and North Star Steel Texas, Inc.

[2] Hylsa Puebla is a wholly-owned subsidiary of Hylsa, S.A. de C.V., which in turn is wholly-owned by Hylsamex, a Mexican holding company. On January 7, 2004, Hylsamex stated that it did not produce subject merchandise and it did not have any sales of subject merchandise to customers in the United States or Mexico during the review period. As a result Hylsamex withdrew its request for a review during the current review period.

[3] The most recently completed segment in which SICARTSA participated was the investigation. *See Notice of Final Determination of Sales at Less Than Fair Value: Carbon and Certain Alloy Steel Wire Rod From Mexico* 67 FR 55800 (August 30, 2002) (''*Wire Rod from Mexico*'').

[4] Section A: Organization, Accounting Practices, Markets and Merchandise

Section B: Comparison Market Sales

Section C: Sales to the United States

Section D: Cost of Production and Constructed Value

[5] Since the due date falls on a Saturday, the actual signature date is November 1, 2004.

purposes of this review, there were separate scopes in effect. These scopes are set forth below.

Scope of Order from October 29, 2002, through July 23, 2003

The merchandise subject to this order is certain hot–rolled products of carbon steel and alloy steel, in coils, of approximately round cross section, 5.00 mm or more, but less than 19.00 mm, in solid cross–sectional diameter.

Specifically excluded are steel products possessing the above–noted physical characteristics and meeting the *Harmonized Tariff Schedule of the United States* (HTSUS) definitions for (a) stainless steel; (b) tool steel; (c) high nickel steel; (d) ball bearing steel; and (e) concrete reinforcing bars and rods. Also excluded are (f) free machining steel products (*i.e.*, products that contain by weight one or more of the following elements: 0.03 percent or more of lead, 0.05 percent or more of bismuth, 0.08 percent or more of sulfur, more than 0.04 percent of phosphorus, more than 0.05 percent of selenium, or more than 0.01 percent of tellurium).

Also excluded from the scope are 1080 grade tire cord quality wire rod and 1080 grade tire bead quality wire rod. This grade 1080 tire cord quality rod is defined as: (i) grade 1080 tire cord quality wire rod measuring 5.0 mm or more but not more than 6.0 mm in cross–sectional diameter; (ii) with an average partial decarburization of no more than 70 microns in depth (maximum individual 200 microns); (iii) having no inclusions greater than 20 microns; (iv) having a carbon segregation per heat average of 3.0 or better using European Method NFA 04–114; (v) having a surface quality with no surface defects of a length greater than 0.15 mm; (vi) capable of being drawn to a diameter of 0.30 mm or less with 3 or fewer breaks per ton, and (vii) containing by weight the following elements in the proportions shown: (1) 0.78 percent or more of carbon, (2) less than 0.01 percent of aluminum, (3) 0.040 percent or less, in the aggregate, of phosphorus and sulfur, (4) 0.006 percent or less of nitrogen, and (5) not more than 0.15 percent, in the aggregate, of copper, nickel and chromium.

This grade 1080 tire bead quality rod is defined as: (i) grade 1080 tire bead quality wire rod measuring 5.5 mm or more but not more than 7.0 mm in cross–sectional diameter; (ii) with an average partial decarburization of no more than 70 microns in depth (maximum individual 200 microns); (iii) having no inclusions greater than 20 microns; (iv) having a carbon segregation per heat average of 3.0 or better using European Method NFA 04–114; (v) having a surface quality with no surface defects of a length greater than 0.2 mm; (vi) capable of being drawn to a diameter of 0.78 mm or larger with 0.5 or fewer breaks per ton; and (vii) containing by weight the following elements in the proportions shown: (1) 0.78 percent or more of carbon, (2) less than 0.01 percent of soluble aluminum, (3) 0.040 percent or less, in the aggregate, of phosphorus and sulfur, (4) 0.008 percent or less of nitrogen, and (5) either not more than 0.15 percent, in the aggregate, of copper, nickel and chromium (if chromium is not specified), or not more than 0.10 percent in the aggregate of copper and nickel and a chromium content of 0.24 to 0.30 percent (if chromium is specified).

The designation of the products as ''tire cord quality'' or ''tire bead quality'' indicates the acceptability of the product for use in the production of tire cord, tire bead, or wire for use in other rubber reinforcement applications such as hose wire. These quality designations are presumed to indicate that these products are being used in tire cord, tire bead, and other rubber reinforcement applications, and such merchandise intended for the tire cord, tire bead, or other rubber reinforcement applications is not included in the scope. However, should petitioners or other interested parties provide a reasonable basis to believe or suspect that there exists a pattern of importation of such products for other than those applications, end–use certification for the importation of such products may be required. Under such circumstances, only the importers of record would normally be required to certify the end use of the imported merchandise.

All products meeting the physical description of subject merchandise that are not specifically excluded are included in this scope.

The products under review are currently classifiable under subheadings 7213.91.3010, 7213.91.3090, 7213.91.4510, 7213.91.4590, 7213.91.6010, 7213.91.6090, 7213.99.0031, 7213.99.0038, 7213.99.0090, 7227.20.0010, 7227.20.0020, 7227.20.0090, 7227.20.0095, 7227.90.6051, 7227.90.6053, 7227.90.6058, and 7227.90.6059 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

Scope of Order from July 24, 2003, through the POR

The merchandise subject to this order is certain hot–rolled products of carbon steel and alloy steel, in coils, of approximately round cross section, 5.00 mm or more, but less than 19.00 mm, in solid cross–sectional diameter.

Specifically excluded are steel products possessing the above–noted physical characteristics and meeting the HTSUS definitions for (a) stainless steel; (b) tool steel; c) high nickel steel; (d) ball bearing steel; and (e) concrete reinforcing bars and rods. Also excluded are (f) free machining steel products (*i.e.*, products that contain by weight one or more of the following elements: 0.03 percent or more of lead, 0.05 percent or more of bismuth, 0.08 percent or more of sulfur, more than 0.04 percent of phosphorus, more than 0.05 percent of selenium, or more than 0.01 percent of tellurium).

Also excluded from the scope are 1080 grade tire cord quality wire rod and 1080 grade tire bead quality wire rod. This grade 1080 tire cord quality rod is defined as: (i) grade 1080 tire cord quality wire rod measuring 5.0 mm or more but not more than 6.0 mm in cross–sectional diameter; (ii) with an average partial decarburization of no more than 70 microns in depth (maximum individual 200 microns); (iii) having no non–deformable inclusions greater than 20 microns and no deformable inclusions greater than 35 microns; (iv) having a carbon segregation per heat average of 3.0 or better using European Method NFA 04–114; (v) having a surface quality with no surface defects of a length greater than 0.15 mm; (vi) capable of being drawn to a diameter of 0.30 mm or less with 3 or fewer breaks per ton, and (vii) containing by weight the following elements in the proportions shown: (1) 0.78 percent or more of carbon, (2) less than 0.01 percent of aluminum, (3) 0.040 percent or less, in the aggregate, of phosphorus and sulfur, (4) 0.006 percent or less of nitrogen, and (5) not more than 0.15 percent, in the aggregate, of copper, nickel and chromium.

This grade 1080 tire bead quality rod is defined as: (i) grade 1080 tire bead quality wire rod measuring 5.5 mm or more but not more than 7.0 mm in cross–sectional diameter; (ii) with an average partial decarburization of no more than 70 microns in depth (maximum individual 200 microns); (iii) having no non–deformable inclusions greater than 20 microns and no deformable inclusions greater than 35 microns; (iv) having a carbon segregation per heat average of 3.0 or better using European Method NFA 04–114; (v) having a surface quality with no surface defects of a length greater than 0.2 mm; (vi) capable of being drawn to a diameter of 0.78 mm or larger with 0.5

or fewer breaks per ton; and (vii) containing by weight the following elements in the proportions shown: (1) 0.78 percent or more of carbon, (2) less than 0.01 percent of soluble aluminum, (3) 0.040 percent or less, in the aggregate, of phosphorus and sulfur, (4) 0.008 percent or less of nitrogen, and (5) either not more than 0.15 percent, in the aggregate, of copper, nickel and chromium (if chromium is not specified), or not more than 0.10 percent in the aggregate of copper and nickel and a chromium content of 0.24 to 0.30 percent (if chromium is specified).

For purposes of the grade 1080 tire cord quality wire rod and the grade 1080 tire bead quality wire rod, an inclusion will be considered to be deformable if its ratio of length (measured along the axis - that is, the direction of rolling - of the rod) over thickness (measured on the same inclusion in a direction perpendicular to the axis of the rod) is equal to or greater than three. The size of an inclusion for purposes of the 20 microns and 35 microns limitations is the measurement of the largest dimension observed on a longitudinal section measured in a direction perpendicular to the axis of the rod. This measurement methodology applies only to inclusions on certain grade 1080 tire cord quality wire rod and certain grade 1080 tire bead quality wire rod that are entered, or withdrawn from warehouse, for consumption on or after July 24, 2003.

The designation of the products as ''tire cord quality'' or ''tire bead quality'' indicates the acceptability of the product for use in the production of tire cord, tire bead, or wire for use in other rubber reinforcement applications such as hose wire. These quality designations are presumed to indicate that these products are being used in tire cord, tire bead, and other rubber reinforcement applications, and such merchandise intended for the tire cord, tire bead, or other rubber reinforcement applications is not included in the scope. However, should petitioners or other interested parties provide a reasonable basis to believe or suspect that there exists a pattern of importation of such products for other than those applications, end–use certification for the importation of such products may be required. Under such circumstances, only the importers of record would normally be required to certify the end use of the imported merchandise.

All products meeting the physical description of subject merchandise that are not specifically excluded are included in this scope.

The products under review are currently classifiable under subheadings 7213.91.3010, 7213.91.3090, 7213.91.4510, 7213.91.4590, 7213.91.6010, 7213.91.6090, 7213.99.0031, 7213.99.0038, 7213.99.0090, 7227.20.0010, 7227.20.0020, 7227.20.0090, 7227.20.0095, 7227.90.6051, 7227.90.6053, 7227.90.6058, and 7227.90.6059 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.[6]

Verification

The Department intends to verify the questionnaire response submitted by Hysla Puebla, as this company was not included in the less than fair value (''LTFV'') investigation.

Product Comparisons

In accordance with section 771(16) of the Act, all products produced by the respondents covered by the description in the ''Scope of Review'' section, above, and sold in Mexico during the POR are considered to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We have relied on eight criteria to match U.S. sales of subject merchandise to comparison–market sales of the foreign like product or constructed value (''CV''): grade range, carbon content range, surface quality, deoxidation, maximum total residual content, heat treatment, diameter range, and coating. These characteristics have been weighted by the Department where appropriate. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics listed above. Where there were no sales of the foreign like product in the home market suitable for matching to the subject merchandise, we used constructed value as the basis for normal value.

Comparisons to Normal Value

To determine whether sales of wire rod from Mexico were made in the United States at less than NV, we compared the EP to the NV, as described in the ''Export Price'' and ''Normal Value'' sections of this notice. In accordance with section 777A(d)(2) of the Act, we calculated monthly weighted–average prices for NV and compared these to individual U.S. transactions. *See* the company–specific calculation memoranda, available in the CRU.

Export Price

For the price to the United States, we used, as appropriate, EP in accordance with sections 772(a) and (b) of the Act. We calculated EP when the merchandise was sold by the producer or exporter outside of the United States directly to the first unaffiliated purchaser in the United States prior to importation and when CEP was not otherwise warranted based on the facts on the record. We based EP on the packed cost–insurance-freight (''CIF''), ex–factory, free–on-board (''FOB''), or delivered prices to the first unaffiliated customer in, or for exportation to, the United States. When appropriate, we reduced these prices to reflect discounts and rebates.

In accordance with section 772(c)(2) of the Act, we made deductions, where appropriate, for movement expenses including inland freight from plant or warehouse to port of exportation, foreign brokerage, handling and loading charges, export duties, international freight, marine insurance, U.S. duties, and U.S. inland freight expenses (freight from port to the customer).

Normal Value

A. Selection of Comparison Markets

To determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared each respondent's volume of home market sales of the foreign like product to the volume of its U.S. sales of the subject merchandise. Pursuant to sections 773(a)(1)(B) and 773(a)(1)(C) of the Act, because each respondent had an aggregate volume of home market sales of the foreign like product that was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, we determined that the home market was viable for all producers.

B. Arm's–Length Test

SICARTSA and Hylsa Puebla reported sales of the foreign like product to an affiliated end–user and an affiliated reseller. The Department calculates the NV based on a sale to an affiliated party only if it is satisfied that the price to the affiliated party is comparable to the price at which sales are made to parties not affiliated with the producer or exporter, *i.e.*, sales at arm's–length. *See* 19 CFR 351.403(c). To test whether these sales were made at arm's–length, we compared the starting prices of sales to affiliated and unaffiliated customers

[6] Effective January 1, 2004, CBP reclassified certain HTSUS numbers related to the subject merchandise. *See* http://hotdocs.usitc.gov/tariff—chapters—current/toc.html.

net of all movement charges, direct selling expenses, discounts and packing. In accordance with the Department's current practice, if the prices charged to an affiliated party were, on average, between 98 and 102 percent of the prices charged to unaffiliated parties for merchandise identical or most similar to that sold to the affiliated party, we consider the sales to be at arm's–length prices. *See* 19 CFR 351.403(c). Conversely, where sales to the affiliated party did not pass the arm's–length test, all sales to that affiliated party have been excluded from the NV calculation. *See Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade*, 67 FR 69186 (November 15, 2002). Both Hysla and SICARTSA had sales that did not pass the arm's–length test and were excluded from the NV calculation.

C. Cost of Production Analysis

1. Calculation of COP

Before making any comparisons to NV, we conducted a COP analysis of SICARTSA and Hylsa Puebla, pursuant to section 773(b) of the Act, to determine whether the respondents' comparison market sales were made below the COP. We calculated the COP based on the sum of the cost of materials and fabrication for the foreign like product, plus amounts for selling, general, and administrative expenses (''SG&A'') and packing, in accordance with section 773(b)(3) of the Act. We relied on the respondents' information as submitted.

In the investigation we found that for iron ore and lime, major inputs in wire rod production, the affiliates' average COP exceeded the transfer price SICARTSA paid to its affiliated suppliers. In the current review, we also preliminarily find that the affiliates' average COP exceeded the transfer price SICARTSA paid for those inputs. Therefore, pursuant to section 773(f)(3) of the Act, we applied the major input rule and adjusted SICARTSA's reported cost of manufacturing to account for purchases of iron ore and lime from affiliated parties at non–arm's length prices. We were unable to compare the transfer price for iron ore to a market price as there were no unaffiliated purchases or sales. *See* October 8, 2004 supplemental questionnaire response at Exhibit 8. We therefore, adjusted SICARTSA's reported COM to reflect the higher COP.

2. Test of Comparison Market Prices

As required under section 773(b)(2) of the Act, we compared the weighted–average COP to the per–unit price of the comparison market sales of the foreign like product, to determine whether these sales had been made at prices below the COP within an extended period of time in substantial quantities, and whether such prices were sufficient to permit the recovery of all costs within a reasonable period of time. We determined the net comparison market prices for the below–cost test by subtracting from the gross unit price any applicable movement charges, discounts, rebates, direct and indirect selling expenses (also subtracted from the COP), and packing expenses.

3. Results of the COP Test

Pursuant to section 773(b)(2)(C)(i) of the Act, where less than 20 percent of sales of a given product were at prices less than the COP, we did not disregard any below–cost sales of that product because we determined that the below–cost sales were not made in ''substantial quantities.'' Where 20 percent or more of a respondent's sales of a given product during the POR were at prices less than the COP, we determined such sales to have been made in ''substantial quantities.'' *See* section 773(b)(2)(C) of the Act. The sales were made within an extended period of time in accordance with section 773(b)(2)(B) of the Act, because they were made over the course of the POR. In such cases, because we compared prices to POR–average costs, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Therefore, for SICARTSA and Hylsa Puebla, for purposes of this administrative review, we disregarded below–cost sales of a given product and used the remaining sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act. *See* the company–specific calculation memoranda on file in the CRU for our calculation methodology and results.

D. Calculation of Normal Value Based on Comparison Market Prices

We calculated NV based on ex–works, FOB or delivered prices to comparison market customers. We made deductions from the starting price, when appropriate, for handling, loading, inland freight, warehousing, inland insurance, and discounts. We added interest, freight, and other revenue (*i.e.*, Mexican and U.S. brokerage and handling, and duty charged to customer) where applicable. In accordance with sections 773(a)(6)(A) and (B) of the Act, we added U.S. packing costs and deducted comparison market packing, respectively. In addition, we made circumstance of sale (''COS'') adjustments for direct expenses, including imputed credit expenses, advertising, warranty expenses, commissions, bank charges, and billing adjustments, in accordance with section 773(a)(6)(C)(iii) of the Act.

We also made adjustments, in accordance with 19 CFR 351.410(e), for indirect selling expenses incurred on comparison market or U.S. sales where commissions were granted on sales in one market but not in the other, the ''commission offset.'' Specifically, where commissions are incurred in one market, but not in the other, we will limit the amount of such allowance to the amount of either the selling expenses incurred in the one market or the commissions allowed in the other market, whichever is less.

When comparing U.S. sales with comparison market sales of similar, but not identical, merchandise, we also made adjustments for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act and section 351.411 of the Department's regulations. We based this adjustment on the difference in the variable cost of manufacturing for the foreign like product and subject merchandise, using POR–average costs.

Sales of wire rod purchased by the respondents from unaffiliated producers and resold in the comparison market were treated in the same manner described above in the ''Export Price'' section of this notice.

E. Calculation of Normal Value Based on Constructed Value

When we could not determine the NV based on comparison market sales because there were no contemporaneous sales of a comparable product, we compared the EP to CV. In accordance with section 773(e) of the Act, we calculated CV based on the sum of the cost of manufacturing (''COM'') of the product sold in the United States, plus amounts for SG&A expenses, profit, and U.S. packing costs. In accordance with section 773(e)(2)(A) of the Act, we based SG&A expenses and profit on the amounts incurred by SICARTSA in connection with the production and sale of the foreign like product in the comparison market.

For price–to-CV comparisons, we made adjustments to CV for COS differences, in accordance with section 773(a)(8) of the Act and 19 CFR 351.410. We made COS adjustments by deducting direct selling expenses incurred on comparison market sales and adding U.S. direct selling expenses.

F. Level of Trade

In accordance with section 773(a)(1)(B) of the Act, we determined NV based on sales in the comparison market at the same level of trade (''LOT'') as the EP sales, to the extent practicable. When there were no sales at the same LOT, we compared U.S. sales to comparison market sales at a different LOT. When NV is based on CV, the NV LOT is that of the sales from which we derive SG&A expenses and profit.

Pursuant to section 351.412 of the Department's regulations, to determine whether comparison market sales were at a different LOT, we examined stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated (or arm's–length) customers. If the comparison–market sales were at a different LOT and the differences affect price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison–market sales at the LOT of the export transaction, we will make an LOT adjustment under section 773(a)(7)(A) of the Act.

For a detailed description of our LOT methodology and a summary of company–specific LOT findings for these preliminary results, see the calculation memoranda, all on file in the CRU.

Currency Conversion

For purposes of these preliminary results, we made currency conversions in accordance with section 773A(a) of the Act, based on the official exchange rates published by the Federal Reserve Bank.

Preliminary Results of Review

As a result of our review, we preliminarily determine that the following percentage weighted–average margins exist for the period April 10, 2002, through September 30, 2003:

Manufacturer/exporter	Margin (percent)
SICARTSA	1.82
Hylsa Puebla	7.27

The Department will disclose calculations performed within five days of the date of publication of this notice to the parties of this proceeding in accordance with 19 CFR 351.224(b). An interested party may request a hearing within 30 days of publication of these preliminary results. *See* 19 CFR 351.310(c). The Department will announce the due date of the case briefs at a later date. Rebuttal briefs must be limited to issues raised in the case briefs. Parties who submit arguments are requested to submit with the argument (1) a statement of the issue, and (2) a brief summary of the argument. Further, parties submitting written comments are requested to provide the Department with an additional copy of the public version of any such comments on diskette. An interested party may request a hearing within 30 days of publication of these preliminary results. *See* 19 CFR 351.310(c). Any hearing, if requested, ordinarily will be held two days after the due date of the rebuttal briefs. The Department will issue the final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, or at a hearing, if requested, within 120 days of publication of these preliminary results.

Assessment Rate

Pursuant to 19 CFR 351.212(b), the Department calculated an assessment rate for each importer of the subject merchandise. Upon issuance of the final results of this administrative review, if any importer–specific assessment rates calculated in the final results are above *de minimis* (*i.e.*, at or above 0.5 percent), the Department will issue appraisement instructions directly to CBP to assess antidumping duties on appropriate entries by applying the assessment rate to the entered value of the merchandise. For assessment purposes, we calculated importer–specific assessment rates for the subject merchandise by aggregating the dumping margins for all U.S. sales to each importer and dividing the amount by the total entered value of the sales to that importer. Where appropriate, to calculate the entered value, we subtracted international movement expenses (*e.g.*, international freight) from the gross sales value.

Cash Deposit Requirements

To calculate the cash deposit rate for each producer and/or exporter included in this administrative review, we divided the total dumping margins for each company by the total net value for that company's sales during the review period.

The following deposit rates will be effective upon publication of the final results of this administrative review for all shipments of wire rod from Mexico entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rates for the companies listed above will be the rates established in the final results of this review, except if the rate is less than 0.5 percent and, therefore, *de minimis*, the cash deposit will be zero; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company–specific rate published for the most recent final results in which that manufacturer or exporter participated; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent final results for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be 20.11 percent, the ''All Others'' rate established in the LTFV investigation. *See Wire Rod From Mexico*, 67 FR 55800, at 55801.

These cash deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: November 1, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. E4–3070 Filed 11–5–04; 8:45 am]

Billing Code: 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–274–804]

Preliminary Results of Antidumping Duty Administrative Review of the Antidumping Duty Order: Carbon and Alloy Steel Wire Rod from Trinidad and Tobago

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

ACTION: Notice of the Preliminary Results of Antidumping Duty Administrative Review.

SUMMARY: In response to requests by interested parties, the Department of Commerce (''the Department'') is conducting an administrative review of the antidumping duty order on carbon and alloy steel wire rod (''wire rod'') from Trinidad and Tobago for the period of review (''POR'') April 10, 2002, through September 30, 2003.

We preliminarily determine that during the POR, Carribean Ispat Limited and its affiliates Ispat North America Inc. (''INA'') and Walker Wire (Ipsat), Inc. (''Walker Wire'') (collectively ''CIL''), sold subject merchandise at less than normal value (''NV''). If these preliminary results are adopted in the final results of this administrative review, we will instruct U.S. Customs and Border Protection (''CBP'') to assess antidumping duties equal to the difference between the export price (''EP'') or constructed export price (''CEP'') and NV.

Interested parties are invited to comment on these preliminary results. Parties who submit comments in this segment of the proceeding should also submit with them: (1) a statement of the issues and (2) a brief summary of the comments. Further, parties submitting written comments are requested to provide the Department with an electronic version of the public version of any such comments on diskette.

EFFECTIVE DATE: November 8, 2004.

FOR FURTHER INFORMATION CONTACT: Dennis McClure or James Terpstra, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–5973 or (202) 482–3965, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 29, 2002, the Department published in the **Federal Register** the antidumping duty order on wire rod from Trinidad and Tobago; see Notice of Antidumping Duty Orders: Carbon and Certain Alloy Steel Wire Rod from Brazil, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine, 67 FR 65945. On October 1, 2003, we published in the **Federal Register** the notice of *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation: Opportunity To Request Administrative Review*, 68 FR 56618.

We received timely requests for review from petitioners,[1] and CIL, in accordance with 19 CFR 351.213(b)(2). On November 28, 2003, we published the notice of initiation of this antidumping duty administrative review covering the period April 10, 2002, through September 30, 2003, naming CIL as the respondent. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 68 FR 66799 (November 28, 2003). On December 9, 2003, we sent a questionnaire to CIL.[2]

During the most recently completed segment of the proceeding in which CIL participated, the Department found and disregarded sales that failed the cost test.[3] Pursuant to section 773(b)(2)(A)(ii) of the Tariff Act of 1930, as amended (''the Act''), we had reasonable grounds to believe or suspect that sales by CIL of the foreign like product under consideration for the determination of NV in this review were made at prices below the cost of production (''COP''). Therefore, we initiated a cost investigation of the respondent, and instructed it to fill out section D upon issuance of the initial questionnaire.

CIL submitted its responses to the Department's questionnaire on January 12, 2004, January 30, 2004, and February 13, 2004. On February 23, 2004, and March 19, 2004, the petitioners submitted comments on CIL's questionnaire response.

On June 14, 2004, the Department published an extension of preliminary results of this review, extending its preliminary results until October 30, 2004.[4] *See Carbon and Certain Alloy Steel Wire Rod From Mexico and Trinidad and Tobago: Extension of Preliminary Results of 2002/2003 Antidumping Duty Administrative Reviews*, 69 FR 32979 (June 14, 2004).

On August 16, 2004, the Department issued a section A–E supplemental questionnaire to CIL. We received the response to the supplemental questionnaire on September 21, 2004. On October 5, 2004, the Department received petitioners' comments on CIL's response to the Department's August 16, 2004, supplemental questionnaire. On October 15, 2004, we received a response from CIL regarding the petitioners' October 5, 2004, comments.

On October 8, 2004, the Department received a reconciliation of CIL's home market and U.S. sales database to its income statements. On October 15, 2004, the Department sent a supplemental questionnaire to further clarify the sales reconciliation. CIL submitted its response on October 22, 2004.

Scope of the Antidumping Duty Order

Effective July 24, 2003, in accordance with the Department's *Notice of Final Result of Changed Circumstances Review of the Antidumping Duty and Countervailing Duty Orders, and Intent To Revoke Orders in Part*, 68 FR 64079 (November 12, 2003), the scope of this order was amended. Therefore, for purposes of this review, there were separate scopes in effect. These scopes are set forth below.

Scope of Order from October 29, 2002, through July 23, 2003

The merchandise subject to this order is certain hot–rolled products of carbon steel and alloy steel, in coils, of approximately round cross section, 5.00 mm or more, but less than 19.00 mm, in solid cross–sectional diameter.

Specifically excluded are steel products possessing the above–noted physical characteristics and meeting the *Harmonized Tariff Schedule of the United States* (HTSUS) definitions for (a) stainless steel; (b) tool steel; (c) high nickel steel; (d) ball bearing steel; and (e) concrete reinforcing bars and rods. Also excluded are (f) free machining steel products (i.e., products that contain by weight one or more of the following elements: 0.03 percent or more of lead, 0.05 percent or more of bismuth, 0.08 percent or more of sulfur, more than 0.04 percent of phosphorus, more than 0.05 percent of selenium, or more than 0.01 percent of tellurium).

Also excluded from the scope are 1080 grade tire cord quality wire rod and 1080 grade tire bead quality wire rod. This grade 1080 tire cord quality rod is defined as: (i) grade 1080 tire cord quality wire rod measuring 5.0 mm or more but not more than 6.0 mm in cross–sectional diameter; (ii) with an average partial decarburization of no more than 70 microns in depth (maximum individual 200 microns); (iii) having no inclusions greater than 20 microns; (iv) having a carbon segregation per heat average of 3.0 or better using European Method NFA 04–

[1] The petitioners are Co-Steel Raritan, Inc., GS Industries, Inc., Keystone Consolidated Industries, Inc., and North Star Steel Texas, Inc.

Section A: Organization, Accounting Practices, Markets and Merchandise

Section B: Comparison Market Sales

Section C: Sales to the United States

Section D: Cost of Production and Constructed Value

Section E: Cost of Further Manufacture or Assemble Performed in the United States

[3] The most recently completed segment in which CIL participated was the investigation. *See Notice of Final Determination of Sales at Less Than Fair Value: Carbon and Certain Alloy Steel Wire Rod From Trinidad and Tobago*, 67 FR 55788 (August 30, 2002)) (''*Final Determination*'').

[4] Since the due date falls on a Saturday, the actual signature date is November 1, 2004.

114; (v) having a surface quality with no surface defects of a length greater than 0.15 mm; (vi) capable of being drawn to a diameter of 0.30 mm or less with 3 or fewer breaks per ton, and (vii) containing by weight the following elements in the proportions shown: (1) 0.78 percent or more of carbon, (2) less than 0.01 percent of aluminum, (3) 0.040 percent or less, in the aggregate, of phosphorus and sulfur, (4) 0.006 percent or less of nitrogen, and (5) not more than 0.15 percent, in the aggregate, of copper, nickel and chromium.

This grade 1080 tire bead quality rod is defined as: (i) grade 1080 tire bead quality wire rod measuring 5.5 mm or more but not more than 7.0 mm in cross–sectional diameter; (ii) with an average partial decarburization of no more than 70 microns in depth (maximum individual 200 microns); (iii) having no inclusions greater than 20 microns; (iv) having a carbon segregation per heat average of 3.0 or better using European Method NFA 04–114; (v) having a surface quality with no surface defects of a length greater than 0.2 mm; (vi) capable of being drawn to a diameter of 0.78 mm or larger with 0.5 or fewer breaks per ton; and (vii) containing by weight the following elements in the proportions shown: (1) 0.78 percent or more of carbon, (2) less than 0.01 percent of soluble aluminum, (3) 0.040 percent or less, in the aggregate, of phosphorus and sulfur, (4) 0.008 percent or less of nitrogen, and (5) either not more than 0.15 percent, in the aggregate, of copper, nickel and chromium (if chromium is not specified), or not more than 0.10 percent in the aggregate of copper and nickel and a chromium content of 0.24 to 0.30 percent (if chromium is specified).

The designation of the products as ''tire cord quality'' or ''tire bead quality'' indicates the acceptability of the product for use in the production of tire cord, tire bead, or wire for use in other rubber reinforcement applications such as hose wire. These quality designations are presumed to indicate that these products are being used in tire cord, tire bead, and other rubber reinforcement applications, and such merchandise intended for the tire cord, tire bead, or other rubber reinforcement applications is not included in the scope. However, should petitioners or other interested parties provide a reasonable basis to believe or suspect that there exists a pattern of importation of such products for other than those applications, end–use certification for the importation of such products may be required. Under such circumstances, only the importers of record would normally be required to certify the end use of the imported merchandise.

All products meeting the physical description of subject merchandise that are not specifically excluded are included in this scope.

The products under review are currently classifiable under subheadings 7213.91.3010, 7213.91.3090, 7213.91.4510, 7213.91.4590, 7213.91.6010, 7213.91.6090, 7213.99.0031, 7213.99.0038, 7213.99.0090, 7227.20.0010, 7227.20.0020, 7227.20.0090, 7227.20.0095, 7227.90.6051, 7227.90.6053, 7227.90.6058, and 7227.90.6059 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

Scope of Order from July 24, 2003, through the POR

The merchandise subject to this order is certain hot–rolled products of carbon steel and alloy steel, in coils, of approximately round cross section, 5.00 mm or more, but less than 19.00 mm, in solid cross–sectional diameter.

Specifically excluded are steel products possessing the above–noted physical characteristics and meeting the HTSUS definitions for (a) stainless steel; (b) tool steel; c) high nickel steel; (d) ball bearing steel; and (e) concrete reinforcing bars and rods. Also excluded are (f) free machining steel products (*i.e.*, products that contain by weight one or more of the following elements: 0.03 percent or more of lead, 0.05 percent or more of bismuth, 0.08 percent or more of sulfur, more than 0.04 percent of phosphorus, more than 0.05 percent of selenium, or more than 0.01 percent of tellurium).

Also excluded from the scope are 1080 grade tire cord quality wire rod and 1080 grade tire bead quality wire rod. This grade 1080 tire cord quality rod is defined as: (i) grade 1080 tire cord quality wire rod measuring 5.0 mm or more but not more than 6.0 mm in cross–sectional diameter; (ii) with an average partial decarburization of no more than 70 microns in depth (maximum individual 200 microns); (iii) having no non–deformable inclusions greater than 20 microns and no deformable inclusions greater than 35 microns; (iv) having a carbon segregation per heat average of 3.0 or better using European Method NFA 04–114; (v) having a surface quality with no surface defects of a length greater than 0.15 mm; (vi) capable of being drawn to a diameter of 0.30 mm or less with 3 or fewer breaks per ton, and (vii) containing by weight the following elements in the proportions shown: (1) 0.78 percent or more of carbon, (2) less than 0.01 percent of aluminum, (3) 0.040 percent or less, in the aggregate, of phosphorus and sulfur, (4) 0.006 percent or less of nitrogen, and (5) not more than 0.15 percent, in the aggregate, of copper, nickel and chromium.

This grade 1080 tire bead quality rod is defined as: (i) grade 1080 tire bead quality wire rod measuring 5.5 mm or more but not more than 7.0 mm in cross–sectional diameter; (ii) with an average partial decarburization of no more than 70 microns in depth (maximum individual 200 microns); (iii) having no non–deformable inclusions greater than 20 microns and no deformable inclusions greater than 35 microns; (iv) having a carbon segregation per heat average of 3.0 or better using European Method NFA 04–114; (v) having a surface quality with no surface defects of a length greater than 0.2 mm; (vi) capable of being drawn to a diameter of 0.78 mm or larger with 0.5 or fewer breaks per ton; and (vii) containing by weight the following elements in the proportions shown: (1) 0.78 percent or more of carbon, (2) less than 0.01 percent of soluble aluminum, (3) 0.040 percent or less, in the aggregate, of phosphorus and sulfur, (4) 0.008 percent or less of nitrogen, and (5) either not more than 0.15 percent, in the aggregate, of copper, nickel and chromium (if chromium is not specified), or not more than 0.10 percent in the aggregate of copper and nickel and a chromium content of 0.24 to 0.30 percent (if chromium is specified).

For purposes of the grade 1080 tire cord quality wire rod and the grade 1080 tire bead quality wire rod, an inclusion will be considered to be deformable if its ratio of length (measured along the axis - that is, the direction of rolling - of the rod) over thickness (measured on the same inclusion in a direction perpendicular to the axis of the rod) is equal to or greater than three. The size of an inclusion for purposes of the 20 microns and 35 microns limitations is the measurement of the largest dimension observed on a longitudinal section measured in a direction perpendicular to the axis of the rod. This measurement methodology applies only to inclusions on certain grade 1080 tire cord quality wire rod and certain grade 1080 tire bead quality wire rod that are entered, or withdrawn from warehouse, for consumption on or after July 24, 2003.

The designation of the products as ''tire cord quality'' or ''tire bead quality'' indicates the acceptability of the product for use in the production of tire cord, tire bead, or wire for use in other

rubber reinforcement applications such as hose wire. These quality designations are presumed to indicate that these products are being used in tire cord, tire bead, and other rubber reinforcement applications, and such merchandise intended for the tire cord, tire bead, or other rubber reinforcement applications is not included in the scope. However, should petitioners or other interested parties provide a reasonable basis to believe or suspect that there exists a pattern of importation of such products for other than those applications, end–use certification for the importation of such products may be required. Under such circumstances, only the importers of record would normally be required to certify the end use of the imported merchandise.

All products meeting the physical description of subject merchandise that are not specifically excluded are included in this scope.

The products under review are currently classifiable under subheadings 7213.91.3010, 7213.91.3090, 7213.91.4510, 7213.91.4590, 7213.91.6010, 7213.91.6090, 7213.99.0031, 7213.99.0038, 7213.99.0090, 7227.20.0010, 7227.20.0020, 7227.20.0090, 7227.20.0095, 7227.90.6051, 7227.90.6053, 7227.90.6058, and 7227.90.6059 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.[5]

Product Comparisons

In accordance with section 771(16) of the Act, all products produced by the respondent covered by the description in the Scope of Review section, above, and sold in Trinidad and Tobago during the POR are considered to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We have relied on eight criteria to match U.S. sales of subject merchandise to comparison–market sales of the foreign like product: grade range, carbon content range, surface quality, deoxidation, maximum total residual content, heat treatment, diameter range, and coating. These characteristics have been weighted by the Department where appropriate. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics listed above. As we did in the investigation, we excluded a small percentage of CIL's U.S. sales because the merchandise was damaged. *See Final Determination*. When there were no appropriate comparison market sales of comparable merchandise, we compared the merchandise sold in the United States to constructed value (''CV''), in accordance with section 773(a)(4) of the Act.

Comparisons to Normal Value

To determine whether sales of wire rod from Trinidad and Tobago were made in the United States at less than NV, we compared the EP or CEP to the NV, as described in the ''Export Price and Constructed Export Price'' and ''Normal Value'' sections of this notice. In accordance with section 777A(d)(2) of the Act, we calculated monthly weighted–average prices for NV and compared these to individual U.S. transactions.

Export Price and Constructed Export Price

For the price to the United States, we used, as appropriate, EP or CEP, in accordance with sections 772(a) and (b) of the Act. We calculated EP when the merchandise was sold by the producer or exporter outside of the United States directly to the first unaffiliated purchaser in the United States prior to importation and when CEP was not otherwise warranted based on the facts on the record. We calculated CEP for those sales where a person in the United States, affiliated with the foreign exporter or acting for the account of the exporter, made the sale to the first unaffiliated purchaser in the United States of the subject merchandise. We based EP and CEP on the packed prices charged to the first unaffiliated customer in the United States and the applicable terms of sale. When appropriate, we reduced these prices to reflect discounts.

In accordance with section 772(c)(2) of the Act, we made deductions, where appropriate, for movement expenses including inland freight, international freight, demurrage expenses, marine insurance, survey fees, U.S. customs duties and various U.S. movement expenses from arrival to delivery incurred by INA, where appropriate.

For CEP, in accordance with section 772(d)(1) of the Act, when appropriate, we deducted from the starting price those selling expenses that were incurred in selling the subject merchandise in the United States, including direct selling expenses (cost of credit, warranty, and cleaning and coating). In addition, we deducted indirect selling expenses that related to economic activity in the United States. These expenses include certain indirect selling expenses incurred by affiliated U.S. distributors. We also deducted from CEP an amount for profit in accordance with sections 772(d)(3) and (f) of the Act.

For certain sales, CIL did not report payment dates because payment is still pending. For those sales for which payment has not yet been received, we set the payment date equal to the date of the preliminary results. We recalculated CIL's imputed credit expenses using the revised payment dates, where applicable, and the gross unit price adjusted for pricing adjustments.

Normal Value

A. Selection of Comparison Markets

To determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared CIL's volume of home market sales of the foreign like product to the volume of its U.S. sales of the subject merchandise. Pursuant to sections 773(a)(1)(B) and 773(a)(1)(C) of the Act, because CIL had an aggregate volume of home market sales of the foreign like product that was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, we determined that the home market was viable.

B. Cost of Production Analysis

1. Calculation of COP

Before making any comparisons to NV, we conducted a COP analysis of CIL, pursuant to section 773(b) of the Act, to determine whether the respondent's comparison market sales were made below the COP. We calculated the COP based on the sum of the cost of materials and fabrication for the foreign like product, plus amounts for selling, general, and administrative expenses (''SG&A'') and packing, in accordance with section 773(b)(3) of the Act. We relied on CIL's information as submitted.

2. Test of Comparison Market Prices

As required under section 773(b)(2) of the Act, we compared the weighted–average COP to the per–unit price of the comparison market sales of the foreign like product, to determine whether these sales had been made at prices below the COP within an extended period of time in substantial quantities, and whether such prices were sufficient to permit the recovery of all costs within a reasonable period of time. We

[5] Effective January 1, 2004, CBP reclassified certain HTSUS numbers related to the subject merchandise. *See* http://hotdocs.usitc.gov/tariff_chapters_current/toc.html.

determined the net comparison market prices for the below–cost test by subtracting from the gross unit price any applicable movement charges, discounts, rebates, direct and indirect selling expenses (also subtracted from the COP), and packing expenses.

3. Results of COP Test

Pursuant to section 773(b)(2)(C)(i) of the Act, where less than 20 percent of sales of a given product were at prices less than the COP, we did not disregard any below–cost sales of that product because we determined that the below–cost sales were not made in ''substantial quantities.'' Where 20 percent or more of a respondent's sales of a given product during the POR were at prices less than the COP, we determined such sales to have been made in ''substantial quantities.'' *See* section 773(b)(2)(C) of the Act. The sales were made within an extended period of time, in accordance with section 773(b)(2)(B) of the Act, because they were made over the course of the POR. In such cases, because we compared prices to POR–average costs, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Therefore, for purposes of this administrative review, we disregarded below–cost sales of a given product and used the remaining sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act. *See* Preliminary Calculation Memorandum for Caribbean Ispat Ltd., dated November 1, 2004, on file in the Central Records Unit, room B099, for our calculation methodology and results.

C. Calculation of Normal Value Based on Comparison Market Prices

We based home market prices on the packed prices to unaffiliated purchasers in Trinidad and Tobago. We adjusted the starting price for foreign inland freight pursuant to section 773(a)(6)(B)(ii) of the Act. In addition, for comparisons made to EP sales, we made adjustments for differences in circumstances of sale (''COS'') pursuant to section 773(a)(6)(C)(iii) of the Act. We made COS adjustments by deducting direct selling expenses incurred for home market sales (credit expense and warranty) and adding U.S. direct selling expenses (credit, warranty, and cleaning and coating expenses directly linked to sales transactions). For comparisons made to CEP sales, we did not add U.S. direct selling expenses. No other adjustments to NV were claimed or allowed.

When comparing U.S. sales with comparison market sales of similar, but not identical, merchandise, we also made adjustments for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act and section 351.411 of the Department's regulations. We based this adjustment on the difference in the variable cost of manufacturing for the foreign like product and subject merchandise, using POR–average costs.

D. Calculation of Normal Value Based on Constructed Value

When we could not determine the NV based on comparison market sales because there were no contemporaneous sales of a comparable product, we compared the EP to CV. In accordance with section 773(e) of the Act, we calculated CV based on the sum of the cost of manufacturing of the product sold in the United States, plus amounts for SG&A expenses, profit, and U.S. packing costs. In accordance with section 773(e)(2)(A) of the Act, we based SG&A expenses and profit on the amounts incurred by CIL in connection with the production and sale of the foreign like product in the comparison market.

For price–to-CV comparisons, we made adjustments to CV for COS differences, in accordance with section 773(a)(8) of the Act and 19 CFR 351.410. We made COS adjustments by deducting direct selling expenses incurred on comparison market sales.

E. Level of Trade/Constructed Export Price Offset

In accordance with section 773(a)(1)(B)(i) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (''LOT'') as the EP or CEP transaction. The NV LOT is that of the starting–price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive SG&A expenses and profit. For EP sales, the U.S. LOT is also the level of the starting–price sale, which is usually from exporter to importer. For CEP transactions, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different LOT than EP or CEP transactions, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at a different LOT and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, we make an LOT adjustment under section 773(a)(7)(A) of the Act. For CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP–offset provision).

In implementing these principles in this review, we obtained information from CIL about the marketing stages involved in the reported U.S. and home market sales, including a description of the selling activities performed by CIL for each channel of distribution. In identifying LOTs for EP and home market sales we considered the selling functions reflected in the starting price before any adjustments. For CEP sales, we considered only the selling activities reflected in the price after the deduction of expenses pursuant to section 772(d) of the Act.

In the home market, CIL reported sales to end–users as its only channel of distribution. In the U.S. market, CIL reported sales through two channels of distribution, one involving sales made directly by CIL to end–users and, occasionally, trading companies, and the second involving sales made by CIL's affiliated U.S. resellers to end–users. We have determined that the sales made by CIL directly to U.S. customers are EP sales and those made by CIL's affiliated U.S. resellers constitute CEP sales.

We found the home market and EP sales to be at the same LOT. CIL's EP sales and home market sales were both made primarily to end–users. In both cases, the selling functions performed by CIL were almost identical in both markets. Other than freight & delivery arrangement, which was only provided for U.S. sales, and sales force development, which was only provided in the home market, in both markets CIL provided services such as: strategic and economic planning, sales forecasting, solicitation of orders, technical advice, price negotiation, processing purchase orders, invoicing, extending credit, managing accounts receivable, and making arrangements for warranty related to sales. It was therefore unnecessary to make an LOT adjustment for comparison of EP and home market prices.

CIL makes CEP sales to the United States through its affiliates, INA and Walker Wire. Sales through CIL's affiliates are normally made to unrelated end–users in the U.S. market. CIL's affiliates perform all of the selling

functions, such as making freight and delivery arrangements, sales force development, market research, solicitation of orders, technical advice, negotiating prices, invoicing, acting as mill and customer liaison, repairing and cleaning coils, and making arrangements for warranty related to sales. However, because in our LOT analysis for CEP sales we only consider the selling activities reflected in the price after the deduction of the expenses incurred by the U.S. affiliate, the record indicates that for CIL's CEP sales there are substantially fewer services performed than for the sales in its home market. Therefore, we have determined that CIL's home market sales are made at a different, and more advanced, stage of marketing than the LOT of the CEP sales.

Accordingly, we determined that an LOT adjustment may be appropriate when comparing to CEP sales. However, the data available does not permit a determination that there is a pattern of consistent price differences between sales at different LOTs in the home market, as there is only one LOT in the home market. Therefore, because CIL's home market sales are made at a different, and more advanced, stage of marketing than the LOT of the CEP sales, we have made a CEP offset to CIL's NV in accordance with section 773(a)(7)(B) of the Act. This offset is equal to the amount of indirect expenses incurred in the home market not exceeding the amount of the deductions made from the U.S. price in accordance with 772(d)(1)(D) of the Act.

Currency Conversion

For purposes of these preliminary results, we made currency conversions in accordance with section 773A(a) of the Act, based on the official exchange rates in effect on the dates of U.S. sales, as obtained from the Federal Reserve Bank.

Preliminary Results of Review

As a result of our review, we preliminarily determine that the following percentage weighted–average margins exist for the period April 10, 2002, through September 30, 2003:

Manufacturer/exporter	Margin (percent)
Caribbean Ispat Limited	3.45
All Others	12.38

The Department will disclose calculations performed within five days of the date of publication of this notice to the parties of this proceeding in accordance with 19 CFR 351.224(b). An interested party may request a hearing within 30 days of publication of these preliminary results. *See* 19 CFR 351.310(c). Any hearing, if requested, ordinarily will be held 44 days after the date of publication, or the first working day thereafter. Interested parties may submit case briefs no later than 30 days after the date of publication of these preliminary results of review. Rebuttal briefs limited to issues raised in such briefs, may be filed no later than 35 days after the date of publication. Parties who submit arguments are requested to submit with the argument (1) a statement of the issue, and (2) a brief summary of the argument. Further, parties submitting written comments are requested to provide the Department with an additional copy of the public version of any such comments on diskette. The Department will issue the final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, or at a hearing, if requested, within 120 days of publication of these preliminary results.

Assessment Rate

Pursuant to 19 CFR 351.212(b), the Department calculated an assessment rate for each importer of the subject merchandise. Upon issuance of the final results of this administrative review, if any importer–specific assessment rates calculated in the final results are above *de minimis* (*i.e.*, at or above 0.5 percent), the Department will issue appraisement instructions directly to CBP to assess antidumping duties on appropriate entries by applying the assessment rate to the entered value of the merchandise. For assessment purposes, we calculated importer–specific assessment rates for the subject merchandise by aggregating the dumping margins for all U.S. sales to each importer and dividing the amount by the total entered value of the sales to that importer.

Cash Deposit Requirements

To calculate the cash deposit rate for each producer and/or exporter included in this administrative review, we divided the total dumping margins for each company by the total net value for that company's sales during the review period.

The following deposit rates will be effective upon publication of the final results of this administrative review for all shipments of wire rod from Trinidad and Tobago entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for the company listed above will be the rate established in the final results of this review, except if the rate is less than 0.5 percent and, therefore, *de minimis*, the cash deposit will be zero; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company–specific rate published for the most recent final results in which that manufacturer or exporter participated; (3) if the exporter is not a firm covered in this review, a prior review, or the original less than fair value (''LTFV'') investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent final results for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be 12.38 percent, the ''All Others'' rate established in the LTFV investigation. *See Final Determination*.

These cash deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: November 1, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. E4–3071 Filed 11–5–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–489–807]

Certain Steel Concrete Reinforcing Bars From Turkey; Final Results, Rescission of Antidumping Duty Administrative Review in Part, and Determination Not To Revoke in Part

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

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On May 5, 2004, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on certain steel concrete reinforcing bars from Turkey (69 FR 25063). This review covers three manufacturers/exporters of the subject merchandise to the United States. The period of review (POR) is April 1, 2002, through March 31, 2003. We are rescinding the review with respect to 19 companies because they had no shipments of subject merchandise to the United States during the POR. In addition, we have determined not to revoke the antidumping duty order with respect to an additional exporter, ICDAS Celik Enerji Tersane ve Ulasim Sanayi, A.S. (ICDAS).

Based on our analysis of the comments received, we have made changes in the margin calculations. Therefore, the final results differ from the preliminary results. The final weighted–average dumping margins for the reviewed firms are listed below in the section entitled ''Final Results of Review.''

EFFECTIVE DATE: November 8, 2004.

FOR FURTHER INFORMATION CONTACT: Irina Itkin or Elizabeth Eastwood, Office of AD/CVD Enforcement, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC, 20230; telephone (202) 482–0656 and (202) 482–3874, respectively.

SUPPLEMENTARY INFORMATION:

Background

This review covers the following three manufacturers/exporters: Colakoglu Metalurji A.S. and Colakoglu Dis Ticaret (collectively ''Colakoglu''); Diler Demir Celik Endustrisi ve Ticaret A.S., Yazici Demir Celik Sanayi ve Ticaret A.S., and Diler Dis Ticaret A.S. (collectively ''Diler''); and ICDAS.

On May 5, 2004, the Department published in the **Federal Register** the preliminary results of administrative review of the antidumping duty order on certain steel concrete reinforcing bars (rebar) from Turkey. *See Certain Steel Concrete Reinforcing Bars from Turkey; Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent Not to Revoke in Part*, 69 FR 25063 (May 5, 2004) (*Preliminary Results*).

Prior to the preliminary results the following companies informed the Department that they had no shipments of subject merchandise to the United States during the POR: Cebitas Demir Celik Endustrisi A.S. (Cebitas), Cemtas Celik Makina Sanayi ve Ticaret A.S. (Cemtas), Demirsan Haddecilik Sanayi ve Ticaret A.S. (Demirsan), Ege Celik Endustrisi Sanayi ve Ticaret A.S. (Ege Celik), Ekinciler Holding A.S. and Ekinciler Demir Celik San A.S. (collectively ''Ekinciler''), Habas Sinai ve Tibbi Gazlar Istihal Endustrisi A.S. (Habas), Iskenderun Iron & Steel Works Co. (Iskenderun), Izmir Demir Celik Sanayi A.S. (Izmir), Kaptan Demir Celik Endustrisi ve Ticaret A.S. (Kaptan), Kardemir—Karabuk Demir Celik Sanayi ve Ticaret A.S. (Karabuk), Kroman Celik Sanayi A.S. (Kroman), Metas Izmir Metalurji Fabrikasi Turk A.S. (Metas), Nurmet Celik Sanayi ve Ticaret A.S. (Nurmet), Nursan Celik Sanayi ve Haddecilik A.S. (Nursan), Sivas Demir Celik Isletmeleri A.S. (Sivas), Tosyali Demir Celik Sanayi A.S. (Tosyali), and Ucel Haddecilik Sanayi ve Ticaret A.S. (Ucel). We reviewed data from U.S. Customs and Border Protection (CBP) and confirmed that there were no entries of subject merchandise from any of these companies during the POR, except for Habas. We also confirmed with CBP data that two additional companies included in this review, Ege Metal Demir Celik Sanayi ve Ticaret A.S. (Ege Metal) and Kurum Demir Sanayi ve Ticaret Metalenerji A.S. (Kurum), did not have entries of subject merchandise during the POR. Consequently, in accordance with 19 CFR 351.213(d)(3) and consistent with our practice, we are rescinding the review for the companies listed above. Furthermore, we are rescinding our review for Habas because we find that this company did not have any reviewable entries during this POR. For further discussion, see the ''Partial Rescission of Review'' section of this notice, below, and *Comment 14* of the ''Issues and Decision Memorandum'' (Decision Memo) from Jeffrey A. May, Deputy Assistant Secretary for Import Administration, to James J. Jochum, Assistant Secretary for Import Administration, dated November 1, 2004.

We invited parties to comment on our preliminary results of review. In June 2004, we received case briefs from the petitioners (*i.e.*, Gerdau AmeriSteel Corporation, Commercial Metals Company (SMI Steel Group), and Nucor Corporation), Colakoglu, and ICDAS, and rebuttal briefs from the petitioners, Colakoglu, ICDAS, Habas, and Diler.

The Department has conducted this administrative review in accordance with section 751 of the Act.

Scope of the Order

The product covered by this order is all stock deformed steel concrete reinforcing bars sold in straight lengths and coils. This includes all hot–rolled deformed rebar rolled from billet steel, rail steel, axle steel, or low–alloy steel. It excludes (i) plain round rebar, (ii) rebar that a processor has further worked or fabricated, and (iii) all coated rebar. Deformed rebar is currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers 7213.10.000 and 7214.20.000. The HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of this proceeding is dispositive.

Period of Review

The POR is April 1, 2002, through March 31, 2003.

Partial Rescission of Review

As noted above, Cebitas, Cemtas, Demirsan, Ege Celik, Ege Metal, Ekinciler, Iskenderun, Izmir, Kaptan, Karabuk, Kroman, Kurum, Metas, Nurmet, Nursan, Sivas, Tosyali, and Ucel had no shipments and/or entries of subject merchandise to the United States during the POR. We have confirmed this with CBP data. Therefore, in accordance with 19 CFR 351.213(d)(3) and consistent with the Department's practice, we are rescinding our review with respect to these companies. (**SEE, E.G.**, Certain Steel Concrete Reinforcing Bars from Turkey; Final Results, Rescission of Antidumping Administrative Review in Part, and Determination Not to Revoke in Part, 68 FR 53127, 53128 (Sept. 9, 2003).)

Furthermore, with regard to Habas, we preliminarily determined that Habas did not have any reviewable entries of subject merchandise during the POR. Information from CBP indicates that there were entries of subject merchandise produced by Habas during the POR. However, the exporter of this merchandise was an unaffiliated company in a third country, and Habas provided documentation to support its claim that it did not have knowledge that this merchandise was destined for the United States. Consequently, we continue to find that Habas did not have any reviewable entries during this POR. *See Comment 14* of the Decision Memo. Accordingly, we are rescinding our review for Habas.

Cost of Production

As discussed in the *Preliminary Results*, we conducted an investigation to determine whether the respondents

participating in the review made home market sales of the foreign like product during the POR at prices below their costs of production (COPs) within the meaning of section 773(b)(1) of the Tariff Act of 1930, as amended (the Act). We performed the cost test for these final results following the same methodology as in the *Preliminary Results*, except as discussed in the accompanying Decision Memo.

We found 20 percent or more of each respondent's sales of a given product during the reporting period were at prices less than the weighted–average COP for this period. Thus, we determined that these below–cost sales were made in ''substantial quantities'' within an extended period of time and at prices which did not permit the recovery of all costs within a reasonable period of time in the normal course of trade. *See* sections 773(b)(2)(B), (C), and (D) of the Act.

Therefore, for purposes of these final results, we found that Colakoglu, Diler, and ICDAS made below–cost sales not in the ordinary course of trade. Consequently, we disregarded these sales for each respondent and used the remaining sales as the basis for determining normal value, pursuant to section 773(b)(1) of the Act.

Analysis of Comments Received

All issues raised in the case briefs by parties to this administrative review and to which we have responded are listed in the Appendix to this notice and addressed in the Decision Memo, which is adopted by this notice. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit, room B–099, of the main Department building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at http://ia.ita.doc.gov/frn. The paper copy and electronic version of the Decision Memo are identical in content.

Changes Since the Preliminary Results

Based on our analysis of comments received, we have made certain changes in the margin calculations. These changes are discussed in the relevant sections of the Decision Memo.

Final Results of Review

We determine that the following weighted–average margin percentages exist for the period April 1, 2002, through March 31, 2003:

Manufacturer/producer/exporter	Margin percentage
Colakoglu	9.25
Diler	0.38
ICDAS	0.00

The Department will determine, and CBP shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), for ICDAS we have calculated importer–specific assessment rates based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of those sales.

Regarding all of Colakoglu and Diler's sales, for assessment purposes, we do not have the information to calculate entered value because these companies were not the importers of record for the subject merchandise. To determine whether the duty assessment rates were *de minimis*, in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we have calculated importer–specific *ad valorem* ratios based on the export prices. Pursuant to 19 CFR 351.106(c)(2), we will instruct CBP to liquidate without regard to antidumping duties any entries for which the assessment rate is *de minimis* (*i.e.*, less than 0.50 percent). The Department will issue appraisement instructions directly to CBP within 15 days of publication of these final results of review.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of rebar from Turkey 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) The cash deposit rates for the reviewed companies will be the rates indicated above; 2) for previously investigated companies not listed above, the cash deposit

rate will continue to be the company–specific rate published for the most recent period; 3) if the exporter is not a firm covered in this review, or the less–than-fair–value (LTFV) investigation, 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) the cash deposit rate for all other manufacturers or exporters will continue to be 16.06 percent, the all others rate established in the LTFV investigation.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: November 1, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

Appendix Issues in Decision Memorandum

Comments

1. Treatment of Section 201 Duties
2. Application of High Inflation/Replacement Cost Methodology
3. Inputs Purchased from Affiliated Parties
4. Treatment of Packing Expenses in the General and Administrative (G&A) and Interest Expense Calculations
5. Date of Sale for Colakoglu
6. Universe of Reviewed Transactions for Colakoglu
7. Home Market Credit Expenses for Colakoglu
8. Commission Offset for Colakoglu
9. Despatch Revenue and Demurrage Expenses for Colakoglu
10. Period of Review for Diler
11. Inland Freight Supplied by Diler's Affiliate
12. Home Market Credit Expenses for Diler
13. G&A Ratio for Diler
14. POR Entries of Merchandise Produced by Habas
15. Revocation for ICDAS
16. Collapsing Issue for ICDAS
17. Whether to Treat ICDAS's U.S. Sales as Export Price (EP) or Constructed Export Price (CEP) Sales

18. Short–term Interest Rates Used for ICDAS
19. Standard Rolling Times for ICDAS
20. Prior Period Reversals for ICDAS
21. Gain on Sale of Ship for ICDAS

[FR Doc. E4–3072 Filed 11–5–04; 8:45 am]

BILLING CODE: 3510–DS–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OBM Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by December 8, 2004.

Title and OMB Number: Viability of TRICARE Standard Survey; OMB Number 0720–0031.

Type of Request: Extension.

Number of Respondents: 25,165.

Responses Per Respondent: 1.

Annual Responses: 25,165.

Average Burden Per Response: 10 minutes.

Annual Burden Hours: 4,194.

Needs and Uses: As mandated by Congress, confidential surveys of civilian physicians will be completed in TRICARE market areas within the United States to determine how many accept new TRICARE Standard patients in each market area. 20 TRICARE market areas in the United States will be conducted each fiscal year until all TRICARE market areas in the United States have been surveyed.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Mr. John Kraemer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Kraemer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DoD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/ESCD/Information Management Division, 1225 South Clark Street, Suite 504, Arlington, VA 22202–4326.

Dated: October 29, 2004.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Office, Department of Defense.

[FR Doc. 04–24784 Filed 11–5–04; 8:45 am]

BILLING CODE 5001–06–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 January 7, 2005.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to the Office of the Under Secretary of Defense (Personnel and Readiness) Defense Commissary Agency, ATTN: Barry White, 1300 E Ave, Ft. Lee, Virginia 23801–1800).

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 at (804) 734–8974.

Title and OMB Control Number: Commissary Evaluation and Utility Surveys—Generic, OMB Control Number 0704–0407.

Needs and Uses: The Defense Commissary Agency will conduct a variety of surveys on an as needed basis. The survey population will include but is not limited to persons eligible to use the commissary throughout the world. The surveys will be used to assess the customer's satisfaction with various aspects of the commissary operation and obtain their opinions of various commissary issues. Surveys will also be used to help determine individual commissary market potential and commissary size requirements.

Affected Public: Individuals or households, businesses or other for profit.

Annual Burden Hours: 148 hours.

Number of Respondents: 6633.

Responses per Respondent: 1.

Average Burden per Response: 1.34 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

(All respondents are authorized patrons by DOD regulations, unless otherwise described.)

Commissary Sizing Survey

Surveys will support commissary renovation and new construction. Survey results will be used to help determine market potential and associated commissary size requirements.

Facility Site Decision

Surveys will support commissary site decisions. Where applicable, commissary user preference can be incorporated into the site location decision process. Patrons will input their answers to questions concerning where they would like a new facility located, as well as give their opinions and concerns that will affect their shopping experience. The survey results will also be used to estimate where the commissary users are located through the use of population density maps.

Patron Migration Survey

These surveys will aid in predicting the impact to commissaries that are near a closing commissary or a commissary that is undergoing some other kind of transformation that may cause commissary users to migrate to an alternative nearby commissary. The results will be used to determine requirements for the nearby receiving commissaries.

Commissary Operational Surveys

These surveys will supply information on various processes within the commissaries. The surveyed population could be commissary customers, employees within the agency, vendors, distributors or contractors. Persons surveyed will not necessarily be authorized commissary users.

Market Basket Price Surveys

These surveys will be administered to commissary eligible personnel to assess their perception of our savings compared to local commercial supermarkets.

Demographic Surveys

This survey will be conducted as needed to assess the demographic make-up of commissary users. The results may be used in conjunction with population data to reveal differences in key demographics such as status, family size, distance from a commissary, age, service membership and military grade.

Dated: November 1, 2004.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 04–24785 Filed 11–5–04; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

President's Information Technology Advisory Committee (PITAC)

ACTION: Notice of meeting.

SUMMARY: PITAC's Subcommittee on Cyber Security will provide an update of its activities and present its draft findings and recommendations. PITAC will discuss the Subcommittee's presentation and provide guidance for use in the completion of PITAC's report on cyber security. Public input will be solicited during a public comment period. A small fraction of the meeting time may be allocated for other PITAC updates at the discretion of the co-chairs and the designated Federal officer.

DATES: Friday, November 19, 2004, 3–5:30 p.m. Eastern Time.

ADDRESSES: Via teleconference, the Internet, or at the Grand Hyatt Hotel, 1000 H Street, NW., Washington, DC 20001.

SUPPLEMENTARY INFORMATION: This meeting will be held primarily via a teleconference and the Internet (through the WebEx application). In addition, the public is invited to participate in this meeting in-person at the Grand Hyatt Hotel in Washington, DC. Detailed information about this meeting, including the agenda and details concerning registration for in-person or remote participation, will be posted at PITAC's Web site (*http://www.nitrd.gov/pitac*) no later than November 3rd. Meeting information may also be obtained by calling 703–292–4873.

Members of the public who wish to participate using the Internet (WebEx) must register by Tuesday, November 16th, 5 p.m. Eastern Time.

FOR FURTHER INFORMATION CONTACT: Contact Alan Inouye at the National Coordination Office for Information Technology Research and Development at 703–292–4873 or by e-mail at *inouye@nitrd.gov*.

Dated: October 28, 2004.

Jeannette Owings-Ballard,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 04–24473 Filed 11–5–04; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of Advisory Committee meeting.

SUMMARY: The Defense Science Board Task Force on Red Lessons Learned will meet in closed session on November 18, 2004, at SAIC, 4001 N. Fairfax Drive, Arlington, VA. This Task Force will assess what useful information can our adversaries learn from U.S. military engagement and, particularly, what might they have learned from Operation Iraqi Freedom and Operation Enduring Freedom; identify the channels through which adversaries learn about U.S. capabilities; is there any evidence an adversary is adjusting to U.S. capabilities and what might the U.S. do to counter this; what are the indicators or observables that the Intelligence Community can focus on to determine if an adversary is engaging in this type of practice and do the indicators change in peacetime or wartime; do different technology insertion models exist; is there any evidence potential adversaries are targeting the seams in the U.S. command and control alignment and planning process; and the preceding areas of concern focus primarily on the military operations phases, are the potential adversaries observing, analyzing and adapting during the preparation and stabilization phase?

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. 2), it has been determined that these Defense Science Board Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, these meetings will be closed to the public.

Dated: November 1, 2004.

Jeannette Owings-Ballard,

OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 04–24786 Filed 11–5–04; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Agency information collection activities: proposed collection; comment request.

SUMMARY: The EIA is soliciting comments on the Form EIA–1605, ''Voluntary Reporting of Greenhouse Gases,'' (long form) and the Form EIA–1605EZ, ''Voluntary Reporting of Greenhouse Gases,'' (short form).

DATES: Comments must be submitted by January 7, 2005, to the addresses listed below.

ADDRESSES: Send all comments to the attention of Stephen E. Calopedis. To ensure receipt of the comments by the due date, submission by e-mail (*stephen.calopedis@eia.doe.gov*) or FAX (202–586–3045) is recommended. Comments submitted by mail should be sent to Stephen E. Calopedis, U.S. Department of Energy, Energy Information Administration, EI–81, 1000 Independence Avenue, SW., Washington, DC 20585. Questions on this action should be directed to Stephen E. Calopedis at 202–586–1156 or *stephen.calopedis@eia.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of existing reporting forms and instructions should be directed to Stephen E. Calopedis at 202–586–1156 or *stephen.calopedis@eia.doe.gov.* The existing forms and instructions can also be downloaded from the program's Web site at *http://www.eia.doe.gov/oiaf/1605/Forms.html.*

SUPPLEMENTARY INFORMATION:

I. Background
II. Current Actions
III. Request for Comments

I. Background

The Federal Energy Administration Act of 1974 (Pub. L. 93–275, 15 U.S.C. 761 *et seq.*) and the DOE Organization Act (Pub. L. 95–91, 42 U.S.C. 7101 *et seq.*) require the EIA to carry out a centralized, comprehensive, and unified energy information program. This program collects, evaluates, assembles, analyzes, and disseminates information on energy resource reserves, production, demand, technology, and related economic and statistical information. This information is used to assess the adequacy of energy resources to meet near and longer-term domestic demands.

The EIA, as part of its effort to comply with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35), provides the general public and other Federal agencies with opportunities to comment on collections of information conducted by or in conjunction with the EIA. Any comments received help the EIA to prepare data requests that maximize the utility of the information collected, and to assess the impact of collection requirements on the public. Also, the EIA will later seek approval by the Office of Management and Budget (OMB) under Section 3507(a) of the Paperwork Reduction Act of 1995.

The Voluntary Reporting of Greenhouse Gases Program collections are conducted pursuant to Section 1605(b) of the Energy Policy Act of 1992 (Pub. L. 102–486, 42 U.S.C. 13385) under General Guidelines issued by the DOE's Office of Policy and International Affairs. The EIA–1605 and EIA–1605EZ forms are designed to collect voluntarily reported data on greenhouse gas emissions, achieved reductions of these emissions, and increased carbon fixation, as well as information on commitments to reduce greenhouse gas emissions and sequester carbon in future years. A summary of the results of the Voluntary Reporting of Greenhouse Gases Program appear in the Program's annual report titled Voluntary Reporting of Greenhouse Gases (*http://www.eia.doe.gov/oiaf/1605/vrrpt/*). Additionally, EIA produces and makes publicly available, a ''public-use'' database containing all the non-confidential information reported to EIA's Voluntary Reporting of Greenhouse Gases Program on the Forms EIA–1605 and EIA–1605EZ (*http://www.eia.doe.gov/oiaf/1605/databases.html*).

Please refer to the existing forms and instructions for more information about the purpose, who may report, when to report, where to submit, the elements to be reported, detailed instructions, provisions for confidentiality, and uses (including possible nonstatistical uses) of the information (*http://www.eia.doe.gov/oiaf/1605/Forms.html*). For instructions on obtaining materials, *see* the **FOR FURTHER INFORMATION CONTACT** section.

II. Current Actions

EIA will be requesting OMB approval for a one-year extension with no changes to the Voluntary Reporting of Greenhouse Gases Program, Forms EIA–1605 and EIA–1605EZ.

This request for a one-year extension of the expiration date of the existing Forms EIA–1605 and EIA–1605EZ is being made to ensure that a data collection instrument is in place while the proposed revised Guidelines to the Voluntary Reporting of Greenhouse Gases Program are in the process of being finalized (see discussion below describing this process). A one-year extension, rather than a three-year extension, is being proposed because EIA anticipates significant changes to the data collection forms and data elements to result from the revisions to the Program Guidelines.

Revised Guidelines for the Voluntary Reporting of Greenhouse Gases Program

On February 14, 2002, President Bush announced a series of programs and initiatives to address the issue of global climate change, including a greenhouse gas intensity reduction goal, energy technology research programs, targeted tax incentives to advance the development and adoption of new technologies, and voluntary programs to promote actions to reduce greenhouse gases. In addition, the President directed the Secretary of Energy, in consultation with the Secretary of Commerce, the Secretary of Agriculture, and the Administrator of the Environmental Protection Agency, to propose improvements to the current Voluntary Reporting of Greenhouse Gases Program required under section 1605(b) of the Energy Policy Act of 1992. These improvements are to enhance measurement accuracy, reliability, and verifiability, working with and taking into account emerging domestic and international approaches. The President also directed the Secretary of Energy to recommend reforms to ensure that businesses and individuals that register reductions are not penalized under a future climate policy and to give transferable credits to companies that can show real emissions reductions.

The purposes of the proposed revised Guidelines are to: (1) Establish revised procedures and reporting requirements for filing voluntary reports, and (2) encourage corporations, government agencies, non-profit organizations, individuals and other private and public entities to submit annual reports of their total entity-wide greenhouse gas emissions, net emission reductions, and carbon sequestration activities that are complete, reliable and consistent.

On May 6, 2002 (67 FR 30370), the Department of Energy solicited public comments on various issues relevant to its efforts to implement the President's directives. After consideration of these public comments, the Secretaries of Energy, Commerce and Agriculture, and the Administrator of the Environmental Protection Agency wrote the President on July 8, 2002, stating that improvements to the existing Voluntary Reporting of Greenhouse Gases Program should:

1. Include fair, objective, and practical methods for reporting baselines, reporting boundaries, calculating real results, and awarding transferable credits for actions that lead to real reductions.
2. Standardize widely accepted, transparent accounting methods.
3. Support independent verification registry reports.
4. Encourage reporters to report greenhouse gas intensity (emissions unit of output) as well as emissions reductions.
5. Encourage corporate or entity-wide reporting.
6. Provide credits for actions to remove carbon dioxide from the atmosphere as well as for actions to reduce emissions.
7. Include a process for evaluating the extent to which past reductions may qualify for credits.
8. Assure that the Voluntary Reporting Program is an effective tool for reaching the President's goal of reducing U.S. greenhouse gas intensity (greenhouse gas emissions per unit of real economic output) by 18 percent over the 2002 to 2012 time frame.
9. Factor in international strategies as well as State-level efforts.
10. Minimize transactions costs for reporters and administrative costs for the Government, where possible, without compromising the foregoing recommendations.

The DOE also held four public workshops (67 FR 64106) in the fall of 2002 to enable interested persons to discuss and provide comments on possible improvements to the Program guidelines. Public comments submitted to DOE's Office of Policy and International Affairs on possible revisions to the Voluntary Reporting of

Greenhouse Gases Program Guidelines are available at *http://www.pi.energy.gov/enhancingGHGregistry/index.html.*

On December 5, 2003 (68 FR 68204), DOE released proposed *Revised General Guidelines* for the Voluntary Reporting of Greenhouse Gas Program. On January 12, 2004, DOE also held a public workshop to discuss the proposed guidelines and to receive comments. A transcript and audio recording of the proceedings of this workshop are available at *http://www.pi.energy.gov/enhancingGHGregistry/proposedguidelines/index.html*. Written comments on the proposed revised General Guidelines are available on-line at *http://ostiweb.osti.gov/pighg/ghgb0202.idc*.

Process for Finalizing and Implementing Revised Program Guidelines

DOE's Office of Policy and International Affairs plans to issue proposed revised General Guidelines for public comment during the Fall of 2004. In parallel with this effort, DOE's Office of Policy and International Affairs intends to issue for public comment proposed revised Technical Guidelines in the Fall of 2004. The Technical Guidelines will specify the methods and factors to be used in measuring and estimating greenhouse gas emissions and emission reductions under the revised General Guidelines. DOE plans to issue in final form all necessary guidelines in 2005. Upon finalization and issuance of the revised Guidelines, EIA plans to develop and issue new reporting forms and instructions for reporting under the revised Program Guidelines.

Given the uncertainty, however, over whether the proposed revised Guidelines will be approved and issued in time to allow EIA to implement a new reporting system in calendar year 2005 to collect calendar year 2004 and earlier data, EIA has chosen to request this one-year extension of the expiration date on the existing forms as an option in the event that the finalization and issuance of the revised Guidelines take longer than expected. It is important to note here that it is not the intent of this notice to solicit comment on the Guideline revision and finalization process above, but rather to extend the expiration date on the existing data collection, Forms EIA–1605 and EIA–1605–EZ, so that EIA has a data collection instrument in place for calendar year 2004 data while the Guideline revision process is completed.

III. Request for Comments

Prospective respondents and other interested parties should comment on the actions discussed in item III. The following issues are provided to assist in the preparation of comments. Please indicate to which form(s) your comments apply.

General Issues: A. Is the proposed collection of information necessary for the proper performance of the functions of the agency and does the information have practical utility? Practical utility is defined as the actual usefulness of information to or for an agency, taking into account its accuracy, adequacy, reliability, timeliness, and the agency's ability to process the information it collects.

B. What enhancements can be made to the quality, utility, and clarity of the information to be collected?

As a Potential Respondent to the Request for Information: A. What actions could be taken to help ensure and maximize the quality, objectivity, utility, and integrity of the information to be collected?

B. Are the instructions and definitions clear and sufficient? If not, which instructions need clarification?

C. Can the information be submitted by the due date?

D. Public reporting burden for this collection is estimated to average 40 hours per response on Form EIA–1605 (long form) and 4 hours per response on Form EIA–1605EZ (short form). The estimated burden includes the total time necessary to provide the requested information. In your opinion, how accurate is this estimate?

E. The agency estimates that the only cost to a respondent is for the time it will take to complete the collection. Will a respondent incur any start-up costs for reporting, or any recurring annual costs for operation, maintenance, and purchase of services associated with the information collection?

F. What additional actions could be taken to minimize the burden of this collection of information? Such actions may involve the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

G. Does any other Federal, State, or local agency collect similar information? If so, specify the agency, the data element(s), and the methods of collection.

As a Potential User of the Information to be Collected: A. What actions could be taken to help ensure and maximize the quality, objectivity, utility, and integrity of the information disseminated?

B. Is the information useful at the levels of detail to be collected?

C. For what purpose(s) would the information be used? Be specific.

D. Are there alternate sources for the information and are they useful? If so, what are their weaknesses and/or strengths?

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

Statutory Authority: Section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35).

Issued in Washington, DC, November 2, 2004.

Nancy J. Kirkendall,

Director, Statistics and Methods Group, Energy Information Administration.

[FR Doc. 04–24814 Filed 11–5–04; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–301–119]

ANR Pipeline Company; Notice of Negotiated Rate Filing

October 29, 2004.

Take notice that on October 25, 2004, ANR Pipeline Company (ANR), tendered for filing and approval amendments to two Rate Schedule FTS–3 service agreements numbers 10179 and 108181 between ANR and Wisconsin Power and Light Company. These amendments effectuate a change in primary delivery points.

ANR requests that the Commission accept and approve the subject negotiated rate agreement amendments to be effective November 1, 2004.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 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. E4–3054 Filed 11–5–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–39–000]

ANR Pipeline Company; Notice of Service Agreement Filing

October 29, 2004.

Take notice that on October 26, 2004, ANR Pipeline Company (ANR) tendered for filing and approval, four service agreements (Agreements) between ANR and Constellation Newenergy—Gas Division WI pursuant to ANR's Rate Schedule FTS–1. ANR requests the Commission find that the Agreements contain an acceptable material deviation from ANR's Form of Service Agreement and accept the attached tariff sheet which references the Agreements as non-conforming.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. 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.

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This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. eastern time on November 5, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4–3059 Filed 11–5–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL05–14–000]

California Independent System Operator, Corporation; Notice of Initiation of Proceeding and Refund Effective Date

October 29, 2004.

On October 28, 2004, the Commission issued an order initiating a proceeding in Docket No. EL05–14–000 under section 206 of the Federal Power Act. *California Independent System Operator Corporation,* 109 FERC ¶ 61,087 (2004). In this proceeding, the Commission will determine the justness and reasonableness of Enforcement Protocol 5.1(a), as discussed in the Commission's order.

The refund effective date in Docket No. EL05–14–000, established pursuant to section 206(b) of the Federal Power Act, will be 60 days following publication of this notice in the **Federal Register**.

Magalie R. Salas,

Secretary.

[FR Doc. E4–3062 Filed 11–5–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–37–000]

Colorado Interstate Gas Company; Notice of Proposed Changes in FERC Gas Tariff

October 29, 2004.

Take notice that on October 25, 2004, Colorado Interstate Gas Company (CIG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to become effective November 25, 2004:

Fourth Revised Sheet No. 281I
Eleventh Revised Sheet No. 282

CIG states that the tendered tariff sheets add a new section to its Tariff to provide a voluntary process for balancing confirmation and nominations during the scheduling process.

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. E4–3057 Filed 11–5–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–40–000]

Colorado Interstate Gas Company; Notice of Proposed Changes in FERC Gas Tariff

October 29, 2004.

Take notice that on October 27, 2004, Colorado Interstate Gas Company (CIG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to become effective November 26, 2004.

Fourth Revised Sheet No. 240A,
Fifth Revised Sheet No. 241A,
Sixth Revised Sheet No. 245,
Fifth Revised Sheet No. 250,
Fifth Revised Sheet No. 251.

CIG states that the tariff sheets remove the ''first bidder meeting minimum acceptable terms of the release'' as a bid evaluation method for capacity release 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 email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–3060 Filed 11–5–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–38–000]

Dauphin Island Gathering Partners; Notice of Proposed Changes in FERC Gas Tariff

October 29, 2004.

Take notice that on October 26, 2004, Dauphin Island Gathering Partners (Dauphin Island) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Seventh Revised Sheet No. 6 and Third Revised Sheet No. 7 to become effective October 1, 2004.

Dauphin Island states that this is a clean up filing to incorporate the tariff changes from Dauphin Island's Annual Charge Adjustment (ACA) filing and Dauphin Island's compliance filing in Docket No. CP99–16–001.

Dauphin Island states that copies of the filing are being served contemporaneously on its customers and other interested parties.

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. E4–3058 Filed 11–5–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP05–1–000]

Eastern Shore Natural Gas Company; Notice of Application

October 28, 2004.

Take notice that on September 26, 2003, Eastern Shore Natural Gas Company, (Eastern Shore), pursuant to section 7(c) of the NGA, as amended, and part 157 of the Commission's Regulations an application for a certificate of public convenience and necessity to construct and operate a new Measurement and Regulating Station

(M&R) in Seaford, Delaware, in order to continue providing service to an existing Eastern Shore customer, Chesapeake Utilities Corporation—Delaware Division (Chesapeake), all as more fully set forth in the application which is on file with the Commission and open to public inspection. 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.

Eastern Shore proposes to construct and operate the M&R station in an area north of Seaford, Delaware, off of Sussex County Road No. 532, approximately 200 feet from Eastern Shore's existing pipeline. Eastern Shore states that no additional system capacity will be created by the construction of the new M&R station. However, if the new station is not constructed and operable in a timely manner, Chesapeake may be unable to meet its full customer demand for natural gas in the upcoming winter heating season in this area. The estimated cost of the project is approximately $94,792 and will be paid for in its entirety by the customer.

Any questions regarding this application should be directed to Elaine B. Bittner, Director, Eastern Shore Natural Gas Company, 417 Bank Lane, Dover, Delaware 19904 at (302) 734–6710, ext. 6016.

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 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.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. On or before the comment date, it is not necessary to 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.

Comment Date: November 18, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4–3069 Filed 11–5–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2496–102]

Eugene Water and Electric Board; Notice Rejecting Request for Rehearing

November 1, 2004.

1. On September 20, 2004, the Director, Division of Hydropower Administration and Compliance, issued an order granting the licensee for the Leaburg-Walterville Hydroelectric Project No. 2496 an extension of time to comply with the requirements of Articles 412 and 413 of the project license.[1] On October 18, 2004, the Oregon Department of Fish and Wildlife (Oregon DFW) filed a request for rehearing of that order.

2. Pursuant to section 313(a) of the Federal Power Act, 16 U.S.C. 825l(a), a request for rehearing may be filed only by a party to the proceeding. In order for Oregon DFW to be a party to the proceeding, it must have timely filed a motion to intervene pursuant to Rule 214 of the Rules of Practice and Procedure, 18 CFR 385.214, not later than 30 days after issuance of the September 20, 2004 order.[2] Since Oregon DFW did not file a motion to intervene in the request for extension of time proceeding, its request for rehearing must be rejected.

3. This notice constitutes final agency action. Request for rehearing by the Commission of this rejection notice must be filed within 30 days of the date of issuance of this notice, pursuant to 18 CFR 385.713.

Linda Mitry,

Deputy Secretary.

[FR Doc. E4–3042 Filed 11–5–04; 8:45 am]

BILLING CODE 6717–01–P

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[1] These articles require the licensee to file a plan to augment spawning gravel downstream from the Leaburg dam and a fish habitat enhancement plan.

[2] *See* Pacific Gas and Electric Company, 40 FERC ¶ 61,035 (1987).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER04–1254–000]

Illinois Power Company; Notice of Filing

October 4, 2004.

Take notice that on September 29, 2004, Illinois Power Company (Illinois Power) tendered for filing its Open Access Transmission Tariff, revised to account for the transfer to the Midwest ISO of functional control over Illinois Power's transmission facilities. Illinois Power requests an effective date of October 1, 2004.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. On or before the comment date, it is not necessary to 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.

Comment Date: 5 p.m. eastern time on October 20, 2004.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–3049 Filed 11–5–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER04–1254–000]

Illinois Power Company; Notice of Filing

October 4, 2004.

Take notice that on September 29, 2004, Illinois Power Company (Illinois Power) tendered for filing its Open Access Transmission Tariff, revised to account for the transfer to the Midwest ISO of functional control over Illinois Power's transmission facilities. Illinois Power requests an effective date of October 1, 2004.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. On or before the comment date, it is not necessary to 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 email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on October 20, 2004.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–3053 Filed 11–5–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–41–000]

Northern Border Pipeline Company; Notice of Tariff Filing

October 29, 2004.

Take notice that on October 27, 2004, Northern Border Pipeline Company (Northern Border) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, Third Revised Sheet No. 294 and Third Revised Sheet No. 295A, to become effective November 26, 2004.

Northern Border states that the purpose of this filing is to update Northern Border's tariff language in accordance with the implementation of Order No. 2004.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 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. E4–3061 Filed 11–5–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ES05–9–000]

Oklahoma Gas and Electric Company; Notice of Filing

October 29, 2004.

Take notice that on October 25, 2004, Oklahoma Gas and Electric Company submitted an application pursuant to section 204 of the Federal Power Act seeking authorization to issue not more than $400,000,000 of short-term debt securities on or before December 31, 2006, with a final maturity date of December 31, 2007.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. On or before the comment date, it is not necessary to 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 email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on November 19, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4–3041 Filed 11–5–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12451–001—Minnesota Lower St. Anthony Falls Project]

SAF Hydroelectric, LLC; Notice of Proposed Restricted Service List for a Programmatic Agreement for Managing Properties Included in or Eligible for Inclusion in the National Register of Historic Places

October 29, 2004.

Rule 2010 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure provides that, to eliminate unnecessary expense or improve administrative efficiency, the Secretary may establish a restricted service list for a particular phase or issue in a proceeding.[1] The restricted service list should contain the names of persons on the service list who, in the judgment of the decisional authority establishing the list, are active participants with respect to the phase or issue in the proceeding for which the list is established.

The Commission staff is consulting with the Minnesota State Historic Preservation Officer (hereinafter, SHPO) and the Advisory Council on Historic Preservation (hereinafter, Council) pursuant to the Council's regulations, 36 CFR part 800, implementing section 106 of the National Historic Preservation Act, as amended, (16 U.S.C. 470 f), to prepare and execute a programmatic agreement for managing properties included in, or eligible for inclusion in, the National Register of Historic Places at Project No. 12451–001.

The programmatic agreement, when executed by the Commission and the SHPO, would satisfy the Commission's section 106 responsibilities for all individual undertakings carried out in accordance with the license until the license expires or is terminated (36 CFR 800.13[e]). The Commission's responsibilities pursuant to section 106 for the Lower St. Anthony Falls Project would be fulfilled through the programmatic agreement, which the Commission proposes to draft in consultation with the SHPO; the Shakopee Mdewakanton Sioux Community of Minnesota; the U.S. Army Corp of Engineers; and the U.S. Bureau of Indian Affairs. The executed programmatic agreement would be incorporated into any Order issuing a license.

SAF Hydroelectric, LLC, the applicant and prospective licensee for Project No. 12451–001, is invited to participate in consultations to develop the Programmatic Agreement and to sign as a concurring party to the Programmatic Agreement. For purposes of commenting on the Programmatic Agreement, we propose to restrict the service list for Project No. 12451–001 as follows:

Dr. Laura Henley Dean, Advisory Council on Historic Preservation, The Old Post Office Building, Suite 803, 1100 Pennsylvania Avenue, NW., Washington, DC 20004.

Dennis Gimmestad, Minnesota Historical Society, State Historic Preservation Office, 345 Kellogg Blvd W, Saint Paul, MN 55102–1903.

Rachel Ramadhyani, Project Manager, Minneapolis Park and Recreation Board, 2117 W River Rd, Minneapolis, MN 55411–2227.

Terrance Virden, Regional Director, Bureau of Indian Affairs, One Federal Drive, Room 550, Ft. Snelling, MN 55111–4007.

Stanley Crooks, Chairman, Shakopee Sioux Community, Shakopee Sioux Community Council, 2330 Sioux Trail, NW., Prior Lake, MN 55372.

Douglas A Spaulding, Spaulding Consultants, LLC, 1433 Utica Ave S Ste 162, Minneapolis, MN 55416–1553.

JoAnn Kryal, Superintendent, Mississippi National River and Recreation Area, 111 Kellogg Boulevard, East, Suite 105, St. Paul, MN 55101–1288.

Matthew Pearcy, Historian, Army Corps of Engineers Centre, 190 Fifth Street East, St. Paul, MN 55101–1638.

[1] 18 CFR 385.2010.

Melissa Bean, Marcy-Holmes Neighborhood Association, 1313 Southeast Fifth Street, Suite 138, Minneapolis, MN 55414.
John Crippen, St. Anthony Falls Heritage Board, 704 South Second Street, Minneapolis, MN 55401.
Greg Mathis, Minneapolis Heritage Preservation Commission, City Hall, Room 210, 350 South Fifth Street, Minneapolis, MN 55415–1385.

Any person on the official service list for the above-captioned proceedings may request inclusion on the restricted service list, or may request that a restricted service list not be established, by filing a motion to that effect within 15 days of this notice date.

An original and 8 copies of any such motion must be filed with the Secretary of the Commission (888 First Street, NE., Washington, DC 20426) and must be served on each person whose name appears on the official service list.

If no such motions are filed, the restricted service list will be effective at the end of the 15 day period. Otherwise, a further notice will be issued ruling on the motion.

Magalie R. Salas,

Secretary.

[FR Doc. E4–3064 Filed 11–5–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–36–000]

Transcontinental Gas Pipe Line Corporation; Notice of Penalty Revenue Sharing

October 29, 2004.

Take notice that on October 25, 2003, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing with the Commission a report showing that on October 15, 2004, Transco submitted penalty sharing amounts to the affected shippers. Transco states that the total sharing amount, including interest, was $993,664.46.

Transco states that it has served copies of Appendix A on the recipients of the refund and is serving copies of the transmittal letter and the Appendix A on their respective 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 on or before the date as indicated below. 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.

Comment Date: 5 p.m. eastern time on November 5, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4–3056 Filed 11–5–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL05–17–000]

KeySpan-Ravenswood, LLC, Complainant v. New York Independent System Operator, Inc., Respondent; Notice of Complaint

October 29, 2004.

Take notice that on October 27, 2004, KeySpan-Ravenswood, LLC filed a formal Complaint against the New York Independent System Operator, Inc. (NYISO) pursuant to section 206 of the Federal Power Act, 16 U.S.C 825e (2001), and 18 CFR 385.206 (2004) alleging that the NYISO violated its filed rate schedules in administering the Installed Capacity (ICAP) market for the Summer 2002 Capability Period.

KeySpan-Ravenswood, LLC states that copies of the complaint were served on the contacts for the NYISO as listed on the Commission's list of corporate officials.

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. The Respondent's answer and all interventions or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the complaint.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. eastern time on November 17, 2004.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–3047 Filed 11–5–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL04–126–000]

PSEG Power In-City I, LLC, Complainant, v. Edison Co., of New York, Inc., Respondent; Notice of Amendment to Complaint

October 28, 2004.

Take notice that on October 21, 2004, PSEG Power In-City I, LLC (In-City) filed a response to the Commission's October 18, 2004, letter requesting additional information regarding the complaint filed August 23, 2004, by In-City in Docket No. EL04–126–000.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all parties to this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. eastern time on November 8, 2004.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–3050 Filed 11–5–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL05–15–000, et al.]

Arkansas Electric Cooperative Corporation, et al.; Electric Rate and Corporate Filings

October 27, 2004.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Arkansas Electric Cooperative Corporation, Complainant v. Entergy Arkansas, Inc., Respondent

[Docket No. EL05–15–000]

Take notice that on October 25, 2004, Arkansas Electric Cooperative Corporation (AECC) filed a formal complaint against Entergy Arkansas, Inc. (EAI) pursuant to sections 206 and 306 of the Federal Power Act, 16 U.S.C. 824e and 825e, and Rule 206 of the Commission's Rules of Practice and Procedure, 18 CFR 206, alleging that EAI has unilaterally, and without filing with the Commission, changed the method of classifying and pricing energy under agreements between EAI and AECC, effective July 1, 2004.

AECC states that copies of the Complaint were served on the contracts for EAI listed on the Commission's list of Corporate Officials.

Comment Date: 5 p.m. eastern time on November 17, 2004.

2. Aquila Merchant Services, Inc., Complainant v. Southwest Power Pool, Inc., Respondent

[Docket Nos. EL05–16–000]

Take notice that on October 26, 2004, Aquila Merchant Services, Inc. (AMS) filed a formal complaint against Southwest Power Pool, Inc. (SPP) pursuant to section 206 of the Federal Power Act, 16 U.S.C. 824e, and Rule 206 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission, alleging that SPP has incorrectly failed to apply the demand charge cap set forth in Schedule 7, section 2 of SPP's Open Access Transmission Tariff (OATT) as required under the terms of the SPP OATT and Order No. 888 with respect to redirected service under section 22.2 of the SPP OATT.

Aquila certifies that copies of the complaint were served on the contacts for SPP as listed on the Commission's list of Corporate Officials.

Comment Date: 5 p.m. eastern time on November 17, 2004.

3. Consolidated Water Power Company

[Docket No. ER98–4512–004]

Take notice that on October 22, 2004, Consolidated Water Power Company (CWPCo) filed a supplement to its revised market-based rate submission filed on August 5, 2004, to address, among other things, Commission's market power standards, including the two indicative screens for assessing generation market power established in *AEP Power Marketing, Inc., et al.*, 107 FERC ¶ 61,026 (2004), *reh'g,* 108 FERC ¶ 61,026 (2004) (AEP).

CWPCo states that a copy of this letter and attachments have been mailed by first class mail upon each person designated on the official service list compiled by the Secretary of the Federal Energy Regulation Commission in Docket No. ER98–4512.

Comment Date: 5 p.m. eastern time on November 12, 2004.

4. United Illuminating Company

[Docket No. ER03–31–007]

Take notice that on October 22, 2004, United Illuminating Company (United Illuminating) tendered for filing revisions to FERC Electric Tariff Second Revised Volume No. 4, Service Agreement No. 23, Interconnection Agreement By and Between the United Illuminating Company and Cross-Sound Cable Company, LLC to comply with the Commission's April 1, 2004, Order, *United Illuminating Co.,* 107 FERC ¶ 61,003 (2004), and the September 22, 2004, Order, *United Illuminating Co.,* 108 FERC ¶ 61,293 (2004).

United Illuminating states that copies of the filing were served upon parties designated on the Official Service List compiled by the Secretary in this proceeding.

Comment Date: 5 p.m. eastern time on November 12, 2004.

5. Xcel Energy Services, Inc.

[Docket No. ER04–1174–002]

Take notice that on October 20, 2004 Xcel Energy Services, Inc. (XES) on behalf of its affiliates, Public Service Company of Colorado (PSCo) and Southwestern Public Service Company (SPS) submitted an amended filing containing changes to the Xcel Energy Operating Companies' Joint Open Access Transmission Tariff. XES requests an effective date of December 13, 2004.

XES states that a copy of this letter with the attachments is being served upon each person designated on the official service list compiled by the Secretary in Docket No. ER04–1174–001.

Comment Date: 5 p.m. eastern time on November 3, 2004.

6. Consolidated Edison Energy, Inc.

[Docket No. ER04–1196–002]

Take notice that on October 22, 2004, Consolidated Edison Energy, Inc. (CEE) submitted an amendment to its August 17, 2004, and September 30, 2004, filings in Docket Nos. ER04–1196–000 and ER04–1196–001.

Comment Date: 5 p.m. eastern time on November 12, 2004.

7. Duke Energy Moapa, LLC

[Docket No. ER05–59–001]

Take notice that on October 22, 2004, Duke Energy Moapa, LLC (Duke Moapa) submitted an errata to its Notice of Cancellation of FERC Electric Tariff, Original Volume No. 1, filed October 21, 2004, in Docket No. ER05–59–000.

Duke Moapa states that a notice of the proposed cancellation has not been served on any party because Duke Energy Moapa, LLC does not engage in the marketing of electric energy or power at wholesale and has no customers.

Comment Date: 5 p.m. eastern time on November 12, 2004.

8. PacifiCorp

[Docket No. ER05–61–000]

Take notice that on October 22, 2004, PacifiCorp submitted a Notice of Cancellation of PacifiCorp's Rate Schedule No. 313 with the Western Area Power Administration. PacifiCorp requests an effective date of December 31, 2004.

PacifiCorp states that copies of the filing were served upon the Western Area Power Administration, the Washington Utilities and Transportation Commission, and the Public Utility Commission of Oregon.

Comment Date: 5 p.m. eastern time on November 12, 2004.

9. Jersey Central Power and Light Company

[Docket No. ER05–64–000]

Take notice that on October 22, 2004, Jersey Central Power and Light Company, a FirstEnergy Company, (Jersey Central) submitted for filing: (1) A Transmission Interconnection Agreement between Jersey Central and Atlantic City Electric Company (ACE), designated as Original Service Agreement No. 1178 under the PJM Open Access Transmission Tariff (PJM OATT), and (2) a Notice of Cancellation for Original Service Agreement No. C890 between Jersey Central and ACE under the PJM OATT.

Jersey Central states that copies of the filing have been served on regulators in New Jersey, ACE and PJM.

Comment Date: 5 p.m. eastern time on November 12, 2004.

Standard Paragraph

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all parties to this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–3039 Filed 11–5–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC05–9–000, et al.]

New York State Electric & Gas Corporation, et al.; Electric Rate and Corporate Filings

October 29, 2004.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. New York State Electric & Gas Corporation and Niagara Mohawk Power Corporation, a National Grid company

[Docket No. EC05–9–000]

Take notice that on October 26, 2004, New York State Electric & Gas Corporation (NYSEG) and Niagara Mohawk Power Corporation, a National Grid company (Niagara Mohawk) jointly filed an application pursuant to section 203 of the Federal Power Act, 16 U.S.C. 824b, and part 33 of the Commission's regulations, 18 CFR part 33. NYSEG requests authorization and approval to sell to Niagara Mohawk an electrical switching substation, along with related assets located in the Town of Springfield, County of Otsego, New York, in order to avoid construction of duplicative facilities and to enable Niagara Mohawk to continue to provide reliable electric distribution service to its retail customers in its adjacent service territory.

Comment Date: 5 p.m. eastern time on November 16, 2004.

2. Meiya Hanneng Power Company Limited

[Docket No. EG05–18–000]

Take notice that on October 26, 2004, Meiya Hanneng Power Company Limited (MHP), with its principal office at 608 St. James Court, St. Denis Street, Port Louis, Mauritius, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

MHP states it is a company organized under the laws of Mauritius and will be engaged, directly or indirectly through an affiliate as defined in section 2(a)(11)(B) of the Public Utility Holding Company Act of 1935 (PUHCA), exclusively in owning, operating, or both owning and operating, a heavy fuel oil fired electric generating facility (to be converted to gas fired in 2005) with a total output of approximately 176 megawatts consisting of a combustion turbine generator, a heat recovery steam generator, a steam turbine generator and certain additional incidental facilities, located in Wuhan, Hubei province, the PRC. MHP further states that it will, through an affiliate, sell electric energy at wholesale from the facility and may engage in other incidental activities with respect thereto consistent with PUHCA.

Comment Date: 5 p.m. eastern time on November 16, 2004.

3. Central Vermont Public Service Corporation

[Docket No. ER98–2329–003]

Take notice that on October 25, 2004 Central Vermont Public Service Corporation (Central Vermont) tendered for filing its three-year updated market power analysis.

Central Vermont states that copies of the filing were served upon the public utility's jurisdictional customers, the New Hampshire Public Utilities Commission, and the Vermont Public Service Board.

Comment Date: 5 p.m. eastern time on November 15, 2004.

4. PPL Southwest Generation Holdings, LLC

[Docket No. ER01–1870–003]

Take notice that on October 25, 2004, PPL Southwest Generation Holdings, LLC (PPL Southwest Generation) submitted a supplement to the updated market power analysis filed on July 12, 2004 in Docket No. ER01–1870–002.

PPL Southwest Generation states that copies of the filing were served on parties on the official service list in the above-captioned proceeding.

Comment Date: 5 p.m. eastern time on November 15, 2004.

5. ISO New England Inc.

[Docket No. ER02–2463–004]

Take notice that on October 21, 2004, ISO New England Inc. (the ISO) submitted a compliance filing pursuant to the Commission's Order on Rehearing issued September 21, 2004 in Docket Nos. ER02–2463–002 and 003, 108 FERC ¶ 61,272.

The ISO states that copies of the filing have been served on all parties in Docket No. ER02–2463.

Comment Date: 5 p.m. eastern time on November 12, 2004.

6. PJM Interconnection, L.L.C.

[Docket Nos. ER04–539–006 and EL04–121–002]

Take notice that on October 26, 2004, PJM Interconnection, L.L.C. (PJM) submitted a compliance filing consisting of (1) the Report of the PJM Market Monitor Regarding Offer Capping of Major Transmission Constraints and (2) amendments to the PJM Open Access Transmission Tariff and the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C. pursuant to the Commission's order issued August 10, 2004 in Docket Nos. ER04–539–001, ER04–539–002 and EL04–121–000.

PJM states that copies of the filing were served upon all PJM members, each State electric utility regulatory commission in the PJM region, and each person designated on the official service list compiled by the Secretary in Docket Nos. ER04–539–001, 002 and EL04–121–000.

Comment Date: 5 p.m. eastern time on November 16, 2004.

7. PacifiCorp

[Docket No. ER05–65–000]

Take notice that on October 25, 2004, PacifiCorp submitted a Notice of Cancellation of PacifiCorp's Rate Schedule No. 311 with the Department of Water Resources of the State of California. PacifiCorp requests an effective date of December 31, 2004.

PacifiCorp states that copies of the filing were served upon the Department of Water Resources of the State of California; the Washington Utilities and Transportation Commission; and the Public Utility Commission of Oregon.

Comment Date: 5 p.m. Eastern Time on November 15, 2004.

8. Walden Energy, LLC

[Docket No. ER05–66–000]

Take notice that on October 25, 2004, Walden Energy, LLC, (Walden) petitioned the Commission for acceptance of Walden Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations. Walden states that it intends to engage in wholesale electric power and energy purchases and sales as a marketer. Walden further states that it is not in the business of generating or transmitting electric power and has no affiliates.

Comment Date: 5 p.m. eastern time on November 15, 2004.

9. Metcalf Energy Center, LLC

[Docket No. ER05–67–000]

Take notice that on October 25, 2004, Metcalf Energy Center, LLC (Applicant) submitted, under section 205 of the Federal Power Act (FPA), a request for authorization to make wholesale sales of electric energy, capacity, replacement reserves, and ancillary services at market-based rates, to reassign transmission capacity, and to resell firm transmission rights. Applicant states that it will own and operate a nominal 600 megawatt natural gas-fired combined-cycle electric generation facility in San Jose, California. Applicant requests an effective date of February 1, 2005.

Comment Date: 5 p.m. eastern time on November 15, 2004.

10. Pastoria Energy Center, LLC

[Docket No. ER05–68–000]

Take notice that on October 25, 2004, Pastoria Energy Center, LLC (Applicant) tendered for filing, under section 205 of the Federal Power Act, a request for authorization to make wholesale sales of electric energy, capacity, replacement reserves, and ancillary services at market-based rates, to reassign transmission capacity, and to resell firm transmission rights. Applicant states that it will own and operate a 750 megawatt natural gas-fired, combined-cycle electric generating facility located in Kern County, California.

Comment Date: 5 p.m. eastern time on November 15, 2004.

11. Boston Edison Company

[Docket No. ER05–69–000]

Take notice that on October 25, 2004 Boston Edison Company, (Boston Edison) tendered for filing modifications to its Open Access Transmission Tariff, FERC Electric Tariff Second Revised Volume No. 8 (Tariff 8) to provide, *inter alia,* for the inclusion of 50 percent of construction work in progress (CWIP) in rate base; for allocation of FERC Assessments, and for the reassignment of the Intangible Plant Account to the transmission function. Boston Edison requests an effective date of January 1, 2005.

Boston Edison states that copies of the filing were served upon the public utility's jurisdictional customers, and the Massachusetts Department of Telecommunications and Energy.

Comment Date: 5 p.m. eastern time on November 15, 2004.

12. Idaho Power Company

[Docket No. ER05–70–000]

Take notice that on October 25, 2004, Idaho Power Company (Idaho Power) tendered for filing an Agreement for Load Following Services between NorthWestern Corporation, doing business as NorthWestern Energy (NWE), and Idaho Power, dated August 25, 2004. Idaho requests an effective date of January 1, 2005.

Idaho Power states that copies of the filing were served upon the Idaho Public Utilities Commission, Montana Public Service Commission, and Oregon Public Utility Commission.

Comment Date: 5 p.m. eastern time on November 15, 2004.

13. Sirius Investment Management, Inc.

[Docket No. ER05–71–000]

Take notice that on October 26, 2004, Sirius Investment Management, Inc. (Sirius) petitioned the Commission for acceptance of Sirius Rate Schedule

FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations. Sirius states that it intends to engage in wholesale electric power and energy purchases and sales as a marketer. Sirius further states that it is not in the business of generating or transmitting electric power.

Comment Date: 5 p.m. eastern time on November 16, 2004.

14. Michigan Electric Transmission Company, LLC

[Docket No. ER05–72–000]

Take notice that on October 26, 2004, Michigan Electric Transmission Company, LLC (METC) submitted an Interconnection Facilities Agreement between the Wolverine Power Supply Cooperative, Inc. (Wolverine) and METC, intended to replace an existing Interconnection Facilities Agreement dated September 1, 1981 and permit Wolverine to interconnect a new substation with METC's transmission system. METC requests an effective date of October 22, 2004.

METC states that a copy of this filing has been served upon Wolverine.

Comment Date: 5 p.m. eastern time on November 16, 2004.

15. Wisconsin Public Service Corporation

[Docket No. ER05–73–000]

Take notice that on October 26, 2004, Wisconsin Public Service Corporation (WPS) tendered for filing three revised sheets (Revised Sheets) to its Control Area Operations Coordination Agreement (Coordination Agreement) between WPS and Wisconsin Electric Power Company (WEPCo), designated as WPS' First Revised Rate Schedule FERC No. 63 (WPS Agreement), reflecting an amendment to Exhibit 1 to the WPS Agreement.

WPS states that copies of the filing were served upon WEPCo, the Public Service Commission of Wisconsin and the Michigan Public Service Commission.

Comment Date: 5 p.m. eastern time on November 16, 2004.

16. Virginia Electric and Power Company

[Docket No. ER05–74–000]

Take notice that on October 26, 2004, Virginia Electric and Power Company (Dominion Virginia Power) tendered for filing an unexecuted Standard Large Generator Interconnection Agreement (LGIA) with Five Forks Energy Associates, LLC. Dominion Virginia Power requests an effective date of October 27, 2004.

Dominion Virginia Power states that copies of the filing were served upon Five Forks and the Virginia State Corporation Commission.

Comment Date: 5 p.m. eastern time on November 16, 2004.

17. The Dayton Power & Light Company

[Docket No. ER05–77–000]

Take notice that on October 27, 2004, The Dayton Power & Light Company (DP&L) submitted for filing two interconnection agreements, which DP&L now proposes to redesignate as service agreements under the Open Access Transmission Tariff (OATT) of PJM Interconnection, L.L.C. (PJM) DP&L states that it has integrated into PJM as of October 1, 2004 and accordingly, DP&L's OATT and its interconnection agreement under that OATT was cancelled as of that date. DP&L requests an effective date of October 1, 2004.

DP&L states that a copy of this filing has been served on the affected State regulatory body, the counterparties to the interconnection agreements, and PJM.

Comment Date: 5 p.m. eastern time on November 17, 2004.

Standard Paragraph

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all parties to this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''e-Subscription'' 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. E4–3040 Filed 11–5–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG05–17–000, et al.]

Metcalf Energy Center, LLC, et al.; Electric Rate and Corporate Filings

October 28, 2004.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Metcalf Energy Center, LLC

[Docket No. EG05–17–000]

Take notice that on October 25, 2004, Metcalf Energy Center, LLC (Applicant), filed with the Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission regulations.

Applicant states that it will own and operate a nominal 600 megawatt power generation facility to be located in San Jose, Santa Clara County, California. Applicant further states that copies of the application were served upon the United States Securities and Exchange Commission and California Public Utilities Commission.

Comment Date: 5 p.m. Eastern Time on November 15, 2004.

2. BS Energy LP

[Docket No. ER04–1082–001]

Take notice that on October 21, 2004, BS Energy LP (BSELP) submitted an amendment to its application filed on August 2, 2004, in Docket No. ER04–1082–000—requesting approval of BS Energy LP Rate Schedule FERC No. 1, the granting of certain blanket approvals, including the authority to sell electricity at market-based rates, and requested the waiver of certain Commission regulations.

Comment Date: 5 p.m. Eastern Time on November 12, 2004.

Standard Paragraph

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of

the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all parties to this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–3045 Filed 11–5–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 2180–007—WI, 1979–012—WI, 2207–009—WI]

PCA Hydro Inc., Wisconsin Public Service Corporation, Mosinee Paper Corporation; Notice of Availability of Multi-Project Environmental Assessment

October 28, 2004.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations, 18 CFR part 380 (Order No. 486, 52 FR 47879), the Office of Energy Projects has reviewed the application for new license for the Grandmother Falls, Alexander, and Mosinee Projects, located on the Wisconsin River, in Lincoln and Marathon Counties, Wisconsin, and has prepared a Multi-Project Environmental Assessment (EA). In the EA, Commission staff analyze the potential environmental effects of relicensing the projects and conclude that issuing new licenses for the projects, with appropriate environmental measures, would not constitute major federal actions that would significantly affect the quality of the human environment.

A copy of the EA is on file with the Commission and is available for public inspection. The EA may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659.

Any comments should be filed within 30 days from the issuance date of this notice, and should be addressed to the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1–A, Washington, DC 20426. Please affix the appropriate project name and project number to all comments. Comments may be filed electronically via 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. For further information, contact Michael Spencer at (202) 502–6093, or by e-mail *michael.spencer@ferc.gov.*

Magalie R. Salas,

Secretary.

[FR Doc. E4–3065 Filed 11–5–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP05–3–000]

CenterPoint Energy Gas Transmission; Notice of Intent To Prepare an Environmental Assessment for the Proposed CenterPoint Energy Gas Transmission Line Ad Expansion Project and Request for Comments on Environmental Issues

November 1, 2004.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Line AD Expansion Project involving construction and operation of facilities by CenterPoint Energy Gas Transmission (CEGT) in Caddo, Hughes, and Grady Counties, Oklahoma.[1] The Line AD Expansion Project would involve the construction of two new compressor stations, the Hinton and Allen Compressor Stations, and adding a compressor unit within CEGT's existing Amber Compressor Station in order to install 28,265 hp of additional compression to CEGT's Line AD. This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with State law.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' was attached to the project notice CEGT provided to landowners. This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet Web site (*http://www.ferc.gov*).

Summary of the Proposed Project

CEGT wants to expand the capacity of its Line AD by approximately 112,900 Decatherms (Dth) per day by installing 28,265 horsepower of additional compression in Caddo, Hughes, and Grady counties, Oklahoma. This will increase Line AD capacity to receive Rocky Mountain gas supplies for transportation west to east across CEGT's system. Specifically, CEGT seeks authority to construct and operate:

- 10,310 hp of gas turbine-driven compression at a new site called the Hinton Compressor Station in Caddo County, Oklahoma;
- 13,220 hp of gas turbine-driven compression at a new site called the

[1] CEGT's application was filed with the Commission under section 7 of the Natural Gas Act and part 157 of the Commission's regulations.

Allen Compressor Station in Hughes County, Oklahoma;

• 4,735 hp of additional reciprocating gas engine-driven compression at the existing Amber Compressor Station in Grady County, Oklahoma.

The location of the project facilities is shown in Appendix 1.[2]

Land Requirements for Construction

Construction of the proposed facilities would require a total of about 9.6 acres of land. Following construction, about 4.3 acres would be fenced in as part of the compressor station facilities.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires the Commission to discover and address concerns the public may have about proposals. This process is referred to as ''scoping''. The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission staff requests public comments on the scope of the issues to address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

In the EA we[3] will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

• Water resources.
• Vegetation and wildlife.
• Cultural resources.
• Geology and soils.
• Land use.
• Air quality and noise.
• Endangered and threatened species.
• Hazardous waste.
• Public safety.

We will not discuss impacts to the following resource areas since they are not present in the project area, or would not be affected by the proposed facilities.

• Fisheries, wetlands and hazardous waste sites.

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, State, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the public participation section beginning on page 7.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by CEGT. This preliminary list of issues may be changed based on your comments and our analysis.

• Five federally listed endangered or threatened species and two candidate species may occur in Caddo County (Hinton Compressor Station) and five federally listed endangered or threatened species have the potential to occur in Hughes County (Allen Compressor Station).

• A total of 4.6 acres of agricultural land would convert to industrial use.

• Decrease in air quality due to emissions from the two new compressor stations as well as increased levels of Hazardous Air Pollutant (formaldehyde) emissions from the existing Amber Compressor Station.

• Increase in noise pollution within the surrounding region of the new Hinton and Allen Compressor Stations.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA/EIS and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative locations), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

• Send an original and two copies of your letter to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.

• Label one copy of the comments for the attention of Gas Branch 3.

• Reference Docket No. CP05–3–000.

• Mail your comments so that they will be received in Washington, DC on or before December 1, 2004.

Please note that we are continuing to experience delays in mail deliveries from the U.S. Postal Service. As a result, we will include all comments that we receive within a reasonable time frame in our environmental analysis of this project. However, the Commission strongly encourages electronic filing of any comments or interventions or protests to this proceeding. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link and the link to the User's Guide. Before you can file comments you will need to create a free account which can be created on-line.

We might mail the EA for comment. If you are interested in receiving it, please return the Information Request (Appendix 4). If you do not return the Information Request, you will be taken off the mailing list.

Becoming an Intervenor

In addition to involvement in the EA/EIS scoping process, you may want to become an official party to the proceeding known as an ''intervenor''. Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must send one electronic copy (using the Commission's eFiling system) or 14 paper copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies of all appendices, other than appendix 1 (maps), are available on the Commission's Web site at the ''eLibrary'' link or from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

[3] ''We'', ''us'', and ''our'' refer to the environmental staff of the Office of Energy Projects (OEP).

385.214) (*see* Appendix 2).[4] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Environmental Mailing List

An effort is being made to send this notice to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project. This includes all landowners who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within distances defined in the Commission's regulations of certain aboveground facilities. By this notice we are also asking governmental agencies, especially those in Appendix 3, to express their interest in becoming cooperating agencies for the preparation of the EA.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208-FERC or on the FERC Internet Web site (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance with eLibrary, the eLibrary helpline can be reached at 1–866–208–3676, TTY (202) 502–8659, or at *FercOnlineSupport@ferc.gov*. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm.*

Finally, public meetings or site visits will be posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Linda Mitry,

Deputy Secretary.

[FR Doc. E4–3043 Filed 11–5–04; 8:45 am]

BILLING CODE 6717–01–P

[4] Interventions may also be filed electronically via the Internet in lieu of paper. *See* the previous discussion on filing comments electronically.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP04–424–000]

Petal Gas Storage, LLC; Notice of Intent To Prepare an Environmental Assessment for the Proposed Heidelberg Compressor Station Uprate Project and Request for Comments on Environmental Issues

November 1, 2004.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Heidelberg Compressor Station Uprate Project involving increased compression by Petal Gas Storage, LLC (Petal) in Jasper County, Mississippi.[1] The new facilities would consist of the uprate and modification of two compressor units to provide additional compression at Petal's existing compressor station, providing a total of 442 additional horsepower (hp). This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' was attached to the project notice Petal provided to landowners. This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet Web site (*http://www.ferc.gov*).

Summary of the Proposed Project

Petal seeks authority to increase the horsepower of the compressor units at its Heidelberg Compressor Station in Jasper County, Mississippi. Petal wishes to increase the withdrawing and delivering of natural gas to downstream pipeline interconnects from 0.7 billion cubic feet per day (Bcf/day) to 1.3 Bcf/day by uprating its existing compressors from 9,000 hp to 9,442 hp. No additional compressor units would be necessary.

The location of the project facilities is shown in appendix 1.[2]

Land Requirements for Construction

No ground disturbance would occur. The two compressors to be uprated are already in place on Petal's property, within its compressor building.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us[3] to discover and address concerns the public may have about proposals. This process is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission staff requests public comments on the scope of the issues to address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

In the EA we will discuss air quality and noise impacts that could occur as a result of the construction and operation of the proposed project under these general headings. We will not discuss impact to the following resource areas since they are not present in the project area, or would not be affected by the proposed facilities:

- Surface water resources, fisheries, and wetlands.
- Geology, soils, and groundwater.
- Land use and visual quality.
- Cultural resources.
- Socioeconomics.
- Vegetation and wildlife (including threatened and endangered species).

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or

[1] Petal's application was filed with the Commission under section 7 of the Natural Gas Act and part 157 of the Commission's regulations.

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies of all appendices, other than appendix 1 (maps), are available on the Commission's Web site at the ''eLibrary'' link or from the Commission's Public Reference Room and Files Maintenance Branch, 888 First Street, NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

[3] ''We,'' ''us,'' and ''our'' refer to the environmental staff of the Office of Energy Projects (OEP).

avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

Currently Identified Environmental Issues

We have already identified one issue (noise impacts on nearby residents) that we think deserves attention based on a preliminary review of the proposed facilities and the environmental information provided by Petal. Issues we consider may change based on your comments and our analysis.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal, and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your letter to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.
- Label one copy of the comments for the attention of Gas Branch 1.
- Reference Docket No. CP04–424–000.
- Mail your comments so that they will be received in Washington, DC on or before December 1, 2004.

Please note that the Commission strongly encourages electronic filing of any comments or interventions or protests to this proceeding. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link and the link to the User's Guide. Prepare your submission in the same manner as you would if filing on paper and save it to a file on your hard drive. Before you can file comments, you will need to create an account by clicking on ''login to file'' and then ''New User Account.'' You will be asked to select the type of filing you are making. This filing is considered a ''comment on filing.''

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an ''intervenor.'' Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must send one electronic copy (using the Commission's e-Filing system) or 14 paper copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, *see* appendix 2).[4] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Environmental Mailing List

An effort is being made to send this notice to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project. This includes all landowners whose property may be used temporarily for project purposes or who own homes within distances defined in the Commission's regulations of certain aboveground facilities.

Availability of Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number excluding the last three digits in the docket number field. Be sure you have selected an appropriate date range. For assistance with eLibrary, the eLibrary helpline can be reached at 1–866–208–3676, TTY (202) 502–8659, or at *FercOnlineSupport@ferc.gov.* The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm.*

Linda Mitry,

Deputy Secretary.

[FR Doc. E4–3044 Filed 11–5–04; 8:45 am]

BILLING CODE 6717–01–P

[4] Interventions may also be filed electronically via the Internet in lieu of paper. *See* the previous discussion on filing comments electronically.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

October 28, 2004.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New major license.

b. *Project No.:* 2630–004.

c. *Date Filed:* June 27, 2003.

d. *Applicant:* PacifiCorp.

e. *Name of Project:* Prospect Nos. 1, 2, and 4 Hydroelectric Project.

f. *Location:* On the Rogue River, Middle Fork Rouge River, and Red Blanket Creek in Jackson County, near Prospect, Oregon. The project does not occupy Federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Toby Freeman, Hydro Licensing, 825 NE Multnomah Avenue, Suite 1500, Portland, OR 97232, (503) 813–6208.

i. *FERC Contact:* Nick Jayjack at (202) 502–6073 or *nicholas.jayjack@ferc.gov.*

j. Deadline for filing comments, recommendations, terms and conditions, and prescriptions is 60 days from the issuance of this notice; reply comments are due 105 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R.

Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Comments, recommendations, terms and conditions, and prescriptions 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.

k. This application has been accepted, and is ready for environmental analysis at this time.

l. The existing Prospect Nos. 1, 2, and 4 Hydroelectric Project consists of: (1) A 10-foot-high, 165-foot-long concrete gravity-type overflow diversion dam on the Middle Fork Rogue River; (2) a 10-foot-high, 1,160-foot-long concrete and earth-fill diversion dam on Red Blanket Creek; (3) a 50-foot-high, 384-foot-long concrete gravity diversion dam on the Rogue River; (4) a 260-acre-foot impoundment behind the North Fork diversion dam (the other two dams form minimal impoundments); (5) non-functional fishways at the Red Blanket Creek and Middle Fork Rogue River diversion dams; (6) a 9.25-mile-long water conveyance system; (7) three powerhouses with a combined installed capacity of 41,560-kilowatts; (8) three 69-kilovolt (kV) transmission lines (0.26, 0.28, and 0.31 miles in length) and one 2.3-kV transmission line (0.6 miles in length); (9) a developed recreation area known as North Fork Park; and (10) appurtenant facilities. The applicant is proposing certain non-power resource enhancements. The applicant estimates that the total average annual generation is 280,657 megawatt-hours. Power from the project serves the applicant's residential and commercial customers in the communities of northern Jackson County and southern Douglas County, Oregon.

m. A copy of the application 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, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

n. All filings must (1) bear in all capital letters the title ''COMMENTS,'' ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Magalie R. Salas,

Secretary.

[FR Doc. E4–3066 Filed 11–5–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[P–2692–032]

Duke Power; Notice of Intent To Prepare an Environmental Assessmentand Notice of Scoping Meetings and Site Visits and Soliciting Scoping Comments

October 29, 2004.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* New major license.

b. *Project No.:* 2692–032.

c. *Date filed:* February 20, 2004.

d. *Applicant:* Duke Power.

e. *Name of Project:* Nantahala Hydroelectric Project.

f. *Location:* On the Nantahala River and its tributaries, in Macon and Clay Counties, North Carolina. There are 41 acres of United States Forest Service managed land (Nantahala National Forest) within the Nantahala Project boundary.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* John C. Wishon, Nantahala Area Relicensing Project Manager, Duke Power, 301 NP&L Loop, Franklin, NC 28734, (828) 369–4604, *jcwishon@duke-energy.com.*

i. *FERC Contact:* Carolyn Holsopple, (202) 502–6407 or *carolyn.holsopple@ferc.gov.*

j. *Deadline for filing scoping comments:* January 10, 2005.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Scoping comments 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.

k. This application is not ready for environmental analysis at this time.

l. The existing Nantahala Project operates in a peaking mode and consists of the following features: (1) A 1,042-foot-long, 250-foot-high earth and rockfill dam; (2) a spillway for the dam located at the east abutment; (3) a 1,605-acre reservoir, with a normal reservoir elevation of 3,012.2 feet National Geodetic Vertical Datum and a storage capacity of 38,336 acre-feet; (4) a reinforced concrete powerhouse containing one generating unit having an installed capacity of 42 megawatts (MW); (5) two stream diversions (Dicks Creek and Whiteoak Creek) that provide additional flow into the project; and (6) appurtenant facilities.

m. Copies of the application are 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, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, 1–202–502–8659. Copies are also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/esuscribenow.htm* to be notified via e-mail of new filings and issuances related to these or other pending projects. For assistance, contact FERC Online Support.

n. *Scoping Process:* The Commission intends to prepare a single, combined Environmental Assessment (EA) for the proposed project and the Franklin Hydroelectric Project (P–2692–032) and Mission Hydroelectric Project (P–2692–032), both filed in July 2003 and scoped in February 2004, in accordance with the National Environmental Policy Act. The EA will consider both site-specific and cumulative environmental impacts and reasonable alternatives to the proposed action.

Site Visit: Duke Power and the Commission staff will conduct a project site visit on December 7, 2004. We will meet at the Nantahala Power Plant. Site visitors will be responsible for their own transportation. Anyone with questions regarding the site visit should contact Mr. John C. Wishon of Duke Power at (828) 369–4604. The time and location of this site visit is as follows:

Nantahala Site Visit

Date: Tuesday, December 7, 2004.

Time: 9 a.m.–12 p.m. (e.s.t.)

Place: Nantahala Power Plant.

Address: 27656 Wayah Road; Topton, NC 28781.

Scoping Meetings: Commission staff will conduct two public scoping meetings in the project area to solicit comments and viewpoints the public may wish to offer concerning project effects associated with the Nantahala Project. An afternoon meeting will focus on resource agency concerns, and an evening meeting will focus on input from the public. All interested individuals, organizations, Indian tribes, and agencies are invited to attend one or both of the meetings, and to assist the staff in identifying the scope of the environmental issues that should be analyzed in the EA. The times and locations of these meetings are as follows:

Nantahala Agency Scoping Meeting

Date: Tuesday December 7, 2004.

Time: 2 p.m.–4 p.m. (e.s.t.)

Place: Southwestern Community College (Old Almond School).

Address: 60 Almond School Road; Bryson City, NC 28713.

Nantahala Public Scoping Meeting

Date: Tuesday December 7, 2004.

Time: 6 p.m.–9 p.m. (e.s.t.).

Place: Southwestern Community College (Old Almond School).

Address: 60 Almond School Road; Bryson City, NC 28713.

Copies of the Scoping Document (SD1) outlining the subject areas to be addressed in the EA are being distributed to the parties on the Commission's mailing list. Copies of the SD1 will be available at the scoping meetings or may be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link (*see* item (m) above). These meetings are posted on the Commission's calendar located on the Internet at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Objectives: At the scoping meetings, staff will: (1) Summarize the environmental issues tentatively identified for analysis in the EA; (2) solicit from the meeting participants all available information, especially empirical data, on the resources at issue; (3) encourage statements from experts and participants on issues that should be analyzed in the EA, including viewpoints in opposition to, or in support of, the staff's preliminary views; (4) determine the resource issues to be addressed in the EA; and (5) identify those issues that do not require a detailed analysis.

Procedures: The meetings will be recorded by a stenographer and become part of the formal record of the Commission proceeding on the project.

Individuals, organizations, agencies, and Indian tribes with environmental expertise and concerns are encouraged to attend the meetings and to assist Commission staff in defining and clarifying the issues to be addressed in the EA.

Magalie R. Salas,

Secretary.

[FR Doc. E4–3067 Filed 11–5–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[P–2698–033, P–2686–032, P–2602–007]

Duke Power; Notice of Intent To Prepare an Environmental Assessmentand Notice of Scoping Meetings and Site Visits and Soliciting Scoping Comments

October 29, 2004.

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

a. *Type of Applications:* 2 New Major Licenses and 1 Surrender of License.

b. *Project Nos.:* 2698–033, 2686–032, and 2602–007.

c. *Dates filed:* July 22, 2003 and June 1, 2004.

d. *Applicant:* Duke Power.

e. *Names of Projects:* East Fork Hydroelectric Project No. 2698–033; West Fork Hydroelectric Project No. 2686–032; and Dillsboro Hydroelectric Project No. 2602–007.

f. *Location:* On the Tuckasegee River, in Jackson County, North Carolina. There are 23.15 acres of United States Forest Service land (Nantahala National Forest) within the East Fork Project boundary. Neither the West Fork Project nor the Dillsboro Project affects any Federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* John C. Wishon, Nantahala Area Relicensing Project Manager, Duke Power, 301 NP&L Loop, Franklin, NC 28734, (828) 369–4604, *jcwishon@duke-energy.com*

i. *FERC Contact:* Carolyn Holsopple, (202) 502–6407 or *carolyn.holsopple@ferc.gov*.

j. *Deadline for filing scoping comments:* January 10, 2005.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Scoping comments 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.

k. These applications are not ready for environmental analysis at this time.

l. The existing East Fork Project operates in a peaking mode and is comprised of three developments: Cedar Cliff, Bear Creek and Tennessee Creek. The Cedar Cliff development consists of the following features: (1) A 590-foot-long, 173-foot-high earth core and rockfill dam (Cedar Cliff Dam); (2) a service spillway excavated in rock at the right abutment; (3) a 221-foot-long emergency spillway located at the left abutment; (4) a 121-acre reservoir, with a normal reservoir elevation of 2,330 feet National Geodetic Vertical Datum (NGVD) and a storage capacity of 6,200 acre-feet; (5) a concrete powerhouse containing one generating unit having an installed capacity of 6.1 megawatts (MW); and (6) appurtenant facilities.

The Bear Creek development consists of the following features: (1) A 760-foot-long, 215-foot-high earth core and rockfill dam (Bear Creek Dam); (2) a spillway on the right abutment; (3) a 473-acre reservoir, with a normal reservoir elevation of 2,560 feet NGVD and a storage capacity of 34,650 acre-feet; (4) a concrete powerhouse containing one generating unit having an installed capacity of 8.2 MW; and (5) appurtenant facilities.

The Tennessee development consists of the following features: (1) A 385-foot-long, 140-foot-high earth core and rockfill dam (Tanasee Creek Dam) with a 225-foot-long, 15-foot-high earth and rockfill saddle dam located 600 feet south of the Tanasee Creek Dam left abutment; (2) a spillway located in a channel excavated in the right abutment; (3) a 810-foot-long, 175-foot-high earth core and rockfill dam (Wolf Creek Dam); (4) a spillway located in a channel excavated in the right abutment; (5) a 40-acre reservoir (Tanasee Creek Lake), with a normal reservoir elevation of 3,080 feet NGVD and a storage capacity of 1,340 acre-feet; (6) a 176-acre reservoir (Wolf Creek Lake), with a normal reservoir elevation of 3,080 feet National Geodetic Vertical Datum and a storage capacity of 10,040-acre-feet; (7) a concrete powerhouse containing one generating unit having an installed capacity of 8.75 MW.

The existing West Fork Project operates in a peaking mode and is comprised of two developments: Thorpe and Tuckasegee. The Thorpe development consists of the following features: (1) A 900-foot-long, 150-foot-high rockfill dam (Glenville Dam), with a 410-foot-long, 122-foot-high earth and rockfill saddle dam located approximately 500 feet from the main dam left abutment; (2) a spillway for Glenville Dam located at the right abutment; (3) a 1,462-acre reservoir, with a normal reservoir elevation of 3,491.8 feet NGVD and a storage capacity of 72,000 acre-feet; (4) a concrete and brick powerhouse containing one generating unit having an installed capacity of 15.5 megawatts (MW); and (5) appurtenant facilities.

The Tuckasegee development consists of the following features: (1) A 254-foot-long, 61-foot-high concrete arch dam (Tuckasegee Dam), with 24 steel flashboards; (2) a 233.5-foot-long spillway; (3) a 7.9-acre reservoir, with a normal reservoir elevation of 2,778.75 feet NGVD and a storage capacity of 35 acre-feet; (4) a concrete powerhouse containing one generating unit having an installed capacity of 2.6 MW; and (5) appurtenant facilities.

The existing Dillsboro Project operates in a run-of-river mode, within a 6-inch tolerance band. Project operation is dependent on available flow in the Tuckasegee River, which is dependent on Duke Power's East Fork and West Fork Tuckasegee River projects. The Dillsboro Project consists of the following features: (1) A 310-foot-long, 12-foot-high concrete masonry dam, consisting of, from left to right facing downstream, (a) a concrete, non-overflow section, (b) a 14-foot-long uncontrolled spillway section, (c) a 20-foot-long spillway section with two 6-foot-wide spill gates, (d) a 197-foot-long uncontrolled spillway section, (e) a 64.5-foot-long powerhouse, (f) an 80-foot-long intake section, and (g) a concrete, non-overflow section; (2) a 0.8-mile-long, 15-acre impoundment at elevation 1972.00 msl; (3) two intake bays, each consisting of a reinforced concrete flume and grated trashracks having a clear bar spacing varying from 2.0 to 3.38 inches; (4) a powerhouse containing two turbine/generating units(vertical Francis and Leffel Type-Z turbines), having an installed capacity of 225 kW; (5) a switchyard, with three single-phased transformers; and (6) appurtenant facilities.

Duke Power filed an application to surrender its major license for the Dillsboro Hydroelectric Project. Duke requests that the Commission approve the following: (1) Continue operating the Dillsboro Project under the terms of the current license until dam removal begins; (2) decommission the dam and powerhouse and complete dam removal and powerhouse closure/removal within three years following the final FERC approval order; (3) prepare and obtain FERC approval of, and implement an environmental monitoring plan in association with the dam removal, including completion of the Duke implemented portions of any post-removal stream restoration and annual monitoring within two years following completion of the dam removal. Also included in the surrender application was the Tuckasegee/Nantahala Settlement Agreements which were filed on January 26, 2004 as part of the relicense applications for the East Fork (P–2698), West Fork (P–2686), and Nantahala (P–2692) Hydroelectric Projects. The settlement agreements provide various environmental enhancement measures, which include the removal of the Dillsboro Dam and Powerhouse.

m. Copies of the applications are 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, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, 1–202–502–8659. Copies are also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/esuscribenow.htm* to be notified via e-mail of new filings and issuances related to these or other pending projects. For assistance, contact FERC Online Support.

n. *Scoping Process:* The Commission intends to prepare a single, combined Environmental Assessment (EA) for the proposed projects in accordance with the National Environmental Policy Act. The EA will consider both site-specific and cumulative environmental impacts and reasonable alternatives to the proposed action.

Site Visits: Duke Power and the Commission staff will conduct project site visits on December 8 (East Fork) and December 9 (West Fork), 2004. We will meet at the Jackson County Justice and Administration Building and will then proceed to the Power Plants. Site visitors will be responsible for their own transportation. We will not be conducting a Dillsboro Hydroelectric Project site visit as one was held in February 2004. Anyone with questions regarding the site visits should contact Mr. John C. Wishon of Duke Power at (828) 369–4604. The times and locations of these site visits are as follows:

East Fork Site Visit

Date: Wednesday, December 8, 2004.

Time: 9 a.m.–12 p.m. (e.s.t.).
Place: Jackson County Justice and Administration Building.
Address: 401 Grindstaff Cove Road, Sylva, NC 28779.

West Fork Site Visit

Date: Thursday, December 9, 2004.
Time: 9 a.m.–12 p.m. (e.s.t.).
Place: Jackson County Justice and Administration Building.
Address: 401 Grindstaff Cove Road, Sylva, NC 28779.

Scoping Meetings: Commission staff will conduct four public scoping meetings in the project area to solicit comments and viewpoints the public may wish to offer concerning project effects associated with the East Fork and West Fork Hydroelectric Projects and the Dillsboro Surrender. Two afternoon meetings (one for East Fork/Dillsboro and one for West Fork/Dillsboro) will focus on resource agency concerns and two evening meetings (one for East Fork/Dillsboro and one for West Fork/Dillsboro) will focus on input from the public. All interested individuals, organizations, Indian tribes, and agencies are invited to attend any or all of the meetings, and to assist the staff in identifying the scope of the environmental issues that should be analyzed in the EA. The times and locations of these meetings are as follows:

East Fork/Dillsboro Agency Scoping Meeting

Date: Wednesday, December 8, 2004.
Time: 2 p.m.–4 p.m. (e.s.t.)
Place: Jackson County Justice and Administration Building, Courtroom # 2, 2nd Floor.
Address: 401 Grindstaff Cove Road, Sylva, NC 28779.

East Fork/Dillsboro Public Scoping Meeting

Date: Wednesday December 8, 2004.
Time: 6 p.m.–9 p.m. (e.s.t.).
Place: Jackson County Justice and Administration Building, Courtroom # 2, 2nd Floor.
Address: 401 Grindstaff Cove Road, Sylva, NC 28779.

West Fork/Dillsboro Agency Scoping Meeting

Date: Thursday December 9, 2004.
Time: 2 p.m.–4 p.m. (est).
Place: Jackson County Justice and Administration Building, Courtroom # 2, 2nd Floor.
Address: 401 Grindstaff Cove Road, Sylva, NC 28779.

West Fork/Dillsboro Public Scoping Meeting

Date: Thursday December 9, 2004.
Time: 6 p.m.–9 p.m. (e.s.t.).
Place: Jackson County Justice and Administration Building, Courtroom # 2, 2nd Floor.
Address: 401 Grindstaff Cove Road, Sylva, NC 28779.

Copies of the Scoping Document (SD1) outlining the subject areas to be addressed in the EA are being distributed to the parties on the Commission's mailing list. Copies of the SD1 will be available at the scoping meetings or may be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link [see item (m) above]. These meetings are posted on the Commission's calendar located on the Internet at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Objectives: At the scoping meetings, staff will: (1) Summarize the environmental issues tentatively identified for analysis in the EA; (2) solicit from the meeting participants all available information, especially empirical data, on the resources at issue; (3) encourage statements from experts and participants on issues that should be analyzed in the EA, including viewpoints in opposition to, or in support of, the staff's preliminary views; (4) determine the resource issues to be addressed in the EA; and (5) identify those issues that do not require a detailed analysis.

Procedures: The meetings will be recorded by a stenographer and become part of the formal record of the Commission proceeding on the project.

Individuals, organizations, agencies, and Indian tribes with environmental expertise and concerns are encouraged to attend the meetings and to assist Commission staff in defining and clarifying the issues to be addressed in the EA.

Magalie R. Salas,
Secretary.

[FR Doc. E4–3068 Filed 11–5–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM05–1–000]

Regulations Governing the Conduct of Open Seasons for Alaska NaturalGas Transportation Projects; Notice of Technical Conference

October 29, 2004.

Take notice that the Federal Energy Regulatory Commission will host a technical conference in this proceeding on December 3, 2004 in Anchorage, Alaska. As previously announced on October 26, 2004, the Commission has initiated a rulemaking to establish regulations governing the conduct of open seasons for capacity on any Alaska natural gas transportation projects. These regulations are required by section 103(e) of the Alaska Natural Gas Pipeline Act of 2004, enacted into law on October 13, 2004. The Commission must issue regulations within 120 days of enactment of the Act, that is, by February 10, 2005. The Commission will provide further public notice with details of the rulemaking proceeding, including the specific location of the technical conference in Anchorage, Alaska, in the near future. All interested parties and the public are invited to attend.

Registration for the December 3rd technical conference is not required, but it is encouraged to assist with the conference planning process. Those electing to register are asked to do so on-line by close of business, Friday, November 26, 2004 at: *http://www.ferc.gov/whats-new/registration/alaska-1203-form.asp.*

Transcripts of the conference will be immediately available from Ace Reporting Company (202–347–3700 or 1–800–336–6646) for a fee. They will be available for the public on the Commission's eLibrary system seven calendar days after FERC receives the transcript. For information about this proceeding, interested persons may go to the Commission's Web site, *http://www.ferc.gov*, and search under the docket number for this proceeding, Docket No. RM05–1. Materials for the conference will also be posted on the Commission's monthly calendar page for this event. Any questions or comments about this technical conference may be directed to: Edwin Holden, 202–502–8089, *Edwin.Holden@ferc.gov* or Richard Foley, 202–502–8955, *Richard.Foley@ferc.gov.*

Linda Mitry,
Acting Secretary.

[FR Doc. E4–3046 Filed 11–5–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER02–1656–000 ER02–1656–019]

California Independent System Operator Corporation; Notice Announcing Call-In Number for November 3, 2004, Technical Conference

November 2, 2004.

By this notice, we are informing interested participants that a listen-only telephone line will be provided for participants in remote locations to call-in and listen to discussions at the November 3, 2004, technical conference.[1] The listen-only telephone line will be of limited availability.

The following is the information needed for facilitation of the listen-only conference call.

Date: November 3, 2004.

Time: 9 a.m.–5 p.m., P.s.t.

Toll Number: (203) 566–6414.

Passcode: 652465.

For more information about the conference, please contact: Olga Kolotushkina at (202) 502–6024 or *olga.kolotushkina@ferc.gov.*

Linda Mitry,

Deputy Secretary.

[FR Doc. E4–3048 Filed 11–5–04; 8:45 am]

BILLING CODE 6717–01–P

[1] *See* Notice of Staff Technical Conference, Docket Nos. ER02–1656–000 and ER02–1656–019 (October 26, 2004).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Technical Conference

October 29, 2004.

Connecticut Transmission Infrastructure: Docket No. PL04–14–000.

New England Power Pool: Docket No. ER03–1141–003; and ISO New England, Inc.

Devon Power LLC, *et al.*: Docket Nos. EL04–102–001, EL04–102–002, ER03–563–018, ER03–563–021, ER03–563–025, ER03–563–026, ER03–563–027, ER03–563–028, ER03–563–033, ER03–563–036, ER03–563–038, ER03–563–039, ER03–563–043, ER04–464–002, ER04–464–005, ER04–464–006.

Exelon New Boston LLC: Docket No. ER04–344–001.

ISO New England Inc.: Docket Nos. EL00–62–055, ER02–2463–003.

Mirant Kandall, LLC: Docket Nos. ER03–998–001, ER03–998–002.

PPL Wallingford Energy LLC, *et al.*: Docket Nos. ER03–421–007, ER03–421–008.

New England Power Pool Participants: Docket No. ER03–345–003.

New England Power Pool: Docket Nos. ER02–2330–009, ER02–2330–026, ER02–2330–027, ER02–2330–028, ER02–2330–029.

Take notice that the Federal Energy Regulatory Commission will host a technical conference on Tuesday, January 6, 2005, to discuss specific transmission proposals and cost issues for the State of Connecticut. The workshop will be held in Room 2C of the Legislative Office Building, 300 Capitol Avenue, Hartford, Connecticut. The workshop is scheduled to begin at 9 a.m. and end at approximately 3 p.m. (eastern time). The Commissioners will attend and participate.

This meeting is a follow-up to the infrastructure conference that was held on October 13, 2004. The goal of the technical conference is to provide a forum for discussion of issues affecting energy infrastructure in and around Connecticut. This discussion will take place between Federal, State and regional leaders and industry representatives. The January 6 conference will focus primarily on proposals for new electric transmission, and the costs of these proposals. An agenda is forthcoming.

The conference is a technical discussion between policy leaders, which members of the public are welcome to attend. Registration is not required; however, in-person attendees are asked to register for the conference on-line by close of business on Friday, January 2, 2005, at *http://www.ferc.gov/whats-new/registration/infra-0106-form.asp.*

Transcripts of the conference will be immediately available from Ace Reporting Company ((202) 347–3700 or 1–800–336–6646) for a fee. They will be available for the public on the Commission's eLibrary system seven calendar days after FERC receives the transcript. Additionally, Capitol Connection offers the opportunity for remote listening of the conference via Real Audio or a Phone Bridge Connection for a fee. Persons interested in making arrangements should contact David Reininger or Julia Morelli at the Capitol Connection (703) 993–3100 as soon as possible or visit the Capitol Connection Web site at *http://www.capitolconnection.org* and click on ''FERC.''

For more information about the conference, please contact Sarah McKinley at (202) 502–8004, *sarah.mckinley@ferc.gov.*

Magalie R. Salas,

Secretary.

[FR Doc. E4–3063 Filed 11–5–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–428–000]

Dominion Cove Point LNG, LP; Notice of Technical Conference

October 29, 2004.

On August 27, 2004,[1] the Commission issued an order directing the Commission Staff to convene a technical conference to discuss certain issues raised by Dominion Cove Point LNG, LP (Cove Point) in a July 30, 2004, filing.

The purpose of the technical conference that is the subject of this notice is to discuss whether tariff language proposed by Cove Point in a ministerial filing is consistent with current Commission policies concerning title transfer tracking, as well as the practices of other LNG terminals.

Protestors assert that the tariff language Cove Point is proposing was originally included in its tariff in 1995, prior to the widespread use of technology permitting instant transfers of information. They assert that the requirement of two business days before providing parties with notification of a requested transfer is an obstacle to the efficient, market driven transactions that the Commission has promoted.

This technical conference will therefore give interested parties the opportunity to discuss whether Cove Point's proposal is justifiable or, as protesters assert, unreasonable in light of today's communications technology.

Take notice that the conference will be held on Tuesday, November 9, 2004 at 10 a.m. (EST), in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

All interested parties and staff are permitted to attend.

Any questions or concerns about the conference should be directed to: Eric Winterbauer, Office of the General Counsel—Markets, Tariffs and Rates, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8329, *Eric.Winterbauer@ferc.gov.*

Magalie R. Salas,

Secretary.

[FR Doc. E4–3055 Filed 11–5–04; 8:45 am]

BILLING CODE 6717–01–P

[1] Dominion Cove Point LNG, LP, 108 FERC ¶ 61,211 (2004).

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Sunshine Act Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the regular meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on November 18, 2004, from 9 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Jeanette C. Brinkley, Secretary to the Farm Credit Administration Board, (703) 883–4009, TTY (703) 883–4056.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: This meeting of the Board will be open to the public (limited space available). In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matter to be considered at the meeting is:

Open Session

- *Approval of Minutes*
- October 14, 2004 (Open).

Dated: November 4, 2004.

Jeanette C. Brinkley,

Secretary, Farm Credit Administration Board.

[FR Doc. 04–24947 Filed 11–4–04; 1:31 pm]

BILLING CODE 6705–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority

November 1, 2004.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before January 7, 2005. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Les Smith, Federal Communications Commission, 445 12th Street, SW, Room 1–A804, Washington, DC 20554 or via the Internet to *Leslie.Smith@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at *Leslie.Smith@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0982.

Title: Implementation of LPTV Digital Data Services Pilot Project.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 14.

Estimated Time per Response: 0.25 hours–15 hours.

Frequency of Response: Recordkeeping requirement; On occasion, Quarterly and Annually reporting requirements; Third Party Disclosure requirement.

Total Annual Burden: 672 hours.

Total Annual Cost: $51,800.

Privacy Impact Assessment: No impact(s).

Needs and Uses: This collection implements the provisions of the LPTV Pilot Project Digital Data ServicesAct (DDSA). The DDSA mandates that the Commission issue regulations establishing a pilot project pursuant to which specified LPTV licensees or permittees can provide digital data services to demonstrate the feasibility of using LPTV stations to provide high-speed wireless digital data service. The Commission is required to implement reporting requirements under the statute. The data collected will be used to ensure that the proposal will not cause interference to other authorized services and to evaluate the project.

OMB Control Number: 3060–0449.

Title: Section 1.65(c), Substantial and Significant Changes in Information Furnished By Applicants to the Commission.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or household; Business or other for-profit entities; Not-for-profit institutions.

Number of Respondents: 6.

Estimated Time per Response: 1 hour 30 minutes.

Frequency of Response: Annual reporting requirement.

Total Annual Burden: 9 hours.

Total Annual Costs: None.

Privacy Impact Assessment: Yes.

Needs and Uses: 47 CFR Section 1.65(c) requires broadcast permittees and licensees to report annually any finding or adverse final action that involves conduct bearing on their character qualifications. This information enables the Commission to determine whether broadcast permittees and licensees maintain the requisite character qualifications to be a broadcast permittee or licensee during their license term.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–24833 Filed 11–5–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority

January 12, 2004.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with

a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Persons wishing to comment on this information collection should submit comments January 7, 2005. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Judith B. Herman, Federal Communications Commission, 445 12th Street, SW., Room 1–C804, Washington, DC 20554 or via the Internet to *Judith-B.Herman@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–1000.

Title: Section 87.147, Authorization of Equipment.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for profit.

Number of Respondents: 25.

Estimated Time Per Response: 1 hour.

Frequency of Response: One time reporting requirement and third party disclosure requirement.

Total Annual Burden: 25 hours.

Annual Cost Burden: N/A.

Privacy Act Impact Assessment: N/A.

Needs and Uses: This rule section requires than an applicant for certification of equipment intended for transmission in any of the frequency bands listed in paragraph (d)(3) of this section must notify the Federal Aviation Administration (FAA) of the filing of an certification application. The letter of notification must be mailed to the FAA. The certification must include a copy of the notification letter to the FAA as well as a copy of the FAA's subsequent determination of the equipment's compatibility with the National Airspace System (NAS). The Commission is seeking an extension (no change in requirements) in order to obtain the full three year clearance from OMB.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–24834 Filed 11–5–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority

November 2, 2004.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Persons wishing to comment on this information collection should submit comments January 7, 2005. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Judith B. Herman, Federal Communications Commission, 445 12th Street, SW., Room 1–C804, Washington, DC 20554 or via the Internet to *Judith-B.Herman@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0221.

Title: Section 90.155, Time in Which Station Must Be Placed in Operation.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for profit, not-for-profit institutions, and state, local or tribal government.

Number of Respondents: 2,055.

Estimated Time Per Response: 1 hour.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 2,055 hours.

Annual Cost Burden: N/A.

Privacy Act Impact Assessment: N/A.

Needs and Uses: Section 90.155 provides that all stations must be placed in operation within twelve (12) months from the date of grant or the authorization cancels automatically and must be returned to the Commission. Application for extension of time to commence service may be made on FCC Form 601. Extensions of time must be filed prior to the expiration of the construction period. Extensions may be granted only if the licensee shows that the failure to commence service is due to causes beyond its control. No extensions will be granted for delays cause by lack of financing, lack of site availability, for the assignment or transfer of control of an authorization, or for failure to timely order equipment. If the licensee orders equipment within 90 days of the license grant, a presumption of due diligence is created. The Commission is seeking extension (no change in rule requirements) to this information collection request. We are simply seeking the full three year OMB clearance.

OMB Control No.: 3060–0221.

Title: Section 87.109, Station Logs.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for profit.

Number of Respondents: 3.

Estimated Time Per Response: 100 hours.

Frequency of Response: Recordkeeping requirement.

Total Annual Burden: 300 hours.

Annual Cost Burden: N/A.

Privacy Act Impact Assessment: N/A.

Needs and Uses: This rule section is necessary to require each fixed station in the International Aeronautical Mobile Service (IAMS) to maintain a written or automatic log in accordance with the provisions of the International Civil Aviation Organization (ICAO). This recordkeeping requirement is necessary to document specific information, including harmful interference, equipment failure, and logging of distress and safety calls where applicable. The Commission is seeking extension (no change in rule requirements) to this information collection request. We are simply seeking the full three year OMB clearance.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–24835 Filed 11–5–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

November 2, 2004.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Pub. L. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before January 7, 2005. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *Judith-B.Herman@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0262.

Title: Section 90.179, Shared Use of Radio Stations.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions, and state, local or tribal government.

Number of Respondents: 42,000.

Estimated Time Per Response: .75 hours.

Frequency of Response: Recordkeeping requirement and third party disclosure requirement.

Total Annual Burden: 31,500 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Needs and Uses: Licensees of radio stations authorized under this rule part may share the use of their facilities. A station is shared when persons not licensed for the station control the station for their own purposes pursuant to the licensee's authorization. Shared use of a radio station may be either on a non-profit cost shared basis or on a for-profit private carrier basis. Section 90.179(d) requires that if the licensee shares the land station on a non-profit, cost shared basis to the licensee, this shared use must be pursuant to a written agreement between the licensee and each participant which sets out (1) the method of operation; (2) the components of the system which are covered by the sharing arrangements; (3) the method of which costs are to be apportioned; and (4) acknowledgement that all shared transmitter use must be subject to the licensee's control. These agreements must be kept as part of the station records.

OMB Control No.: 3060–0805.

Title: Section 90.527, Regional Plan Requirements; Section 90.523, Eligibility; and Section 90.545, TV/DTV Interference Protection Criteria.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions, and state, local or tribal government.

Number of Respondents: 26,656.

Estimated Time Per Response: .50–28.87 hours.

Frequency of Response: On occasion reporting requirement and third party disclosure requirement.

Total Annual Burden: 647,675 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Needs and Uses: Section 90.523 requires that all applications submitted by a nongovernmental organization (NGO) must be accompanied by a new, written certification of support (for the NGO) applicant to operate the applied-for system) by the state or local governmental entity referenced in paragraph (b)(1) of this rule section. All NGO authorizations are conditional. NGOs assume all risks associated with operating under conditional authority. If at any time the supporting governmental entity notifies the Commission in writing of such governmental entity's termination of its authorization of a NGOs operation of a system in the 764–776 MHz and 794–806 MHz frequency bands, the NGO's application shall be dismissed automatically or, if authorized by the Commission, the NGOs authorization shall terminate automatically.

Section 90.527 requires that each regional planning committee must submit a regional plan for approval by the Commission. There is specific information that must be included in the plans, under this rule section, including a certification by the regional planning chairperson that all planning committee meetings, including subcommittee or executive committee meetings, were open to the public. Modification of regional plans may be submitted in a written request, signed by the regional planning committee, to the Chief, Wireless Telecommunications Bureau, FCC. The request must contain the full text of the modification, and must certify that successful coordination of the modification with all adjacent regions has occurred and that all such regions concur with the modification.

Section 90.545 requires licensees of stations operating within the effective radiated power (ERP) and the antenna height above average terrain (HAAT) limits of the proposed land mobile base station, the associated control station, and the mobile transmitters, must select one of three methods to meet the TV/DTV protection requirements, subject to

Commission approval: (1) Utilize the geographic separation specified in the tables referenced in this rule section; (2) submit an engineering study justifying the proposed separations based on the actual parameters of the land mobile station and the actual parameters of the TV/DTV station(s) it is trying to protect; (3) submit an engineering study justifying the proposed separations based on the parameters of the land mobile station and the parameters, including authorized and/or applied-for facilities, of the TV/DTV station(s) it is trying to protect; or, (4) obtain written concurrence from the applicable TV/DTV station(s). If this method is chosen, a copy of the agreement must be submitted with the application.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–24836 Filed 11–5–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

SUMMARY: Notice is hereby given of the final approval of proposed information collection by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). Board–approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83–Is and supporting statements and approved collection of information instrument(s) are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer –Cindy Ayouch—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3829).

OMB Desk Officer–Mark Menchik—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503, or email to mmenchik@omb.eop.gov.

Final approval under OMB delegated authority of the extension for three years, with revision, of the following report:

Report title: Consolidated Bank Holding Company Report of Equity Investments in Nonfinancial Companies.

Agency form number: FR Y–12.

OMB Control number: 7100–0300.

Frequency: Quarterly and semi–annually.

Reporters: Bank holding companies.

Annual reporting hours: 1,696 hours.

Estimated average hours per response: 16 hours.

Number of respondents: 28.

General description of report: This information collection is mandatory pursuant to Section 5(c) of the Bank Holding Company Act (12 U.S.C. 1844(c)) and data may be exempt from disclosure pursuant to Sections (b)(4) and (b)(8) of the Freedom of Information Act (5 U.S.C. 552(b)(4) and (b)(8)).

Abstract: The FR Y–12 was implemented as of September 30, 2001, in response to the Gramm–Leach–Bliley Act (GLB Act) of 1999, which broadened the scope of permissible investments in nonfinancial companies. The FR Y–12 collects information from certain domestic bank holding companies (BHCs) on their investments in nonfinancial companies on three schedules: Type of Investments, Type of Security, and Type of Entity within the Banking Organization. Large BHCs report on a quarterly basis, and small BHCs report semi–annually.

Current Actions: The Federal Reserve will revise the FR Y–12 reporting form and instructions to enhance the Federal Reserve's ability to monitor and supervise the private equity merchant banking (PEMB) activity across all BHCs for purposes of safety and soundness. The revisions to the FR Y–12 include (1) modifying the reporting threshold to reduce regulatory burden; (2) adding a memorandum item to Schedule A to collect data on ''Investments managed for others;'' (3) adding a memorandum item to Schedule B to identify whether the BHC holds any warrants received in connection with equity investment activity; (4) simplifying Schedule C by eliminating three columns used to collect data on direct investments in public entities, direct investments in nonpublic entities, and all indirect investments; and (5) adding Schedule D ''Nonfinancial Investment Transactions During the Reporting Period'' to collect information on all PEMB activity of the BHC during the reporting period and to better reflect the industry's focus on monitoring ''cash in and cash out.'' The Federal Reserve will defer implementation of the revised FR Y–12 until March 31, 2005, to coincide with the implementation of proposed revisions to the FR Y–9C and FR Y–9SP reports (OMB No. 7100–0128).

The Federal Reserve received one comment letter from a banking trade association. The comment is summarized and addressed below.

Addition of Memorandum Item ''Investments managed for others''

The Federal Reserve proposed to add a memorandum item to collect information on the extent of the BHC's role in managing private equity investments for others. This item would be used to collect new information on the extent of the institution's PEMB operations. Significant investment funds management activity could increase the inherent legal and reputational risk of the institution.

The commenter opposed the addition of this memorandum item for three reasons. First, the commenter felt the proposed instructions did not adequately define the scope of the item and questioned whether any such investments managed through a BHC's trust, brokerage or mutual fund businesses were to be included. The Federal Reserve clarified the instructions for memorandum item 4 by defining the BHCs management relationship ''as serving as a general partner in a limited partnership or performing a similar function in a private equity fund.'' The Federal Reserve also added an exclusion for investments managed through a bank trust department in a fiduciary capacity. Second, the commenter felt the collection of these data would be burdensome as there is not typically a standard reporting category for such business lines. During the development stage of modifying the FR Y–12, the Federal Reserve consulted with several large BHCs on the proposed addition of this item and concluded from the responses received that this information was readily available for reporting purposes and should not be burdensome. Third, the commenter felt that reporting this item would be outside the scope of the FR Y–12 because the form collects information on the types of investments made by BHCs and their subsidiaries in nonfinancial companies. The Federal Reserve believes that the collection of these data are necessary to accurately and efficiently conduct off–site monitoring of information regarding the extent of the institution's PEMB operation.

Addition of a Schedule for ''Nonfinancial Investment Transactions During the Reporting Period''

The Federal Reserve proposed adding a schedule that would collect data on all PEMB activity of the BHC, on an aggregate basis, for the reporting period. Columns A and B would collect acquisition cost and carrying value for all purchases, returns of capital, and net changes in valuation made for all direct investments. Columns C and D would collect data on the same items for all transactions involving indirect (fund) investments. These data would provide valuable insight into the scope of activity on a transaction basis and, when reviewed over time, would provide critical trend data useful for industry studies as well as BHC supervisory monitoring.

The commenter strongly opposed the addition of the schedule and felt the intended use of the data was unclear. The commenter also stated that the reasons provided for collecting the data did not fully justify the costs to the industry. The Federal Reserve disagreed with this comment stating that these data will enhance off–site monitoring of PEMB activity and will better facilitate risk–focused supervision by providing supervisors with significant insights into the level of activities that are not necessarily discernible by reviewing only aggregate balances.

The commenter stated that these data currently are not readily available and providing such detail would require the implementation of new tracking systems to capture the detail, as proposed. The Federal Reserve believes the items should be readily available on a BHC's internal tracking systems of associated cash flows. In meeting with several large BHCs, company representatives emphasized that PEMB participants track commitments to invest, cash flows associated with new investments, and the return of cash related to existing investments in order to calculate internal rates of return. The new items in this schedule would require respondents to slot the cash flows and valuation adjustments.

Revised Instructions for Acquisition Costs

The commenter stated that the definition for ''Acquisition Costs'' was unclear and conflicted with previous guidance. The Federal Reserve clarified the glossary entry for Acquisition Costs in the instructions.

Effective Date

The commenter urged the Federal Reserve to delay the implementation date of these revisions for a minimum of two quarters. The commenter felt the additional time would be necessary for BHCs to implement changes to their processes and other resources that would be required to fulfill the new filing requirements. The Federal Reserve believes that the time allotted for implementing the proposed revisions is sufficient because of modifications to the proposal for ''Investments managed for others'' and because BHCs have until March 2005 before the revised reporting goes into effect.

Board of Governors of the Federal Reserve System, November 3, 2004.

Jennifer J. Johnson

Secretary of the Board.

[FR Doc. 04–24843 Filed 11–5–04; 8:45 am]

BILLING CODE: 6210–01–S

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 22, 2004.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. Rex Lee Davis, Emily Medlock Davis, Alan Rex Davis, Beverly Renee Davis, Stephen Paul Davis, and Tammy Renee Davis, all of Boaz, Alabama; to acquire additional voting shares of Peoples Independent Bancshares, Inc., and thereby indirectly acquire voting shares of Peoples Independent Bank, Boaz, Alabama.

Board of Governors of the Federal Reserve System, November 2, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–24791 Filed 11–5–04; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality Notice of Meeting

In accordance with section 10(d) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2), announcement is made of a Health Care Policy and Research Special Emphasis Panel (SEP) meeting.

The Health Care Policy and Research Special Emphasis Panel is a group of experts in fields related to health care research who are invited by the Agency for Healthcare Research and Quality (AHRQ), and agree to be available, to conduct on an as needed basis, scientific reviews of applications for AHRQ or other Department support. Individual members of the Panel do not attend regularly-scheduled meetings and do not serve for fixed terms or long period of time. Rather, they are asked to participate in particular review meetings which require their type of expertise.

Substantial segments of the upcoming SEP meeting listed below will be closed to the public in accordance with the Federal Advisory Committee Act, section 10(d) of 5 U.S.C., Appendix 2 and 5 U.S.C. 552b(c)(6). Grant applications for Adolescent Family Life Research Grant (R01) Awards are to be reviewed and discussed at this meeting. These discussions are likely to reveal personal information concerning individuals associated with the applications. This information is exempt from mandatory disclosure under the above-cited statutes.

SEP Meeting on: Adolescent Family Life Research Grant (R01) Awards.

Date: December 9–10, 2004 (open on December 9 from 8 a.m. to 8:10 a.m. and closed for the remainder of the meeting).

Place: John Eisenberg Building, 540 Gaither Road, Brighton Dam Room, Rockville, MD 20850.

Contact Person: Anyone wishing to obtain a roster of members, agenda or minutes of the nonconfidential portions of this meeting should contact Mrs. Bonnie Campbell, Committee Management Officer, Office of Research Review, Education and Policy, AHRQ, 540 Gaither Road, Room 2038, Rockville, Maryland 20850, Telephone (301) 427–1554.

Agenda items for this meeting are subject to change as priorities dictate.

Dated: November 2, 2004.

Carolyn M. Clancy,

Director.

[FR Doc. 04–24815 Filed 11–5–04; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Dissemination Research on Fall Prevention: Development and Testing of an Exercise Program Package To Prevent Older Adult Falls

Announcement Type: New.

Funding Opportunity Number: CEO5–029.

Catalogue of Federal Domestic Assistance Number: 93.136.

Key Dates: Letter of Intent Deadline: December 8, 2004.

Application Deadline: February 7, 2005.

Executive Summary: This research study is a Cooperative Agreement that seeks to: (a) Translate an effective exercise fall intervention for older adults into a program package that can be delivered to community-based organizations for implementation with older adults, and (b) develop and implement dissemination research that is focused on reach and uptake (adoption), feasibility for the organizations offering the program and the individual participants, fidelity by the provider to the key elements that made the original intervention effective, and acceptability of the program to the organizations and to the older adult recipients.

Development of the program package will involve developing multiple package components, including the materials needed to: (a) Recruit organizations and individuals, (b) train program providers, and (c) deliver and implement the program in a non-research setting.

The Principal Investigator (PI) is expected to seek collaboration with and feedback from relevant experts such as representatives from the administrations of senior service organizations; technical experts in areas such as health care, physical therapy, and occupational therapy; health education specialists; and community-dwelling seniors. In addition, the PI may utilize video and other media experts.

As a result of this translation and dissemination research, future dissemination activities will be informed about strategies that may enhance reach; increase organizational uptake in diverse, non-research, community-based settings; improve provider fidelity to key elements in program delivery; and increase organizations' and older adults' acceptance of the fall prevention exercise program.

I. Funding Opportunity Description

Authority: This program is authorized under section 301(a) [42 U.S.C. 241(a)] of the Public Health Service Act, and section 391(a)[42 U.S.C. 280b(a)] of the Public Service Health Act, as amended.

Background: The problem of fall-related injuries among persons aged 65 and older is enormous—accounting for 11,623 deaths[1] and over 1.6 million non-fatal emergency department-treated injuries [1] each year. With a rapidly increasing older adult population, it is essential to address the problem of older adult falls. While physical activity provides many health benefits, certain types of exercise specifically address known fall risk factors by improving balance and lower body strength. The 2003 CMS-sponsored Rand Report on this topic showed that exercise interventions can reduce the rate of falls by 19 percent (pooled risk ratio: 0.81, [95 percent CI 0.72, 0.92]) [2]. While a number of exercise interventions have demonstrated effectiveness in a research setting, no researcher has taken the next steps: Translating the intervention into a program that retains the key elements that made the original research effective, implementing the program in a community setting, and conducting research to test dissemination factors such as uptake and acceptability of the program in a community-based setting.

References:

1. Centers for Disease Control and Prevention (CDC). Web-based Injury Statistics Query and Reporting System (WISQARS) [Online]. (2004). National Center for Injury Prevention and Control (NCIPC) and, CDC (producer). Available from: URL: *www.cdc.gov/ncipc/wisqars.* [Cited 26 July 2004].

2. Healthy Aging Initiative Evidence Reports. Falls Prevention Interventions in the Medicare Population. Rand Corporation, Contract Number 500–98–0281. Available from: URL: *www.cms.hhs.gov/healthyaging/fallspi.asp?*

Purpose: The purpose of the programs is to support research on translating an exercise intervention that rigorous research has shown is effective in reducing falls among older adults into a program; testing implementation of the program in a community setting; and conducting dissemination research focusing on reach, uptake (adoption), feasibility, fidelity of the implementation, and acceptability.

This program addresses the ''Healthy People 2010'' focus area of Injury and Violence Prevention. Specifically, it addresses Objective 15–27, to reduce deaths from falls, and Objective 15–28, to reduce hip fractures among people age 65 and older.

Measurable outcomes of the program will be in alignment with one (or more) of the following performance goal(s) for (NCIPC):

1. Increase the capacity of injury prevention and control programs to address the prevention of injuries and violence.

2. Conduct a targeted program of research to reduce injury-related death and disability.

Outcomes also should be in alignment with the NCIPC Research Agenda priority areas to disseminate effective interventions to reduce injuries at home and in the community and to reduce older adult falls and fall-related injuries. Specifically, ''Evaluate strategies for widespread dissemination and implementation of effective interventions to reduce injuries at home and in the community.'' (NCIPC Research Agenda, p19); ''Research has demonstrated that many interventions at home and in the community work. * * * Encouraging widespread adoption of these efficacious interventions calls for dissemination research. * * * Demonstration programs should be developed and evaluated to determine the effectiveness of various persuasive communications techniques, audience segmentation, tailored messaging, and collaboration models to speed diffusion and widen adoption.'' (NCIPC Research Agenda, p19)

''[Pertaining to older adult falls:] Research is needed to develop and evaluate approaches to implementing and disseminating effective fall prevention programs in the community. * * * This includes research to identify the best formats and channels for delivering interventions to ensure that older adults adopt them.'' (NCIPC Research Agenda, p22)

Available from: URL: *www.cdc.gov/ncipc/pub-res /research_ agenda/agenda.htm.*

Outcome measures of interest will include:

1. Reach and uptake (adoption) at organizational and individual levels;

2. Fidelity to the key elements when the program is implemented;

3. Feasibility at organizational and individual levels; and

4. Acceptability at the organizational and individual levels.

Research Objectives:

Note: Applicants will be expected to identify an effective exercise intervention to reduce older adult falls. Examples of such interventions may be found in:

Healthy Aging Initiative Evidence Reports. Falls Prevention Interventions in the

Medicare Population. Rand Corporation, Contract Number 500–98–0281. Available from: URL: *www.cms.hhs.gov/healthyaging/fallspi.asp?*

Gillespie LD, Gillespie WJ, Robertson MC et al. Interventions for preventing falls in elderly people (Cochrane Review). In: The Cochrane Library, Issue 3, 2004. Chinchester, UK: John Wiley & Sons, Ltd.

This Announcement does not include dissemination of exercise programs to nursing home residents or frail, home-bound older adults where medical screening and follow up, or medical monitoring, is required.

Specific interventions that fit the requirements of this Announcement and have credible evidence of effectiveness based on rigorous research trials include:

(a) Tai Chi tailored for community-dwelling older adults offered as group classes.

(b) Tai Chi group classes plus related activities undertaken by individuals in their homes.

(c) Community-based group exercise classes focusing on strength, balance, and endurance training.

(d) Community-based group exercise classes focusing on strength, balance, and endurance training, including individualized programs.

1. To translate an effective exercise fall intervention for older adults into a program that can be implemented in community settings.

Additional objectives are to translate the intervention into a program; create a program package of materials; recruit organizations for testing; implement the program in a community setting; evaluate the results of the implementation with particular emphasis on dissemination research questions of reach, uptake (adoption), feasibility, and implementation fidelity and acceptability; refine the fall prevention program, recruit a second organization and implement the revised program; and produce a final package that can be broadly disseminated and used nationwide. (**Note:** broad dissemination and nationwide use is not a part of this Announcement).

2. To identify the key elements that made the intervention effective. In the absence of a component analysis which is rare in behavioral studies, the original investigators will need to derive these key elements based on their publications, notes, recall, and judgment. They will likely need to consult with their former research project staff and others, consider the underlying theoretical models used in their intervention design, and examine the data that was obtained in their study. Applicants other than the original investigators will need to demonstrate the ability to carry out these processes.

3. To conduct research on translating and disseminating effective exercise fall interventions into programs that can be implemented in community settings.

Research questions to be addressed might include:

(a) Reach—Who are you most interested in reaching and how many persons from this target audience will be reached?

(b) Uptake (adoption)—Do organizations and individuals who learn of the program consider using it, actually use it, and use it fully? What barriers and facilitators to use can be identified?

(c) Feasibility—How much time, money, staff, space and other resources are needed vs. what is available?

(d) Fidelity—Are the key components that made the intervention effective maintained when the program is implemented?

(e) Acceptability—How acceptable is the intervention to those it will impact; *e.g.*, are cultural norms taken into account? Is the program acceptable at organizational and individual levels?

(f) Adaptability—Can the intervention vary, as needed depending on the audience?

Translational research has been utilized to develop programs in topic areas such as HIV/AIDS. Two examples of this type of research are:

1. Kraft JM. Mezoff JS. Sogolow ED. Neumann MS. Thomas PA. A technology transfer model for effective HIV/AIDS interventions: science and practice. AIDS Education & Prevention. 12(5 Suppl):7–20, 2000.

2. Sogolow ED. Kay LS. Doll LS. Neumann MS. Mezoff JS. Eke AN. Semaan S. Anderson JR. Strengthening HIV prevention: application of a research-to-practice framework. AIDS Education & Prevention. 12(5 Suppl):21–32, 2000.

Additional examples of translation and dissemination research are ongoing at the National Cancer Institute, National Institute of Mental Health, and National Institute on Drug Abuse, among others. Examples may be found at URLs:

www.nci.nih.gov/search/results.aspx
www.nimh.nih.gov/dsir/dirp.cfm
www.nimh.nih.gov/scientificmeetings/chddimtg.cfm
www.drugabuse.gov/CTN/whatisblending.html

Although not specific to fall prevention, effective evidence-based exercise interventions have been identified and these may help inform the research translation process. These interventions have been described in:

1. Task Force on Community Preventive Services. Recommendations to increase physical activity in communities. American Journal of Preventive Medicine, 2002; 22: 67–72.

2. Kahn, EB, Ramsey, LT, Brownson, RC, *et al.* The effectiveness of interventions to increase physical activity: a systematic review. American Journal of Preventive Medicine, 2002, 22:73–107.

Rigorous evaluations are needed to determine the effectiveness of interventions, programs, and policies addressing the prevention of violence. Experimental designs are strongly encouraged. However, NCIPC will consider other evaluation designs, if justified, as required by the needs and constraints in a particular setting.

For effective interventions, it is possible to do cost-effectiveness studies. To be comparable to other cost effectiveness studies, they should follow the guidelines in the following references:

Gold MR, Siegel JE, Russell LB, Weinstein MC. Cost-Effectiveness in Health and Medicine. New York: Oxford University Press, 1996.

Haddix AC, Teutsch SM, Corso, PS. Prevention Effectiveness: A Guide to Decision Analysis and Economic Evaluation. Second Edition. New York: Oxford University Press, 2003.

Activities:

Awardee activities for this program are as follows:

For the selected effective exercise intervention, a series of activities will take place over the three years of the Cooperative Agreement:

Year One: Planning and Development

- Identify those key elements that made this intervention effective.
- Establish an ad hoc expert group to guide and support development of a draft fall prevention program package.
- Develop a curriculum (including a variety of educational materials such as audio, video, and print) that translates these key elements into a community-based exercise program.;
- Develop materials for recruitment of organizations and individuals.;
- Develop materials for training providers of the exercise program, including criteria-based performance standards.
- Create the draft program package of materials;
- Develop a research protocol and submit for Institutional Review Board (IRB) review by all cooperating institutions participating in the research study.;
- Develop and pilot test evaluation instruments to assess reach, uptake (adoption), feasibility, fidelity, and acceptability.

• Recruit (two to three) community-based organizations for implementation. This applies only where organizational settings are relevant such as where the program takes place in a senior center.

• Revise materials pertaining to recruitment of organizations.

Year Two: Implementation

• Recruit older adults into the program.;

• Train personnel.;

• Implement the program in one community setting. Provide the program to a small number of older adults (less than eight), for a predetermined period depending on the program design (*e.g.*, two to three months).

• Make minor revisions to the provider materials as needed and repeat implementation in same setting two to three times.

• Revise all materials.

• Recruit older adults into the program in a new setting, train personnel, and implement the program following guidance above.

• In all instances, employ the evaluation tools to collect data required to address the research questions previously listed under ''Research Objectives.''

Year Three: Evaluation

• Evaluate the dissemination using data collected during Year Two; analyze reach, uptake (adoption), feasibility, implementation fidelity, and acceptability;

• Use findings to revise and refine the program package.

• Incorporate dissemination research results to produce a final program package that will enable the program to be broadly disseminated in various community settings nationwide.

• Prepare a paper for publication in a peer review practice journal.

In a cooperative agreement, CDC staff is substantially involved in program activities, above and beyond routine grant monitoring.

CDC Activities for this program are as follows:

1. Provide up-to-date scientific information, technical assistance, and guidance in the design and conduct of the research when and where needed or requested.

2. Provide to awardees:

(a) Scientific information and guidance in translation and dissemination research design, data collection methods, and data quality assurance when requested;

(b) If necessary, technical assistance in developing data collection instruments and methods for data management;

(c) If necessary, guidance in developing a research protocol for annual Institutional Review Board (IRB) review for use by all cooperating institutions participating in the research study; and

(d) Technical assistance and guidance in analysis and dissemination of results including the preparation of manuscripts when required.

3. The CDC IRB will review the protocol initially and on at least an annual basis until the research study, including analyses, is completed and will assist in ensuring human subjects assurances are in place as needed.

4. Monitor and evaluate the scientific and operational accomplishments of the project. This may be accomplished through periodic site visits, telephone calls, electronic communication, and bi-annual report.

5. Convene meetings of recipients for the exchange of information.

II. Award Information

Type of Award: Cooperative Agreement. CDC involvement in this program is listed under ''CDC Activities'' above.

Mechanism of Support: U49.

Fiscal Year Funds: 2005.

Approximate Total Funding: $350,000 (This amount is an estimate, and is subject to availability of funds.)

Approximate Number of Awards: One.

Approximate Average Award: $350,000 (This amount is for the first 12-month budget period and includes both direct and indirect costs. Approximately $1,050,000 total is available over the entire three years of the project period.)

Floor of Award Range: None.

Ceiling of Award Range: $350,000 (This ceiling is for the first 12-month budget period and includes both indirect and direct costs.) If the budget proposed exceeds this amount it will not be eligible for review and will be discarded.

Anticipated Award Date: September 1, 2005.

Budget Period Length: 12 months.

Project Period Length: Three years.

Throughout the project period, CDC's commitment to continuing the awards will be dependent on the availability of funds, evidence of satisfactory progress by the recipient (as documented in required reports), and the determination that continued funding is in the best interest of the Federal Government.

III. Eligibility Information

III.1. Eligible Applicants

Applications may be submitted by public and private nonprofit and for profit organizations and by governments and their agencies, such as:

• Research institutions.
• Universities.
• Colleges.
• Public nonprofit organizations.
• Private nonprofit organizations.
• For profit organizations.
• Small, minority, women-owned businesses.
• Hospitals.
• Community-based organizations.
• Faith-based organizations.
• Federally recognized Indian tribal governments.
• Indian tribes.
• Indian tribal organizations.
• State and local governments or their Bona Fide Agents (this includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Marianna Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau).

A Bona Fide Agent is an agency/organization identified by the state as eligible to submit an application under the state eligibility in lieu of a state application. If you are applying as a bona fide agent of a state or local government, you must provide a letter from the state or local government as documentation of your status. Place this documentation behind the first page of your application form.

III.2. Cost Sharing or Matching

Matching funds are not required for this program.

III.3. Other

If you request a funding amount greater than the ceiling of the award range, your application will be considered non-responsive, and will not be entered into the review process. You will be notified that your application did not meet the submission requirements.

Special Requirements:

If your application is incomplete or non-responsive to the requirements listed in this section, it will not be entered into the review process. You will be notified that your application did not meet submission requirements.

• Late applications will be considered non-responsive. See section ''IV.3. Submission Dates and Times'' for more information on deadlines.

• In order to plan the application review more effectively and efficiently, CDC requires that you submit a Letter of Intent (LOI) to apply for this program. See ''IV.3. Submission Dates and Times'' for more information on deadlines.

• Application must demonstrate credible evidence of the effectiveness in a research study of any proposed intervention or that no negative effects have been demonstrated because of the intervention.

• Application must include an exercise program that has been subject to rigorous research. Rigorous research does not include studies that focus exclusively or primarily on participant satisfaction rather than falls as the primary outcome.

• Participants must be independent, community dwelling older adults (for example, the applicant should not propose to disseminate via health care providers to older adults who reside in assisted living or nursing homes).

• The applicant must provide evidence such as publications from peer reviewed journals (in the appendix of the application) that demonstrate expertise in:

(a) Designing and conducting original intervention research on exercise for fall prevention; and/or

(b) Conducting translation/dissemination research.

• If the applicant is not strong in both areas, the applicant must demonstrate enhanced capacity to perform the translation and dissemination research by including documentation of potential consultants or collaborators who have the relevant other area of expertise.

• The applicant must provide documentation of collaborating experts (*e.g.*, administrators of senior centers, technical experts, and community-based seniors) describing the areas of expertise and indicating willingness to collaborate and areas of potential collaboration.

• **Note:** Title 2 of the United States Code Section 1611 states that an organization described in Section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, or loan.

Individuals Eligible to Become Principal Investigators: Any individual with the skills, knowledge, and resources necessary to carry out the proposed injury research as outlined above is invited to work with their institution to develop an application for support. Individuals from underrepresented racial and ethnic groups as well as individuals with disabilities are always encouraged to apply for CDC programs.

PIs must demonstrate that they have the authority to carry out this research. For example, if a PI is affiliated with a university, he or she must be a faculty member and not a visiting scientist.

PIs are encouraged to submit only one proposal in response to this program announcement. With few exceptions (*e.g.*, research issues needing immediate public health attention), only one application per principal investigator will be funded under this announcement.

IV. Application and Submission Information

IV.1. Address To Request Application Package

To apply for this funding opportunity, use application form PHS 398 (OMB number 0925–0001 rev. 5/2001). Forms and instructions are available in an interactive format on the CDC Web site, at the following Internet address: *www.cdc.gov/od/pgo/forminfo.htm.* Forms and instructions are also available in an interactive format on the National Institutes of Health (NIH) Web site at the following Internet address: *http://grants.nih.gov/grants/funding/phs398/phs398.html*

If you do not have access to the Internet or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) staff at: 770–488–2700. Application forms can be mailed to you.

IV.2. Content and Form of Application Submission

Letter of Intent (LOI):

Your LOI must be written in the following format:

• Maximum number of pages: 25 pages.

• Font size: 12-point unreduced.

• Double-spaced.

• Paper size: 8.5 by 11 inches.

• Page margin size: One inch.

• Printed only on one side of page.

• Written in plain language, avoid jargon.

• Your LOI must contain the following information:

Descriptive title of the proposed research

○ Name, address, E-mail address, telephone number, and FAX number of the Principal Investigator.

○ Names of other key personnel.

○ Participating institutions.

○ Number and title of this Announcement.

Application: Follow the PHS 398 application instructions for content and formatting of your application. If the instructions in this announcement differ in any way from the PHS 398 instructions, follow the instructions in this announcement. For further assistance with the PHS 398 application form, contact PGO–TIM staff at 770–488–2700, or contact GrantsInfo, Telephone (301) 435–0714, E-mail: *GrantsInfo@nih.gov.*

Your research plan should address activities to be conducted over the entire project period.

You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the Federal government. Your DUNS number must be entered on line 11 of the face page of the PHS 398 application form. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *www.dunandbradstreet.com* or call 1–866–705–5711.

For more information, see the CDC Web site at: *http://www.cdc.gov/od/pgo/funding/pubcommt.htm.*

This announcement uses the non-modular budgeting format.

In addition to the instructions provided in the PHS 398 for writing the Description on page 2 of the PHS 398 form, structure the Description using the following components: (1) Statement of the problem, (2) Purpose of the proposed research, (3) Methods, including study population, data sources and any statistical analyses to be performed, and (4) Implications for prevention.

The Description (abstract) should answer the following questions:

• Does the Description state the hypothesis?

• Does the Description describe the objectives and specific aims?

• Does the Description state the importance of the research and how it is innovative?

• Does the Description outline the methods that will use to accomplish the goals?

• Is the language of the Description simple and easy to understand for a broad audience?

Additional requirements that may require you to submit additional documentation with your application are listed in section ''VI.2. Administrative and National Policy Requirements.''

Additional documentation that may be required for submission with your application is listed in section ''VI.2. Administrative and National Policy Requirements.''

IV.3. Submission Dates and Times

Letter of Intent (LOI): December 8, 2004.

CDC requires that you submit a LOI if you intend to apply for this program. Although the LOI will not be evaluated, and does not enter into review of your

subsequent application, failure to submit a timely LOI will preclude you from submitting an application.

Application deadline date: February 7, 2005.

Explanation of deadlines: LOIs and applications must be received in the CDC Procurement and Grants Office by 4 p.m. Eastern Time on the deadline date. If you submit your LOI or application by the United States Postal Service or commercial delivery service, you must ensure that the carrier will be able to guarantee delivery by the closing date and time. If CDC receives your submission after closing due to: (1) Carrier error when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, you will be given the opportunity to submit documentation of the carrier's guarantee. If the documentation verifies a carrier problem, CDC will consider the submission as having been received by the deadline.

This announcement is the definitive guide on LOI and application content, submission address, and deadline. It supersedes information provided in the application instructions. If your application is not received in the CDC Procurement and Grants office by the deadline above, it will not be eligible for review, and will be discarded. You will be notified that you did not meet the submission requirements.

CDC will not notify you upon receipt of your submission. If you have a question about the receipt of your LOI or application, first contact your courier. If you still have a question, contact the PGO–TIM staff at: 770–488–2700. Before calling, please wait two to three days after the submission deadline. This will allow time for submissions to be processed and logged.

IV.4. Intergovernmental Review of Applications

Your application is subject to Intergovernmental Review of Federal Programs, as governed by Executive Order (EO) 12372. This order sets up a system for state and local governmental review of proposed federal assistance applications. You should contact your state single point of contact (SPOC) as early as possible to alert the SPOC to prospective applications, and to receive instructions on your state's process. Click on the following link to get the current SPOC list: *http://www.whitehouse.gov/omb/grants/spoc.html.*

IV.5. Funding Restrictions

Restrictions, which must be taken into account while writing your budget, are as follows:

- Funds relating to the conduct of research will not be released until the appropriate assurances and Institutional Review Board approvals are in place. Sufficient time and resources should be devoted to preparing an acceptable IRB Protocol package. Funds for human subjects recruitment and human subjects research will be withheld until appropriate IRB approval has been obtained.
- Reimbursement of pre-award costs is not allowed.

If you are requesting indirect costs in your budget, you must include a copy of your indirect cost rate agreement. If your indirect cost rate is a provisional rate, the agreement should be less than 12 months of age.

IV.6. Other Submission Requirements

LOI Submission Address: Submit your LOI by express mail, delivery service, fax, or E-mail to:

Address for Express Mail or Delivery Service: NCIPC Extramural Resources Team, CDC, National Center for Injury Prevention and Control, 2945 Flowers Road, Yale Building, Room 2054, Atlanta, Georgia 30341.

Address for U.S. Postal Service Mail: NCIPC Extramural Resources Team, CDC, National Center for Injury Prevention and Control, 4770 Buford Hwy, NE., Mailstop K–62, Atlanta, GA 30341.

Telephone: 770–488–4037.
Fax: 770–488–1662.
Email: *cipert@cdc.gov.*

Application Submission Address: Submit the original and one hard copy of your application by mail or express delivery service to: Technical Information Management #CE05–029, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341.

At the time of submission, four additional copies of the application, and four copies of all appendices must be sent to:

Address for Express Mail or Delivery Service: NCIPC Extramural Resources Team, CDC, National Center for Injury Prevention and Control, 2945 Flowers Road, Yale Building, Room 2054, Atlanta, Georgia 30341.

Address for U.S. Postal Service Mail: NCIPC Extramural Resources Team, CDC, National Center for Injury Prevention and Control, 4770 Buford Hwy, NE., Mailstop K–62, Atlanta, GA 30341.

Applications may not be submitted electronically at this time.

V. Application Review Information

V.1. Criteria

Applicants are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the Cooperative Agreement. Measures of effectiveness must relate to the performance goals stated in the ''Purpose'' section of this announcement. Measures must be objective and quantitative and must measure the intended outcome. These measures of effectiveness must be submitted with the application and will be an element of evaluation.

The goals of CDC-supported research are to advance the understanding of biological systems, improve the control and prevention of disease and injury, and enhance health. In the written comments, reviewers will be asked to evaluate the application in order to judge the likelihood that the proposed research will have a substantial impact on the pursuit of these goals.

The scientific review group will address and consider each of the following criteria equally in assigning the application's overall score, weighting them as appropriate for each application. The application does not need to be strong in all categories to be judged likely to have major scientific impact and thus deserve a high priority score. For example, an investigator may propose to carry out important work that by its nature is not innovative but is essential to move a field forward.

The review criteria are as follows:

Significance: Does this study address an important problem? If the aims of the application are achieved, how will scientific knowledge be advanced? What will be the effect of these studies on the concepts or methods that drive this field? Will study advance scientific knowledge of how to disseminate community-based interventions for preventing older adult fall-related injuries.

Approach: Are the conceptual framework, design, methods, and analyses adequately developed, well integrated, and appropriate to the aims of the project? Does the applicant acknowledge potential problem areas and consider alternative tactics? To what extent do the applicant's work plan and timetable include development of program package materials, specification of relevant experts and agreements with them, recruitment of organizations, staffing including trainer, training for providers, program delivery; and dissemination research design and implementation.

Innovation: Does the project employ novel concepts, approaches or methods? Are the aims original and innovative? Does the project challenge existing paradigms or develop new methodologies or technologies?

Investigator: Is the investigator appropriately trained and well suited to carry out this work? Is the work proposed appropriate to the experience level of the principal investigator and other researchers (if any)? Does the PI have the authority to conduct the project?

Environment: Does the scientific environment in which the work will be done contribute to the probability of success? Does the proposed experiments or study take advantage of unique features of the scientific environment or employ useful collaborative arrangements? Is there evidence of institutional support?

To what extent have the applicant and proposed collaborators documented:

a. Their history and current capacity to provide a leadership function in conducting translation/dissemination research of an exercise program package to reduce falls among older adults.

b. A willingness to partner with CDC so that the Applicant Activities and CDC Activities are undertaken in a collaborative fashion as intended for Cooperative Agreement recipients. This would include a willingness to attend and participate in technical assistance and planning meetings and related travel to Atlanta coordinated by the CDC for all Cooperative Agreement recipients.

c. Their organizational capacity to realize the objectives of the Cooperative Agreement.

d. Their management operation, structure and/or organization. An organizational chart of the applicant's organization should be included as an appendix. Additionally, the applicant should include within their management plan the specific role and mechanisms to be established to ensure effective coordination, communication and shared decision making among the involved agencies/organizations.

e. A staffing plan for the project, noting existing staff as well as additional staffing needs. The responsibilities of individual staff members including the level of effort and allocation of time for each project activity by staff position should be included. If relevant, the specific staff positions within other involved state level agencies, both in-kind and funded, should be described.

f. CVs for the PI and co-PIs (if any), and CVs, resumes, and/or biosketches for current, proposed, and in-kind staff, and position descriptions for all proposed positions to be funded under this cooperative agreement) should be included as an appendix. This should include the use of consultants, as appropriate.

Protection of Human Subjects from Research Risks: Does the application adequately address the requirements of Title 45 CFR Part 46 for the protection of human subjects? This will not be scored; however, an application can be disapproved if the research risks are sufficiently serious and protection against risks is so inadequate as to make the entire application unacceptable.

Applicants should consider the possible need for IRB and/or OMB submissions early in the Cooperative Agreement and plan appropriately for their completion to avoid delays and restriction of funds.

Inclusion of Women and Minorities in Research: Does the application adequately address the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research? This includes: (1) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation; (2) The proposed justification when representation is limited or absent; (3) A statement as to whether the design of the study is adequate to measure differences when warranted; and (4) A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

Inclusion of children as participants in research involving human subjects: The NIH maintains a policy that children (*i.e.*, individuals under the age of 21) must be included in all human subjects research, conducted or supported by the NIH, unless there are scientific and ethical reasons not to include them. This policy applies to all initial (Type 1) applications submitted for receipt dates after October 1, 1998. NCIPC has adopted this policy for this announcement.

All investigators proposing research involving human subjects should read the ''NIH Policy and Guidelines'' on the inclusion of children as participants in research involving human subjects that is available at: *http://grants.nih.gov/grants/funding/children/children.htm.*

Budget: The reasonableness of the proposed budget and the requested period of support in relation to the proposed research.

V.2. Review and Selection Process

Applications will be reviewed for completeness by the Procurement and Grants Office (PGO), and for responsiveness by the National Center for Injury Prevention and Control. Incomplete applications and applications that are non-responsive to the eligibility criteria will not advance through the review process. Applicants will be notified that their application did not meet submission requirements.

Applications that are complete and responsive to the announcement will be evaluated for scientific and technical merit by an appropriate peer review group or charter study section convened by the National Center for Injury Prevention and Control in accordance with the review criteria listed above. As part of the initial merit review, all applications may:

- Undergo a process in which only those applications deemed to have the highest scientific merit by the review group, generally the top half of the applications under review, will be discussed and assigned a priority score.
- Receive a written critique.
- Applications deemed to have the highest scientific merit will receive a second programmatic level review by the Science and Program Review Subcommittee (SPRS) of the Advisory Committee for Injury Prevention and Control (ACIPC).

Applications that are complete and responsive may be subjected to a preliminary evaluation (streamline review) by an external peer review committee, the Special Emphasis Panel (SEP), to determine if the application is of sufficient and scientific merit to warrant further review by the SEP. CDC will withdraw from further consideration applications judged to be noncompetitive and promptly notify the Principal Investigator/Program Director and the official signing for the applicant organization. A dual review process will be used to further evaluate applications that are complete and responsive.

All awards will be determined by the Director of the NCIPC based on priority scores assigned to applications by the primary review committee SEP, recommendations by the external secondary review committee of the Science and Program Review Subcommittee of the Advisory Committee for Injury Prevention and Control (ACIPC), consultation with NCIPC senior staff, and the availability of funds.

The primary review will be a peer review conducted by the SEP. A committee of reviewers with appropriate expertise will review all

applications for scientific merit using current National Institutes of Health (NIH) criteria (a scoring system of 100–500 points) to evaluate the methods and scientific quality of the application. All categories are of equal importance, however, the application does not need to be strong in all categories to be judged likely to have a major scientific impact.

The secondary review will be conducted by the Science and Program Review Subcommittee (SPRS) of the Advisory Committee for Injury Prevention and Control (ACIPC). ACIPC Federal agency experts will be invited to attend the secondary review and will receive modified briefing books (*i.e.*, abstracts, strengths and weaknesses from summary statements, and project officer's briefing materials). ACIPC Federal agency experts will be encouraged to participate in deliberations when applications address overlapping areas of research interest so that unwarranted duplication in federally funded research can be avoided and special subject area expertise can be shared. The NCIPC Division Associate Directors for Science (ADS) or their designees will attend the secondary review in a similar capacity as the ACIPC Federal agency experts to assure that research priorities of the announcement are understood and to provide background regarding current research activities. Only SPRS members will vote on funding recommendations, and their recommendations will be carried to the entire ACIPC for voting by the ACIPC members in closed session. If any further review is needed by the ACIPC, regarding the recommendations of the SPRS, the factors considered would be the same as those considered by the SPRS.

The Subcommittee's responsibility is to develop funding recommendations for the NCIPC Director based on the results of the primary review, the relevance and balance of proposed research relative to the NCIPC programs and priorities, and to assure that unwarranted duplication of federally funded research does not occur. The secondary review Subcommittee has the latitude to recommend to the NCIPC Director, to reach over better-ranked proposals in order to assure maximal impact and balance of proposed research. The factors to be considered will include:

a. The results of the primary review including the application's priority score as the primary factor in the selection process.

b. The relevance and balance of proposed research relative to the NCIPC programs and priorities.

c. The significance of the proposed activities in relation to the priorities and objectives stated in ''Healthy People 2010'', the Institute of Medicine report, ''Reducing the Burden of Injury'', and the NCIPC Injury ''Research Agenda.''

d. Budgetary considerations including the extent to which the budget is reasonable, clearly justified, and consistent with the intended use of funds.

Award Criteria: Criteria that will be used to make award decisions during the programmatic review include:

- Scientific merit (as determined by peer review).
- Availability of funds.
- Programmatic priorities.
- Geographic diversity.
- Racial/ethnic diversity.
- Balance of intervention approaches and strategies.
- Consistency with research priorities in CDC's Injury Research Agenda.
- Availability of funds within categories of violence and injury funding streams.

V.3. Anticipated Announcement of Award Date

September 1, 2005

VI. Award Administration Information

VI.1. Award Notices

Successful applicants will receive a Notice of Grant Award (NGA) from the CDC Procurement and Grants Office. The NGA shall be the only binding, authorizing document between the recipient and CDC. The NGA will be signed by an authorized Grants Management Officer, and mailed to the recipient fiscal officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review by mail.

VI.2. Administrative and National Policy Requirements

45 CFR Part 74 and Part 92

For more information on the Code of Federal Regulations, see the National Archives and Records Administration at the following Internet address: *http://www.access.gpo.gov/nara/cfr/cfr-table-search.html*

The following additional requirements apply to this project:

- AR–1 Human Subjects Requirements.
- AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research.
- AR–6 Patient Care.
- AR–7 Executive Order 12372.
- AR–9 Paperwork Reduction Act Requirements.
- AR–10 Smoke-Free Workplace Requirements.
- AR–12 Lobbying Restrictions.
- AR–13 Prohibition on Use of CDC Funds for Certain Gun Control Activities.
- AR–14 Accounting System Requirements.
- AR–22 Research Integrity.
- AR–23 States and Faith-Based Organizations.
- AR–24 Health Insurance Portability and Accountability Act Requirements (HIPAA).

Additional information on AR–1 through AR–24 can be found on the CDC web site at the following Internet address: *http://www.cdc.gov/od/pgo/funding/ARs.htm.*

- AR–25 Release and Sharing of Data

Starting with the December 1, 2004 receipt date, all ''Requests for Applications (RFA)/Program Announcements (PA)'' soliciting proposals for individual research projects of $500,000 or more in total (direct and indirect) costs per year require the applicant to include a plan describing how the final research data will be shared/released or explain why data sharing is not possible. Details on data sharing and release, including information on the timeliness of the data and the name of the project data steward, should be included in a brief paragraph immediately following the Research Plan Section of the PHS 398 form. References to data sharing and release may also be appropriate in other sections of the application (*e.g.* background and significance, or human subjects requirements). The content of the data sharing and release plan will vary, depending on the data being collected and how the investigator is planning to share the data. The data sharing and release plan will not count towards the application page limit and will not factor into the determining scientific merit or the priority scoring. Investigators should seek guidance from their institutions on issues related to institutional policies, and local IRB rules, as well as local, state and federal laws and regulations, including the Privacy Rule.

Projects that involve the collection of information from 10 or more individuals and funded by cooperative agreement will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Further detail on the requirements for addressing data sharing in applications for NCIPC funding may be obtained by contacting NCIPC program staff or by visiting the NCIPC internet Web site at:

http://www.cdc.gov/ncipc/osp/sharing_policy.htm

VI.3. Reporting

You must provide CDC with an original, plus two hard copies of the following reports:

1. Interim progress report, (use form PHS 2590, OMB Number 0925–0001, rev. 5/2001 as posted on the CDC website) no less than 90 days before the end of the budget period. The progress report will serve as your non-competing continuation application, and must contain the following elements:

a. Current budget period activities objectives.

b. Current budget period financial progress.

c. New budget period program proposed activity objectives.

d. Budget.

e. Measures of effectiveness.

f. Additional requested information.

2. Financial status report, no more than 90 days after the end of the budget period.

3. Final financial and performance reports, no more than 90 days after the end of the project period.

These reports must be mailed to the Grants Management Specialist listed in the ''Agency Contacts'' section of this announcement.

VII. Agency Contacts

We encourage inquiries concerning this announcement.

For general questions, contact: Technical Information Management Section, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770–488–2700.

For scientific/research issues, contact: Karin Mack, Ph.D., National Center for Injury Prevention and Control, Centers for Disease Control and Prevention (CDC), 4770 Buford Hwy NE., Mailstop K–63, Atlanta, GA 30341. Telephone: 770–488–4389. E-mail: *KMack@cdc.gov.*

For questions about peer review, contact: Gwendolyn Cattledge, PhD, Scientific Review Administrator, Associate Director for Extramural Research,National Center for Injury Prevention and Control Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE., Mailstop K–02. Telephone: 770–488–1430. E-mail: *gxc8@cdc.gov.*

For financial, grants management, or budget assistance, contact: James Masone, Grants Management Specialist, CDC Procurement and Grants Office,2920 Brandywine Road, Atlanta, GA 30341. E-mail: *JMasone@cdc.gov.*

VIII. Other Information

This and other CDC funding opportunity announcements can be found on the CDC web site, Internet address: *www.cdc.gov.* Click on ''Funding'' then ''Grants and Cooperative Agreements.''

William P. Nichols,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 04–24715 Filed 11–5–04; 8:45 am]

BILLING CODE 4163–18–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Public Health Injury Surveillance and Prevention Program

Announcement Type: New.

Funding Opportunity Number: CE05–027.

Catalog of Federal Domestic Assistance Number: 93.136.

Key Dates: Letter of Intent Deadline: December 8, 2004.

Application Deadline: February 7, 2005.

I. Funding Opportunity Description

Authority: This program is authorized under sections 391(a) and 301(a) of the Public Health Service Act (PHS Act) and [42 U.S.C. 241(a) and 280b(a)], as amended.

Purpose: The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2005 funds for a cooperative agreement program for the development, enhancement, and integration of injury prevention and control and surveillance programs. The purpose of this program is to enable State public health agencies to develop or strengthen their organizational focus related to the prevention and control of injuries and to develop or strengthen their injury surveillance programs, particularly those with a focus on traumatic brain injury (TBI). This program addresses the ''Healthy People 2010'' focus area of Injury and Violence Prevention.

This announcement incorporates funding guidance for the following four components: Part A—the Integrated Core Injury Prevention and Control (ICIPC) Program, Part B—the Traumatic Brain Injury Extended Surveillance (TBIES) Program, Part C—the Traumatic Brain Injury Emergency Department (TBIED) Surveillance Program and Part D—the Traumatic Brain Injury Service Linkage (TBISL) Program. All States/territories must qualify and be recommended for funding for Part A (ICIPC) in order to be eligible for Part B (TBIES), Part C (TBIED) or Part D (TBISL). The ICIPC component supports the planning, implementation and integration of comprehensive injury prevention and control activities with basic injury surveillance activities. CDC defines injury program integration as a coordinated approach to reducing the incidence, morbidity and mortality of injury through surveillance and prevention efforts. The TBIES component supports efforts to provide expanded information on the incidence of traumatic brain injury. The TBIED component supports efforts to provide information on the incidence of mild traumatic brain injury treated in the emergency department. The TBISL component supports efforts to link individuals with traumatic brain injury to information about services.

Measurable outcomes of the program will be in alignment with one (or more) of the following performance goal(s) for the National Center for Injury Prevention and Control:

1. Increase the capacity of injury prevention and control programs to address the prevention of injuries and violence.

2. Monitor and detect fatal and non-fatal injuries.

This announcement is only for non-research activities supported by CDC/ATSDR. If research is proposed, the application will not be reviewed. For the definition of research, please see the CDC Web site at the following Internet address: *http://www.cdc.gov/od/ads/opspoll1.htm*

Activities

Part A: The Integrated Core Injury Prevention and Control (ICIPC) Program

In conducting activities to achieve the purpose of Part A of this program, the recipient will be responsible for incorporating the core components of a model State injury prevention program as outlined in the STIPDA: Safe States—2003 Edition. For a downloadable version of this document, please see the STIPDA Web site at the following Internet address: *http://www.stipda.org/safestates.htm.*Activities to be followed related to this requirement are described below. CDC has developed performance measures to evaluate recipients' progress in meeting ICIPC requirements. These performance measures are listed following each associated recipient activity. Activities are as follows:

- Building a Solid Infrastructure for Injury Prevention and Control.
  - Enhance comprehensive injury prevention and control infrastructure by acquiring key staff and associated resources to

coordinate and integrate comprehensive injury prevention and control efforts with statewide injury surveillance efforts. Performance will be measured by the extent to which the program has:

- Established the infrastructure for ICIPC including staff and other resources.
- Where appropriate, established written inter-agency/organizational agreements (*e.g.* Memoranda of Understanding) related to the roles, duties and responsibilities of shared staff.

○ Mobilize support and build partnerships by identifying, contacting and inviting potential key private, professional, voluntary and nonprofit injury prevention and control organizations, injury care providers, policymakers, consumers, payers, media, State and Federal agencies, surveillance, research and academic institutions, and others to become members of a new or existing State/territory-wide Injury Community Planning Group (ICPG). The role of the ICPG may include, but should not be limited to: Participation of members on injury prevention and control boards and commissions, providing information on the effectiveness of existing State policies related to injury prevention and control, and reviewing surveillance data to help identify and prioritize injury problems within the State. Performance will be measured by the extent to which the program and ICPG has developed and sought guidance from coalitions and partners, both within and outside of the organization and sustained these partnerships as ongoing entities by such activities as:

- Generating support and resources or securing funding to support Integrated Core Injury Prevention and Control Program (ICIPC) activities.
- Establishing written responsibilities for the ICPG (*e.g.*, in a mission statement or scope of work).
- Supporting the ICPG process by providing funding and resources.
- Assuring the ICPG has access to current information about injury prevention and control.
- Conducting one ICPG injury prevention symposium per budget year to develop specific marketing injury strategies for the comprehensive injury prevention plan. The symposium should include, but not be limited to: Regional/statewide representatives of key governmental and non-governmental agencies; media outlets; HMOs/MCOs; hospital/trauma/medical centers; state athletic associations; medical/professional organizations/associations and other stakeholders or gatekeepers.

○ Develop a State injury prevention and control plan, or where appropriate, conduct a systematic evaluation and update of the existing injury prevention and control plan. In each case, the recipient should work with their ICPG to assure that their plan includes prioritized measurable goals and objectives with timeframes, and identifies implementing organizations for priority plan strategies. Performance will be measured by the extent to which the plan reflects that the program:

- Used data to describe the epidemiology of the burden of injury in the State/territory.
- Evaluated the epidemiologic data to determine the critical target areas for injury prevention and control activities.
- Established priorities and chosen appropriate evidence-based intervention strategies.
- Identified implementing organizations for priority plan strategies.
- Developed objective/quantitative measures of effectiveness that will demonstrate accomplishment of program goals and objectives and measure intended outcomes.

○ Collaborate and coordinate with your State's Office of Terrorism Preparedness and Emergency Response (or its equivalent) to assure their participation in the ICPG and in the development/update of the State injury prevention and control plan. Performance will be measured by the extent to which the program secures memorandums of understanding (MOU) documenting this collaboration.

• Collect, Analyze and Use Injury Data

○ States/Territories must collect and analyze injury data including, but not limited to, data related to: Traumatic brain injuries (TBI) and the following external causes: drowning, fire-related injuries, motor vehicle injuries, poisonings, firearm-related injuries, homicides, suicides, and those injuries resulting from mass casualty events for their own use from centralized electronic hospital discharge data and centralized electronic vital statistics data sets [*see* eligibility information (*i.e.,* Special Requirements) for allowable exceptions]. Performance will be measured based upon the extent to which the program has demonstrated that it:

- Used available data to inform the injury prevention and control planning process.
- Used available data to evaluate progress toward meeting the core goals and objectives of the state/territory injury prevention and control program.
- Promoted and facilitated the use of injury data to meet the needs of injury prevention and control groups and service agencies (*e.g.,* HRSA).
- Participated in the Multi-State Injury Indicator Report.

○ States/Territories must submit an annual injury data report produced for use in their own state/territory and for submission to CDC. This report shall be consistent with CDC's current recommendations for Injury Indicator Surveillance (*see* Appendix 1 for detailed methodology). In addition, this report shall include completed tables with aggregated numbers and rates categorized by sex, age group, and external cause for All-injury deaths and hospitalizations, TBI related deaths and hospitalizations, drowning related deaths and hospitalizations, fire related deaths and hospitalizations, motor vehicle related deaths and hospitalizations, poisoning related deaths and hospitalizations, firearm related deaths and hospitalizations, suicide related deaths and hospitalizations, and homicides. The report shall include a written interpretation of the injury data in a format suitable for dissemination within the State/territory and shall include a focus on priority areas identified by the State/territory and a brief analysis of TBI in the state/territory. Performance will be measured by the extent to which the program has:

- Incorporated CDC's recommendations for data completeness, timeliness, and quality.
- Compliance will be determined based upon the successful submission of required annual reports and the completeness of the submitted spreadsheet tables (spreadsheet format will be supplied by CDC).
- The first annual injury data report

should include data from 01/01/2004–12/31/2004. The report must be received as an attachment to the annual report (due October 31). For example, CDC should receive the first report using 2004 data no later than October 31, 2006. Subsequent annual reports will follow the same pattern.

- Implement, and Evaluate Interventions
  - ○ Implement priorities as established by the State/territory comprehensive injury prevention and control plan, which provides a framework for action to reduce the burden of injury in the State/territory. Performance will be measured by the extent to which the program has:
    - ■ Identified interventions focused on priorities outlined in the state/territory wide injury prevention and control plan.
    - ■ Identified and collaborated with influential and appropriate partners who are able to implement and support injury prevention and control plan activities/strategies.
    - ■ Continuously evaluated and monitored its own process and the outcomes of the ICIPC plan, its objectives and activities.
  - ○ Use surveillance findings to inform and guide State/territory injury prevention and control activities, including the ICIPC where applicable. Performance will be measured by the extent to which the program has:
    - ■ Used surveillance findings to guide injury prevention and control activities.
    - ■ Used surveillance findings to evaluate the effectiveness of intervention programs.
- States/Territories funded under this cooperative agreement must send representation to the annual CDC sponsored grantees meeting.

Part B: Traumatic Brain Injury Extended Surveillance (TBIES) Program

In conducting activities to achieve the purpose of Part B of this program, the recipients will be responsible for conducting all of the activities of Part A as well as the activities described below. CDC has developed performance measures to evaluate recipients' progress in meeting TBIES requirements. These performance measures are listed following each associated recipient activity. Activities are as follows:

- ■ TBI Basic Electronic Surveillance
  - ○ Conduct centralized statewide electronic surveillance of TBI, consistent with standard definitions and methods for TBI surveillance described in the current *Annual Data Submission Standards for Central Nervous System (CNS) Injury Surveillance.* For a downloadable version of this document, please see the CDC Web site at the following Internet address: *http://www.cdc.gov/doc.do/id/0900f3ec80145eec.*Performance will be measured by the extent to which the program has:
    - ■ Used centralized statewide electronic hospital discharge and vital statistics databases for case identification.
    - ■ Linked and unduplicated data obtained from centralized statewide electronic hospital discharge and vital statistics databases, including data elements that describe diagnosis, demographics, external cause, and discharge disposition.
- TBI Extended Medical Record Surveillance
  - ○ Annually review the medical records of a representative sample of reported hospitalized cases to obtain data consistent with standard definitions for the expanded TBI dataset described in the current Central Nervous System Injury Surveillance Data Submission Standards. Performance will be measured by the extent to which the program has:
    - ■ Complied with CDC's standards for data completeness and quality. Compliance will be determined based on an evaluation of data submitted to CDC's National Center for Injury Prevention and Control. The first annual data submission should include data from 01/01/2004–12/31/2004. The data must be received by CDC as an attachment to the annual report. For example, CDC should receive the first data submission using 2004 data no later than October 31, 2006. Subsequent annual data submissions will follow the same pattern.
  - ○ During years two through five collect additional information on 10–15 TBI data elements related to a topic of emerging public health importance. CDC and all grantees participating in extended surveillance will jointly decide upon topic areas during year 1. Performance will be measured by the extent to which the program has:
    - ■ Complied with data collection efforts mutually agreed upon by CDC and the program. Compliance will be determined based on an evaluation of data submitted to CDC's National Center for Injury Prevention and Control.
- Analysis and Reporting
  - ○ Analyze and interpret collected data and prepare an annual report suitable for dissemination within the State/territory either separately or within the All-injury report described in Part A. Performance will be measured by the extent to which the program:
    - ■ Successfully disseminates the report within the State/territory and submits the report to CDC's NCIPC.
  - ○ Generate an annual summary report documenting methodological and other issues related to conducting extended surveillance to include programmatic lessons learned, strengths and limitations of the data, usefulness of the data for State/territory injury prevention and control planning, etc. This information will be used to expand and improve the content of CDC's ''Annual Data Submission Standards, Central Nervous System Injury Surveillance.'' Performance will be measured by the extent to which the program:
    - ■ Successfully submits the report to CDC's National Center for Injury Prevention and Control.

Part C: Traumatic Brain Injury Emergency Department Surveillance (TBIED) Program

In conducting activities to achieve the purpose of Part C of this program, the recipients will be responsible for conducting all the activities of Part A as well as the activities described below. CDC has developed performance measures to evaluate recipients' progress in meeting TBIED requirements. These performance measures are listed following each associated recipient activity. Activities are as follows:

- Basic Electronic Surveillance
  - ○ Conduct centralized statewide electronic emergency department (ED) surveillance of TBI, consistent with standard definitions and methods for TBI surveillance described in the current Central Nervous System Injury Surveillance Data Submission Standards. Performance will be measured by the extent to which the program has:
    - ■ Used centralized statewide electronic ED databases for case identification.
    - ■ Linked and unduplicated data obtained from centralized statewide electronic ED databases with centralized electronic hospital discharge data and centralized

electronic vital statistics data.

- Emergency Department Surveillance
  - ○ Annually review the medical records of a representative sample of reported cases to obtain data consistent with standard definitions for the extended TBI dataset described in the current Central Nervous System Injury Surveillance Data Submission Standards. In addition to the evaluation measures included in the current Central Nervous System Injury Surveillance Data Submission Standards, perform an annual evaluation of sensitivity to include at a minimum a qualitative assessment of the data sources (*e.g.*, number and proportion of EDs participating in the State). Performance will be measured by the extent to which the program has:
    - ■ Complied with CDC's standards for data completeness and quality. Compliance will be determined based on an evaluation of data submitted to CDC's National Center for Injury Prevention and Control. The first annual data submission should include data from 01/01/2004–12/31/2004. The data must be received by CDC as an attachment to the annual report. For example, CDC should receive the first data submission using 2004 data no later than October 31, 2006. Subsequent annual data submissions will follow the same pattern.
- Analysis and Reporting
  - ○ Analyze and interpret collected data and prepare an annual report suitable for dissemination within the State/territory either separately or within the All-injury report described in Part A. Performance will be measured by the extent to which the program:
    - ■ Successfully disseminates the report within the State/territory and submits the report to CDC's National Center for Injury Prevention and Control.
  - ○ Generate an annual summary report documenting methodological and other issues related to conducting ED surveillance to include programmatic lessons learned, strengths and limitations of the data, usefulness of the data for State/territory injury prevention and control planning, etc. This information will be used to expand and improve the content of CDC's ''Guidelines for ED Surveillance.'' Performance will be measured by the extent to which the program:
    - ■ Successfully submits the report to CDC's National Center for Injury Prevention and Control.

Part D: Traumatic Brain Injury Service Linkage (TBISL) Program

In conducting activities to achieve the purpose of Part D of this program, the recipients will be responsible for conducting all of the activities of Part A as well as the activities described below. CDC has developed performance measures to evaluate recipients' progress in meeting TBISL requirements. These performance measures are listed following associated recipient activities. Activities are as follows:

- Feasibility assessment
  - ○ In year one, conduct an assessment of the feasibility of (a) obtaining from the State/territory TBI surveillance system, personal identifying and contact information for a sample of persons hospitalized with TBI and (b) using that information to provide those individuals with information about available services in their State. Performance will be measured by the extent to which the program:
    - ■ Submits a report summarizing the results of the feasibility assessment. This assessment should identify potential partners for linkage activities and discuss the pros and cons of differing linkage strategies within the State/territory. Information to be collected will be decided upon in collaboration with CDC. The feasibility assessment report must be submitted as an attachment to the Year one interim report (due six months after the beginning of the budget period).
  - ○ In year one, develop and submit a plan for linkage implementation based on results of the feasibility study. The plan for linkage implementation must be submitted as part of the Year one annual report due October 31, 2006. Performance will be measured by the extent to which the plan:
    - ■ Describes the populations to be linked, including justification for their selection.
    - ■ Clearly describes the methods for proposed linkage activities including a process for identifying and linking persons to information about services within an appropriate timeframe post injury.
    - ■ Identifies partners with whom they will collaborate in conducting linkage activities and from whom they have received letters of support.
- Implementation
  - ○ In year two, States must implement proposed linkage activity(ies) as a pilot and prepare a report, which includes findings/results and lessons learned. The report must be submitted as an attachment to the Year two annual report due October 31, 2007. Performance will be measured by the extent to which the program:
    - ■ Has successfully implemented pilot activities and has summarized their actions in a report to the CDC's National Center for Injury Prevention and Control.
  - ○ In years three through five, States/territories must conduct the linkage activity(ies), and prepare an annual report summarizing the activity including; findings/results, lessons learned, and implications/recommendations for future activities in this and in other States/territories. The report must be submitted as an attachment to the Year three to five annual reports, due October 31st. Performance will be measured by the extent to which the program has:
    - ■ Continuously evaluated and monitored its own process, objectives and activities.
    - ■ Developed and monitored measures of effectiveness for its proposed activities.
    - ■ Successfully submitted required reports.

In a cooperative agreement, the staff of CDC staff is substantially involved in the program activities, above and beyond routine grant monitoring.

CDC Activities for this program are as follows:

Part A

- Assist with the exchange of information and collaboration among recipients.
- Provide recipients with relevant research findings and public health recommendations related to comprehensive injury prevention and control.
- Provide ongoing guidance, consultation, and technical assistance in conducting recipient activities.
- Assist with the identification of national injury prevention and control campaigns and materials that can be integrated into comprehensive injury prevention and control programs.
- Provide recipients with instructions and spreadsheets for calculating annual injury indicator data.

Part B

- Provide ongoing guidance, consultation, and technical assistance in conducting recipient activities.
- Collaborate with grantees to establish standards for data completeness, timeliness, and quality,

and to promote the use of TBI data to support injury prevention and control efforts.

• Receive, assess, aggregate and disseminate TBI data from grantees.

Part C

• Provide ongoing guidance, consultation, and technical assistance in conducting recipient activities.

• Collaborate with grantees to establish standards for data completeness, timeliness, and quality, and to promote the use of TBI data to support injury prevention and control efforts.

• Receive, assess, aggregate and disseminate TBI data from grantees.

Part D

• Assist with the exchange of information and collaboration among recipients.

• Provide ongoing guidance, consultation, and technical assistance in conducting recipient activities.

II. Award Information

Type of Award: Cooperative Agreement.

Budgets should be prepared for Parts A, B, C, & D separately. In the application packet, you should list each Part's budget amount in separate columns on the SF424 (*i.e.,* Part A in column 1, Part B in column 2, Part C in column 3 and Part D in column 4). Details on this form and instructions for submitting an application are provided in the ''Application and Submission'' section. CDC involvement in this program is listed in the Activities Section above.

Part A (ICIPC)

Fiscal Year Funds: 2005.

Approximate Total Funding Available: $4,750,000.

Approximate Number of Awards: 33.

Approximate Funding per Award: $144,000.

Floor of Award Range: None.

Ceiling of Award Range: $150,000.

Part B (TBIES)

Fiscal Year Funds: 2005.

Approximate Total Funding Available: $440,000.

Approximate Number of Awards: Four.

Approximate Funding per Award: $110,000.

Floor of Award Range: None.

Ceiling of Award Range: $110,000.

Part C (TBIED)

Fiscal Year Funds: 2005.

Approximate Total Funding Available: $300,000.

Approximate Number of Awards: Two.

Approximate Funding per Award: $150,000.

Floor of Award Range: None.

Ceiling of Award Range: $150,000.

Part D (TBISL)

Fiscal Year Funds: 2005.

Approximate Total Funding Available: $150,000.

Approximate Number of Awards: Three.

Approximate Funding per Award: $50,000.

Floor of Award Range: None.

Ceiling of Award Range: $50,000.

If you request a funding amount greater than the ceiling of award range per Part, your application will not be considered eligible and not forwarded for review. This ceiling of award range per part is for the first 12-month budget period and includes both indirect and direct costs. If considered ineligible, you will be notified in writing by NCIPC prior to start date of the award.

Anticipated Award Start Date: August 1, 2005.

Budget Period Length: 12 months.

Project Period Length: Five years.

Throughout the project period, CDC's commitment to continuation of awards will be conditioned on the availability of funds, evidence of satisfactory progress by the recipient (as documented in required reports), and the determination that continued funding is in the best interest of the Federal Government.

III. Eligibility Information

III.1. Eligible Applicants

Applications may be submitted by health departments of States and territories or their bona fide agents, this includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau. A Bona Fide Agent is an agency/organization identified by the State/territory as eligible to submit an application under the State/territory eligibility in lieu of a State/territory application. If you are applying as a bona fide agent of a State/territory, you must provide documentation of your status. Place this documentation behind the first page of your application form.

Special Requirements: If your application is incomplete or non-responsive to the requirements listed below, it will not be entered into the review process. You will be notified that your application did not meet the submission requirements.

• All States/territories should demonstrate the ability to access a centralized electronic hospital discharge data set. States/Territories unable to access centralized electronic hospital discharge data sets must demonstrate the ability to access an alternate centralized electronic data set that is representative of the State/territory hospitals. As an appendix to this application include a summary of current (*i.e.*, 2001, 2002 or most current morbidity data analyzed by age, sex and cause).

• All States/territories must demonstrate the ability to access centralized electronic vital statistics data sets. As an appendix to this application include a summary of current (*i.e.*, 2001, 2002 or most current mortality data analyzed by age, sex and cause).

• States/territories previously funded under program announcement numbers 00119, 02207 and 99136 must submit a State/territory-wide injury prevention and control plan as an appendix to this application.

• States/Territories must maintain an active Injury Community Planning Group (ICPG) the ICPG shall be responsible for developing/enhancing injury prevention and control plan and marketing strategy to promote the vision and values of the Integrated Core Injury Prevention and Control Program.

• All States/territories must qualify and be recommended for funding for Part A (ICIPC) in order to be eligible for Part B (TBIES), Part C (TBIED) or Part D (TBISL). Note: For this reason, the CDC review panel will only consider Parts B, C and D of the applications reviewed, approved and funded for Part A.

• States/Territories applying for Part C (TBIED) must demonstrate the ability to access centralized electronic emergency department discharge data sets.

• States/Territories applying for Part D (TBISL) who propose direct patient contact must have legal authority to contact individuals identified by surveillance activities. In order to demonstrate legal authority applicants must submit both of the following as an appendix to the application: A copy of the supporting legislation/regulation and a letter from the appropriate health department official (*e.g.* attorney or health officer) certifying that the applicant will have access to personal identifying information of TBI cases for the purposes of the linkage activities outlined in this RFA.

• **Note:** Title 2 of the United States Code Section 1611 states that an organization described in Section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, or loan.

III.2. Cost Sharing or Matching

Matching funds are not required for this program.

IV. Application and Submission Information

IV.1. Address To Request Application Package

To apply for this funding opportunity use application form CDC 5161. Application forms and instructions are available on the CDC Web site, at the following Internet address: *www.cdc.gov/od/pgo/forminfo.htm.*

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) staff at: (770) 488–2700. Application forms can be mailed to you.

IV.2. Content and Form of Submission

Letter of Intent (LOI): CDC requests that you submit a LOI if you intend to apply for one or more parts of this program. Your LOI will be used to gauge the level of interest in this program, and to allow CDC to plan the application review. Your LOI must be written in the following format:

- Maximum number of pages: Two.
- Font size: 12-point unreduced.
- Single spaced.
- Paper size: 8.5 by 11 inches.
- Page margin size: One inch.
- Printed only on one side of page.
- Written in plain language, avoid jargon.

Your LOI must contain the following information:

- Number and title of this Program Announcement (PA#).
- Identification of Part(s) for which you intend to apply.

Application: You are required to send a cover letter that summarizes which Parts you are applying for, dollar amounts, and point of contact information. Ensure that each part of the application and section are properly labeled and include page numbers. A detailed budget and narrative justification must be provided. Guidance for completing your budget can be found on the CDC Web site, at the following Internet address: *http://www.cdc.gov/od/pgo/funding/budgetguide.htm.*You must include a table of contents. You must submit a project narrative with your application forms. Your narrative must be submitted in the following format:

- Maximum number of pages: Part A—25; Part B—15; Part C—15; Part D—10. If your narrative exceeds the page limit, only the first pages, which are within the page limit, will be reviewed.
- Font size: 12 point unreduced.
- Double spaced.
- Paper size: 8.5 by 11 inches.
- Page margin size: One inch.
- Printed only on one side of page.
- Held together only by rubber bands or metal clips; not bound in any other way.

Your narrative should address activities to be conducted over the entire project period, and must include the following items in the order listed:

- Part A: Executive summary, state of need, goals and objectives, methods and staffing, evaluation, collaboration, and budget and justification (appendices, budget and justification will not be counted in the stated page limit).
- Part B: Executive summary, review of literature and statement of need, methods and activities, capacity to conduct TBI Surveillance, goals and objectives, management and staffing, evaluation, and budget and justification (appendices, budget and justification will not be counted in the stated page limit).
- Part C: Executive summary, review of literature and statement of need, methods and activities, capacity to conduct TBI ED surveillance, goals and objectives, management and staffing, evaluation, and budget and justification (appendices, budget and justification will not be counted in the stated page limit).
- Part D: Executive summary, review of literature and statement of need, methods and activities, capacity, goals and objectives, management and staffing, evaluation, collaboration and budget and justification (appendices, budget and justification will not be counted in the stated page limit).
- Additional information may be included in the application appendices. The appendices will not be counted toward the narrative page limit.

You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the Federal government. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *www.dunandbradstreet.com* or call 1–866–705–5711.

For more information, see the CDC Web site at: *http://www.cdc.gov/od/pgo/funding/pubcommt.htm.* Additional requirements that may require you to submit additional documentation with your application are listed in section ''VI.2. Administrative and National Policy Requirements.''

IV.3. Submission Dates and Times

LOI Deadline Date: December 8, 2004.

CDC requests that you send a LOI if you intend to apply for this program. Although the LOI is not required, not binding, and does not enter into the review of your subsequent application, the LOI will be used to gauge the level of interest in this program, and to allow CDC to plan the application review.

Application Deadline Date: February 7, 2005.

Explanation of Deadlines: Applications must be received in the CDC Procurement and Grants Office by 4 p.m. eastern time on the deadline date. If you submit your application by the United States Postal Service or commercial delivery service, you must ensure that the carrier will be able to guarantee delivery by the closing date and time. If CDC receives your submission after closing due to: (1) Carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, you will be given the opportunity to submit documentation of the carriers guarantee. If the documentation verifies a carrier problem, CDC will consider the submission as having been received by the deadline.

This announcement is the definitive guide on LOI and application content, submission address, and deadline. It supersedes information provided in the application instructions. If your submission does not meet the deadline above, it will not be eligible for review, and will be discarded. You will be notified that you did not meet the submission requirements.

CDC will not notify you upon receipt of your submission. If you have a question about the receipt of your LOI or application, first contact your courier. If you still have a question, contact the PGO–TIM staff at: (770) 488–2700. Before calling, please wait two to three days after the submission deadline. This will allow time for submissions to be processed and logged.

IV.4. Intergovernmental Review of Applications

Your application is subject to Intergovernmental Review of Federal Programs, as governed by Executive

Order (EO) 12372. This order sets up a system for State and local governmental review of proposed Federal assistance applications. You should contact your State Single Point of Contact (SPOC) as early as possible to alert the SPOC to prospective applications, and to receive instructions on your State's process. Click on the following link to get the current SPOC list: *http://www.whitehouse.gov/omb/grants/spoc.html*.

IV.5. Funding Restrictions

Restrictions, which must be taken into account while writing your budget, are as follows:

- Funds may not be used for research.
- Reimbursement of pre-award costs is not allowed.
- Federal funds awarded under this announcement may not be used to offset existing, State funded projects.

If you are requesting indirect costs in your budget, you must include a copy of your indirect cost rate agreement. If your indirect cost rate is a provisional rate, the agreement should be less than 12 months of age

IV.6. Other Submission Requirements

LOI Submission Address: Submit your LOI by express mail, delivery service, fax, or e-mail to: Angela Marr, 4770 Buford Hwy., NE., M.S. F–41, Atlanta, GA 30341–3724. Tel: (770) 488–1428.Fax: (770) 488–4338. E-mail: *amarr@cdc.gov*.

Application Submission Address: Submit the original and two hard copies of your application by mail or express delivery service to:Technical Information Management—#CE05–027, CDC Procurement and Grants Office,2920 Brandywine Road,Atlanta, GA 30341.

Applications may not be submitted electronically at this time.

V. Application Review Information

V.1. Criteria

Applicants are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goals stated in the ''Purpose'' section of this announcement. Measures must be objective and quantitative, and must measure the intended outcome. These measures of effectiveness must be submitted with the application and will be an element of evaluation.

Your application will be evaluated against the following criteria:

Part A (ICIPC)

Each application will be evaluated and scored individually by an objective review panel. Evaluation and scoring for Part A will be conducted according to the following criteria:

- Need for an Integrated Core Injury Prevention and Control Program (30 points)
  - Did the applicant describe the need for an Integrated Core Injury Prevention and Control Program and the nature of any current injury prevention and control or surveillance programs in their State?
  - Did the applicant describe the current level of agency/inter-agency resources dedicated to injury activities and how additional funding will contribute to efforts to initiate or improve existing or planned injury surveillance activities?
  - Did the applicant provide evidence of a current or existing injury prevention and control plan to develop or enhance its injury prevention and control or surveillance system?
- Methods and Staffing (30 points)
  - Did the applicant provide a detailed description of how staffing resources (including epidemiological resources) will be allocated and used to accomplish each objective and overall program goals?
  - Did the application include the designation of a coordinator with the responsibility for coordinating Integrated Core Injury Prevention and Control Program activities?
  - Did the applicant provide a reasonable and complete timeline for implementing and completing all activities and objectives?
  - Did the application provide a description of the roles of each unit, organization, or agency, as well as evidence of coordination, supervision, and degree of commitment (*e.g.*, time, in-kind, financial) of staff, organizations, and agencies involved in Integrated Core Injury Prevention and Control Program activities?
  - Did the application provide evidence of access to or assignment of epidemiological expertise for performing routine data review and analysis activities and providing technical advice and consultation?
  - Did the applicant provide evidence of intra-agency memoranda of understanding outlining; roles, duties, responsibilities and travel authorization for shared staff where appropriate to travel to CDC sponsored meetings?
- Evaluation (20 points)
  - Is the proposed evaluation system detailed? Does it address the goals and objectives of the program? Will it effectively evaluate program progress, effectiveness, and impact?
  - Does the application demonstrate the availability of potential data sources for evaluation purposes? Does it outline methods to evaluate the data sources? Does it document the availability of staff with the appropriate expertise, experience and capacity to perform program evaluation?
  - Does the application present a feasible plan for reporting evaluation results and for using evaluation information for programmatic decisions and continuous program improvement?
- Goals and Objectives (10 points)
  - Did the applicant include goals that are relevant to the purpose of the proposal and feasible to accomplish during the project period? Are the goals specific and measurable?
  - Did the applicant include objectives that are feasible to accomplish during the budget period? Are the activities outlined necessary to accomplish the purpose of the proposal?
- Collaboration (10 points)
  - Has the applicant provided adequate information to assess the relationships between the program and other organizations, agencies, and health department units that will relate to the program or conduct related activities?
  - Has the applicant provided a clear and adequate description of appropriate membership and roles of an Injury Community Planning Group?
  - Did the applicant provide evidence of intra-agency memoranda of understanding outlining roles, duties, responsibilities and travel authorization where appropriate to travel to CDC sponsored meetings?
- Budget and Justification (not scored)
  - Has the applicant provided a detailed budget and narrative justification consistent with the stated objectives and planned program activities?
  - Has the applicant provided a budget to include funds for attending the annual grantees meeting?

Part B (TBIES)

Each application will be evaluated and scored individually by an objective review panel. All applications will be evaluated and scored first for Part A and

subsequently, where applicable, for Part B.

Evaluations and scoring for Part B will be conducted according to the following criteria:

- Methods and Activities: (35 points)
  - Can the methods and activities achieve the proposed objectives, consistent with the purposes of this announcement? Did the applicant propose appropriate methods and activities to collect and analyze optional data consistent with the Program Requirements for Part B, including sampling methods and proposed staffing?
- Capacity to conduct TBI surveillance: (20 points)
  - Did the applicant demonstrate authority to collect and maintain necessary TBI surveillance data consistent with the current CDC Central Nervous System Injury Surveillance Data Submission Standards, with demonstrated timeliness of case ascertainment, completeness of case ascertainment, and ability to analyze data? Did the applicant demonstrate appropriate existing capacity to collect and analyze optional data (*e.g.*, describing TBI severity, circumstances, and early outcome) from a representative sample of cases reported to the TBI surveillance system? If previously funded under PA #01030, did the applicant provide evidence of successful TBI surveillance activities, including:
    - A summary of current (*i.e.*, 2001, 2002 or most current) TBI morbidity and mortality data analyzed by age, sex, and cause;
    - An evaluation of TBI surveillance data quality (*e.g.*, predictive value positive, completeness, timeliness);
    - Letter(s) from CDC indicating successful submission of annual datasets for 2000, 2001 and 2002?

If not previously funded under PA#01030, did the applicant provide evidence of successful TBI surveillance capacity, including:

- A summary of current (*i.e.*, 2001, 2002, or most current) TBI morbidity and mortality data analyzed by age, sex, and cause;
- An evaluation of TBI surveillance data quality (*e.g.*, predictive value positive, completeness, timeliness).

- Management and Staffing: (20 points)
  - Does the staffing plan indicate the applicant's ability to carry out the objectives of the program? Considerations include: organizational structure, staff qualifications, experience, degree of stability maintaining current staff in critical positions, identified training needs or plan, and job descriptions and curricula vitae for both proposed and current staff. Does the applicant plan to coordinate activities with any other injury surveillance, prevention, and control programs or activities in the applicant's organizations?
- Goals and Objectives: (10 points)
  - Are the objectives specific, achievable, practical, measurable, time-linked, and consistent with the overall purposes described in this announcement?
- Evaluation: (10 points)
  - Did the applicant include plans to evaluate the attainment of proposed objectives, including plans to evaluate the sensitivity and predictive value positive of case ascertainment and the completeness and quality of data?
- Review of Literature and Statement of Need: (5 points)
  - Did the applicant review key literature relevant to the proposed project, and did the applicant describe needs within the jurisdiction to which the application is responsive?
- Budget and Justification: (not scored)
  - Are the budget reasonable, clearly justified, and consistent with stated objectives and proposed activities?
  - Has the applicant provided a budget to include funds for attending the annual grantees meeting?

Part C (TBIED)

Each application will be evaluated and scored individually by an objective review panel. All applications will be evaluated and scored first for Part A and subsequently, where applicable, for Part C.

Evaluations and scoring for Part C will be conducted according to the following criteria:

- Methods and Activities: (35 points)
  - Can the methods and activities achieve the proposed objectives, consistent with the purposes of this announcement? Did the applicant propose appropriate methods and activities to collect and analyze emergency department TBI data consistent with the Program Requirements for Part C, including sampling methods and proposed staffing?
- Capacity to conduct TBIED surveillance: (20 points)
  - Did the applicant demonstrate authority to collect and maintain necessary TBI emergency department surveillance data consistent with the current CDC Central Nervous System Injury Surveillance Data Submission Standards, with demonstrated timeliness of case ascertainment, completeness of case ascertainment, and ability to analyze data? Did the applicant demonstrate appropriate existing capacity to collect and analyze abstracted data (*e.g.*, describing TBI ED severity, circumstances, and early outcome) from a representative sample of cases reported to the TBI ED surveillance system?
- Management and Staffing: (20 points)
  - Does the staffing plan indicate the applicant's ability to carry out the objectives of the program? Considerations include: organizational structure, staff qualifications, experience, degree of stability maintaining current staff in critical positions, identified training needs or plan, and job descriptions and curricula vitae for both proposed and current staff. Does the applicant plan to coordinate activities with any other injury surveillance, prevention, and control programs or activities in the applicant's organizations?
- Goals and Objectives: (10 points)
  - Are the objectives specific, achievable, practical, measurable, time-linked, and consistent with the overall purposes described in this announcement?
- Evaluation: (10 points)
  - Did the applicant include plans to evaluate the attainment of proposed objectives, including plans to evaluate the sensitivity and predictive value positive of case ascertainment and the completeness and quality of data?
- Review of Literature and Statement of Need: (5 points)
  - Did the applicant review key literature relevant to the proposed project, and did the applicant describe needs within the jurisdiction to which the application is responsive?
- Budget and Justification: (not scored)
  - Are the budget reasonable, clearly justified, and consistent with stated objectives and proposed activities?
  - Has the applicant provided a budget to include funds for attending the annual grantees meeting?

Part D (TBISL)

Each application will be evaluated and scored individually by an objective review panel. All applications will be evaluated and scored first for Part A and

subsequently, where applicable, for Part D.

Evaluations and scoring for Part D will be conducted according to the following criteria:

- Methods and Activities: (25 points)
  - Can the methods and activities achieve the proposed objectives, consistent with the program requirements for Part D of this announcement?
- Capacity to link individuals with TBI to information about services: (20 points)
  - If direct patient contact is proposed, did the applicant demonstrate authority to collect and maintain necessary TBI surveillance data? Did the applicant demonstrate legislative authority to contact individuals identified through TBI surveillance with information about services?
- Collaboration (20 points)
  - Has the applicant provided adequate information to assist the relationships between the program and other organizations, agencies, and health department units that will be involved in TBI linkage activities?
  - Has the applicant provided a clear and adequate description of appropriate partners and their stated roles?
- Management and Staffing: (10 points)
  - Does the staffing plan indicate the applicant's ability to carry out the objectives of the program? Considerations include: Organizational structure, staff qualifications, experience, degree of stability maintaining current staff in critical positions, identified training needs or plan, and job descriptions and curricula vitae for both proposed and current staff. Does the applicant plan to coordinate activities with any other injury surveillance, prevention, and control programs or activities in the applicant's organizations?
- Goals and Objectives: (10 points)
  - Are the objectives specific, achievable, practical, measurable, time-linked, and consistent with the overall purposes described in this announcement?
- Evaluation: (10 points)
  - Did the applicant include plans to evaluate the attainment of proposed objectives?
- Review of Literature and Statement of Need: (5 points)
  - Did the applicant review key literature relevant to the proposed project, and did the applicant describe needs within the jurisdiction to which the application is responsive?
- Budget and Justification: (not scored)
  - Are the budget reasonable, clearly justified, and consistent with stated objectives and proposed activities?
  - Has the applicant provided a budget to include funds for attending the annual grantees meeting?

V.2. Review and Selection Process

Applications will be reviewed for completeness by the Procurement and Grants Office (PGO) staff, and for responsiveness by the National Center for Injury Prevention and Control. Incomplete applications and applications that are non-responsive to the eligibility criteria will not advance through the review process. Applicants will be notified by the National Center for Injury Prevention and Control in writing that their application did not meet submission requirements prior to the start date of the award.

An objective review panel will evaluate complete and responsive applications according to the criteria listed in the ''V.1. Criteria'' section above. Applications will be funded in order by score and rank determined by the review panel.

VI. Award Administration Information

VI.1. Award Notices

Successful applicants will be notified by telephone of selection for funding and to discuss proposed budget and receive a Notice of Grant Award (NGA) from the CDC Procurement and Grants Office. The NGA shall be the only binding, authorizing document between the recipient and CDC. The NGA will be signed by an authorized Grants Management Officer and mailed to the recipient fiscal officer identified in the application.

VI.2. Administrative and National Policy Requirements

45 CFR Part 74 and Part 92

For more information on the Code of Federal Regulations, *see* the National Archives and Records Administration at the following Internet address: *http://www.access.gpo.gov/nara/cfr/cfr-table-search.html.*

The following additional requirements apply to this project:

- AR–7 Executive Order 12372
- AR–9 Paperwork Reduction Act Requirements
- AR–10 Smoke-Free Workplace Requirements
- AR–11 Healthy People 2010
- AR–12 Lobbying Restrictions
- AR–13 Prohibition on Use of CDC Funds for Certain Gun Control Activities

Additional information on these requirements can be found on the CDC web site at the following Internet address: *http://www.cdc.gov/od/pgo/funding/ARs.htm.*

VI.3. Reporting Requirements

You must provide CDC with an original, plus two hard copies of the following reports:

1. Interim progress report. The progress report will serve as your non-competing continuation application, and must contain the following elements:

a. Current Budget Period Activities Objectives.

b. Current Budget Period Financial Progress.

c. New Budget Period Program Proposed Activity Objectives.

d. Budget.

e. Measures of Effectiveness.

f. Additional Requested Information.

2. Financial status report and annual progress report (*see* Appendix II for reporting requirements table), no more than 90 days after the end of the budget period.

3. Final financial and performance reports, no more than 90 days after the end of the project period.

These reports must be mailed to the Grants Management or Contract Specialist listed in the ''Agency Contacts'' section of this announcement.

VI.4. Other Requirements

Projects that involve the collection of information from 10 or more individuals and funded by cooperative agreement will be subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. OMB clearance for the data collection initiated under this cooperative program is pending approval by OMB.

VII. Agency Contacts

We encourage inquiries concerning this announcement. For general questions, contact: Technical Information Management Section, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341. Telephone: (770) 488–2700.

For program technical assistance, contact: Angela Marr, Project Officer, 4770 Buford Hwy., NE., M.S. F–41, Atlanta, GA 30341–3724. Tel: (770) 488–1428. E-mail: *amarr@cdc.gov.*

CDC will host a program technical assistance conference call for this announcement on November 16, 2004, from 1 p.m. (e.s.t.) to 2 p.m. (e.s.t.). The

conference bridge number is (877) 368–9836 and the participant pass code is 852136. For financial, grants management, or budget assistance, contact: Angie Tuttle, Grants Management Specialist, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341. Telephone: (770) 488–2719. E-mail: *AEN4@cdc.gov.*

VIII. Other Information

This and other CDC funding opportunity announcements can be found on the CDC Web site, Internet address: *www.cdc.gov.* Click on ''Funding'' then ''Grants and Cooperative Agreements.''

Dated: November 2, 2004.

William P. Nichols,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 04–24809 Filed 11–5–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committee; Renewals

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the renewal of certain FDA advisory committees by the Commissioner of Food and Drugs (the Commissioner). The Commissioner has determined that it is in the public interest to renew the charters of the committees listed in table 1 of this document for an additional 2 years beyond charter expiration date. The new charters will be in effect until the dates of expiration listed in table 1. This notice is issued under the Federal Advisory Committee Act of October 6, 1972 (Public Law 92–463 (5 U.S.C. app. 2)).

DATES: Authority for these committees will expire on the dates indicated in table 1 of this document unless the Commissioner formally determines that renewal is in the public interest.

TABLE 1.

Name of committee	Date of expiration
Anesthetic and Life Support Drugs Advisory Committee	May 1, 2006.
Blood Products Advisory Committee	May 13, 2006.
Pulmonary-Allergy Drugs Advisory Committee	May 30, 2006.
Drug Safety and Risk Management Advisory Committee	May 31, 2006.
Science Advisory Board to the National Center for Toxicological Research	June 2, 2006.
Peripheral and Central Nervous System Drugs Advisory Committee	June 4, 2006.
Psychopharmacologic Drugs Advisory Committee	June 4, 2006.
Transmissible Spongiform Encephalopathies Advisory Committee	June 9, 2006.
Science Board to the Food and Drug Administration	June 26, 2006.
Allergenic Products Advisory Committee	July 9, 2006.
Cardiovascular and Renal Drugs Advisory Committee	August 27, 2006.
Endocrinologic and Metabolic Drugs Advisory Committee	August 27, 2006.
Oncologic Drugs Advisory Committee	September 1, 2006.
Anti-Infective Drugs Advisory Committee	October 7, 2006.
Dermatologic and Ophthalmic Drugs Advisory Committee	October 7, 2006.
Cellular, Tissue, and Gene Therapies Advisory Committee (formerly Biological Response Modifiers Advisory Committee)	October 28, 2006.

FOR FURTHER INFORMATION CONTACT: Linda A. Sherman, Advisory Committee Oversight and Management Staff (HF–4), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1220.

Dated: October 29, 2004.

Sheila Dearybury Walcoff,

Associate Commissioner for External Relations.

[FR Doc. 04–24842 Filed 11–5–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; 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 Center for Research Resources Special Emphasis Panel Clinical Research.

Date: November 17–18, 2004.

Time: November 17, 2004, 8 a.m. to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Omni Charlottesville Hotel, 235 West Main Street, Charlottesville, VA 22902.

Contact Person: Carol Lambert, PhD, Scientific Review Administrator, Office of Review, National Institutes of Health, NCRR, 6701 Democracy Blvd., 1 Democracy Plaza, Room 1076, MSC 4874, Bethesda, MD 20892, (301) 435–0814, *lambert@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research; 93.371, Biomedical Technology; 93.389, Research Infrastructure, 93.306, 93.333, National Institutes of Health, HHS.)

Dated: October 28, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–24795 Filed 11–5–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; 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 Environmental Health Sciences Special Emphasis Panel K25 Review.

Date: December 6, 2004–6, 2005.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: NIEHS/National Institutes of Health, Building 4401, East Campus, 79 T.W. Alexander Drive, Research Triangle Park, NC 27709, (Telephone Conference Call).

Contact Person: Linda K. Bass, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research & Training, Nat. Institute of Environmental Hlth. Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, (919) 541–1307.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel K23 Review.

Date: December 6, 2004.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: NIEHS/National Institutes of Health, Building 4401, East Campus, 79 T.W. Alexander Drive, Research Triangle Park, NC 27709, (Telephone Conference Call).

Contact Person: Linda K. Bass, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research & Training, Nat. Institute of Environmental Hlth. Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, (919) 541–1307.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel K08 Review.

Date: December 6, 2004.

Time: 3 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: NIEHS/National Institutes of Health, Building 4401, East Campus, 79 T.W. Alexander Drive, Research Triangle Park, NC 27709, (Telephone Conference Call).

Contact Person: Linda K. Bass, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research & Training, Nat. Institute of Environmental Hlth. Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, (919) 541–1307.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education, 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS.)

Dated: October 28, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–24792 Filed 11–5–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; 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 contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel, Pathology Rodent Colonies.

Date: November 17, 2004.

Time: 11 a.m. to 12 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Ave., 2C212, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Alfonso R. Latoni, PhD, Scientific Review Administrator, Scientific Review Office, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Room 2C212, Bethesda, MD 20892, (301) 496–9666, *latonia@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS.)

Dated: October 28, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–24793 Filed 11–5–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; 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 Environmental Health Sciences Special Emphasis Panel Training Grants.

Date: November 16, 2004.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: NIEHS/National Institutes of Health, Building 4401, East Campus, 79 T.W. Alexander Drive, Research Triangle Park, NC 27709, (Telephone Conference Call).

Contact Person: Leroy Worth, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research and Training, Nat. Institute of Environmental Health Sciences, P.O. Box 12233, MD EC–30/Room 3171, Research Triangle Park, NC 27709, 919/541–0670, *worth@niehs.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. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing. National Institutes of Health, HHS.)

Dated: October 28, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–24796 Filed 11–5–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; 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 Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel, Review of Career Transition Award (K22), Mentored Patient-Oriented Research Career Development Award (K23), Midcareer Investigator Award in Patient-Oriented Research (K24), and Mentored Quantitative Research Career Development Award (K25).

Date: November 9, 2004.

Time: 8 a.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Guo HE Zhang, PhD, MD, Scientific Review Administrator, National Institute of Arthritis and Musculoskeletal and Skin Diseases, National Institutes of Health, 6701 Democracy Boulevard, Suite 800, Bethesda, MD 20817, (301) 451–6524, *zhanggu@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 No. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS.)

Dated: October 28, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–24797 Filed 11–5–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; 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 person privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel First International Conference on Environmental Exposure and Health.

Date: November 16, 2004.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: NIEHS/National Institutes of Health, Building 4401, East Campus, 79 T.W. Alexander Drive 3446, Research Triangle Park, NC 27709, (Telephone Conference Call).

Contact Person: Janice B Allen, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research and Training, Nat. Institute of Environmental Health Science, P.O. Box 12233, MD EC–30/Room 3170 B, Research Triangle Park, NC 27709, (919) 541–7556.

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 Environmental Health Sciences Special Emphasis Panel First International Neurotoxicology Association.

Date: November 18, 2004.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: NIEHS/National Institutes of Health, Building 4401, East Campus, 79 T.W. Alexander Drive 3446, Research Triangle Park, NC 27709, (Telephone Conference Call).

Contact Person: RoseAnne M McGee, Associate Scientific Review Administrator, Scientific Review Branch, Office of Program Operations, Division of Extramural Research and Training, Nat. Inst. of Environmental Health Science, P.O. Box 12233, MD EC–80, Research Triangle Park, NC 27709, (919) 541–0752.

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. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education 93.894, Resources and Manpower Development in Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS.)

Dated: October 28, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–24798 Filed 11–5–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; 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 Allergy and Infectious Diseases Special Emphasis Panel; Drug Resistance and HIV Infection.

Date: November 23, 2004.

Time: 12:30 PM to 1:30 PM.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive 3145, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Geetha P. Bansal, PhD., Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID/NIH/DHHS, Room 3145, 6700–B Rockledge Drive, MSC 7616, Bethesda, MD 20892, (301) 402–5658, *gbansal@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and infectious Diseases Research, National Institutes of Health, HHS.)

Dated: October 28, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–24799 Filed 11–5–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel mRNA-Profiling of the Major Mental Disorders.

Date: November 9, 2004.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: A. Roger Little, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6157, MSC 9608, Bethesda, MD 20892–9608, (301) 402–5844, *alittle@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.

Name of Committee: National Institute of Mental Health Special Emphasis Panel HIV/AIDS Review.

Date: November 30, 2004.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Churchill Hotel, 1914 Connecticut Avenue, NW., Washington, DC 20009.

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.*

(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: October 28, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–24800 Field 11–5–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; 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 General Medical Sciences Special Emphasis Panel; Review of Program and Center Grant Applications for Trauma and Burn.

Date: November 30, 2004.

Time: 8 AM to 5 PM.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Carole H. Latker, PhD., Scientific Review Administrator, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 3AN–18B, Bethesda, MD 20892, (301) 594–2848, *latkerc@nigms.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS.)

Dated: October 28, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–24801 Filed 11–5–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; 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 General Medical Sciences Special Emphasis Panel Short Course: Integrative and Organ Systems Pharmacology.

Date: December 1, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Brian R. Pike, PhD, Scientific Review Administrator, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 63AN–18K, Bethesda, MD 20892, 301–594–3907, *pikbr@nigms.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS.)

Dated: October 28, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–24802 Filed 11–5–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: AIDS and Related Research Review Group AIDS Discovery and Development of Therapeutics Study Section.
Date: November 8–9, 2004.
Time: 8 a.m. to 3:30 p.m.
Agenda: To review and evaluate grant applications.
Place: One Washington Circle Hotel, One Washington Circle NW., Washington, DC 20037.
Contact Person: Eduardo A. Montalvo, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5212, MSC 7852, Bethesda, MD 20892, (301) 435–1168, *montalve@csr.nih.gov.*
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel Oxidative Damage Repair.
Date: November 10, 2004.
Time: 2 p.m. to 3:30 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Syed M. Quadri, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6210, MSC 7804, Bethesda, MD 20892, (301) 435–1211, *quadris@csr.nih.gov.*
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel Cardiac Myofilament.
Date: November 16, 2004.
Time: 1 p.m. to 2 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Ai-Ping Zou, PhD, MD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118, MSC 7814, Bethesda, MD 20892, (301) 435–1777, *zouai@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel ZRG1 BPC–C (02) S Spectroscopic Imaging.
Date: November 18, 2004.
Time: 4 p.m. to 5:30 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Noni Byrnes, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4196, MSC 7806, Bethesda, MD 20892, (301) 435–1217, *byrnesn@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Member Conflict: Biostatistics.
Date: November 18, 2004.
Time: 4 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Christopher Sempos, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3146, MSC 7770, Bethesda, MD 20892, (301) 451–1329, *semposch@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Member Conflicts: Cancer Epidemiology 2.
Date: November 19, 2004.
Time: 7:30 a.m. to 8 a.m.
Agenda: To review and evaluate grant applications.
Place: The Melrose Hotel, 2430 Pennsylvania Ave., NW., Washington, DC 20037.
Contact Person: Christopher Sempos, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3146, MSC 7770, Bethesda, MD 20892, (301) 451–1329, *semposch@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Member Conflicts: Cancer Epidemilogy 1.
Date: November 19, 2004.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: The Melrose Hotel, 2430 Pennsylvania Ave., NW., Washington, DC 20037.
Contact Person: Christopher Semmpos, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3146, MSC 7770, Bethesda, MD 20892, (301) 451–1329, *semposch@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel AIDS/HIV Small Business Innovative Research Grants.
Date: November 19, 2004.
Time: 8:30 a.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: Georgetown Suites, 1111 30th Street, NW., Washington, DC 20007.
Contact Person: Kenneth A. Roebuck, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5214, MSC 7852, Bethesda, MD 20892, (301) 435–1166, *roebuckk@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel BBBP–K 90(S): Infant Psychobiology, Infant Learning, Maternal Depression.
Date: November 22, 2004.
Time: 10:30 a.m. to 12:30 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Anita Miller Sostek, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4100, MSC 7184, Bethesda, MD 20892, 301–435–1260, *sosteka@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Adult Psychopathology.
Date: November 22, 2004.
Time: 11 a.m. to 12 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge, Drive Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Cheri Wiggs, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3180, MSC 7848, Bethesda, MD 20892, (301) 435–1261, *wiggsc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Platelet Signaling.
Date: November 23, 2004.
Time: 2 p.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Delia Tang, MD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4126, MSC 7802, Bethesda, MD 20892, 301–435–2506, *tangd@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Cancer Immunotherapy.
Date: November 24, 2004.
Time: 1 p.m. to 2 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Cathleen L. Cooper, PhD, Sceintific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4208,

MSC 7812, Bethesda, MD 20892, 301–435–3566, *cooperc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SBIB G 50R: PAR–04–023: Bioengineering Research Partnerships.

Date: November 29, 2004.

Time: 9 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Paul F. Parakkal, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5122, MSC 7854, Bethesda, MD 20892, 301–435–1176, *parakkap@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 BPC–F Program Project.

Date: November 30, 2004.

Time: 7:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Robert Lees, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4182, MSC 7806, Bethesda, MD 20892, (301) 435–2684, *leesro@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Animal Neurobiology and Emotion.

Date: November 30, 2004.

Time: 10 a.m. to 11:30 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Maribeth Champoux, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3146, MSC 7759, Bethesda, MD 20892, 301–594–3163, *champourm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Substance Abuse and Addictive Disorders.

Date: November 30, 2004.

Time: 11:30 a.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Cheri Wiggs, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3180, MSC 7848, Bethesda, MD 20892, (301) 435–1261, *wiggsc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 ONC–J 02M: Experimental Therapeutics of Cancer.

Date: November 30, 2004.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Martin L. Padarathsingh, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6212, MSC 7804, Bethesda, MD 20892, (301) 435–1717, *padaratm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 IFCN–G 50 Micromechanical Device for Intracochlear Drug Delivery.

Date: November 30, 2004.

Time: 3 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Joseph Kimm, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5178, MSC 7844, Bethesda, MD 20892, (301) 435–1249, *kimmj@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS.)

Dated: October 28, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–24794 Filed 11–05–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOMELAND SECURITY

Office of the General Counsel; Senior Executive Service Performance Review Board

AGENCY: Office of the General Counsel, DHS.

ACTION: Notice.

SUMMARY: This notice announces the appointment of the members of the Performance Review Board (PRB) for the Office of the General Counsel, Department of Homeland Security (DHS). The purpose of the PRB is to review and make recommendations concerning proposed performance appraisals, ratings, bonuses, pay adjustments, and other appropriate personnel actions for incumbents of Senior Executive Service (SES) positions for which the General Counsel is the appointing authority. The PRB will perform PRB functions for other DHS SES positions if requested.

EFFECTIVE DATE: This Notice is effective November 8, 2004.

FOR FURTHER INFORMATION CONTACT: Ms. Michele Burton, Director, Executive Services, Office of Human Resources Management, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW, Room 2.4–A, Washington, DC 20229. Telephone (202) 344–2525.

SUPPLEMENTARY INFORMATION: Title 5 U.S.C. 4314(c) requires each Federal agency to establish one or more performance review boards to make recommendations, as necessary, in regard to the performance of senior executives within the agency. This notice announces the appointment of the members of the PRB for the Office of the General Counsel for DHS. The purpose of the PRB is to review and make recommendations concerning proposed performance appraisals, ratings, bonuses, pay adjustments, and other appropriate personnel actions for incumbents of SES positions for which the General Counsel of DHS is the appointing authority. The Board will perform PRB functions for other DHS SES positions if requested.

This notice does not constitute a significant regulatory action as are defined under section 3(f) of Executive Order 12866. Therefore, DHS has not submitted this notice to the Office of Management and Budget.

Further, because this notice is a matter of agency organization, procedure and practice, DHS is not required to follow the rulemaking requirements under the Administrative Procedure Act (5 U.S.C. 553).

Composition of Departmental PRB: The Board shall consist of at least three members. In the case of an appraisal of a career appointee, more than half of the members shall consist of career appointees. The names and titles of the PRB members are as follows:

Elizabeth L. Branch, Associate General Counsel for Rules and Regulations, Office of the General Counsel, DHS;

Dea Doris Carpenter, Deputy Chief Counsel, U.S. Citizenship andImmigration Services;

Thomas J. Connelly, Associate General Counsel for Information Analysis andInfrastructure Protection, Office of the General Counsel, DHS;

Francine J. Kerner, Chief Counsel, Transportation Security Administration;

John J. Kelleher, Chief Counsel, U.S. Secret Service;

Calvin M. Lederer, Deputy Judge Advocate General, U.S. Coast Guard;

Barry C. O'Melinn, Deputy Principal Legal Advisor, U.S. Immigration andCustoms Enforcement;

Alfonso Robles, Chief Counsel, U.S. Customs and Border Protection; and

Hugo Teufel III, Associate General Counsel for General Law, Office of the General Counsel, DHS.

Mary Kate Whalen,

Deputy Associate General Counsel for Regulations, Office of the General Counsel, Department of Homeland Security.

[FR Doc. 04–24953 Filed 11–5–04; 8:45 am]

BILLING CODE 4410–10–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–04–030]

Sunshine Act Meeting

AGENCY: United States International Trade Commission.

TIME AND DATE: November 10, 2004 at 9:30 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meetings: none.
2. Minutes.
3. Ratification List.
4. Inv. No. 731–TA–1059 (Final)(Hand Trucks from China)—briefing and vote. (The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on or before November 22, 2004.)
5. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: November 3, 2004.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–24911 Filed 11–4–04; 11:39 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Application No. D–11165, et al.]

Proposed Exemptions; The National Electrical Benefit Fund (the Plan)

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and requests for a hearing (at least three copies) should be sent to the Employee Benefits Security Administration (EBSA), Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. _____, stated in each Notice of Proposed Exemption. Interested persons are also invited to submit comments and/or hearing requests to EBSA via e-mail or FAX. Any such comments or requests should be sent either by e-mail to: *moffitt.betty@dol.gov*, or by FAX to (202) 219–0204 by the end of the scheduled comment period. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N–1513, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

The National Electrical Benefit Fund (the Plan) Located in Rockville, MD

[Application No. D–11165]

Proposed Exemption

Based upon the facts and representations set forth in the application, the Department of Labor is considering granting an exemption under the authority of section 408(a) of the Act (or ERISA) and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of section 406(a)(1)(A) through (D) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code,[1] shall not apply, effective April 1, 2003, to (1) the collateral assignment (the Collateral Assignment), by the Plan, of its rights and interests in the Stonegate at Bellefaire, LLC (the LLC), a real estate operating company (REOC), to M&T Real Estate, Inc. (the Senior Lender), a party in interest with respect to the Plan; and (2) the guaranty (the Guaranty) by the Plan, executed in favor of the Senior Lender, requiring the Plan to reimburse the Senior Lender for any losses the Senior Lender may incur as a result of certain affirmative ''bad acts'' that are committed by the Plan as a member (the Member) of the LLC.

This proposed exemption is subject to the following conditions:

(a) The Plan's execution of the Collateral Assignment and the Guaranty

[1] For purposes of this proposed exemption, references to specific provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

was on terms no less favorable to the Plan than those which the Plan could obtain in an arm's length transaction with an unrelated party;

(b) The decisions on behalf of the Plan to invest in the LLC and consent to the terms of the Collateral Assignment and Guaranty in favor of the Senior Lender were made by fiduciaries which were independent of and unaffiliated with the Senior Lender;

(c) At the time of the transactions, the Plan had total assets that were in excess of $5 billion, and not more than 1% of the Plan's total assets was invested or will be invested in the LLC.

(d) The other member of the LLC (the Managing Member) also executed Guaranties in favor of the Senior Lender;

(e) As a Member of the LLC, the Plan's total potential liability with respect to its investment in the real estate project (the Project), which is being developed and will be owned by the LLC, is limited to:

(1) Capital contributions made by the Plan to the LLC.

(2) Amounts funded by the Plan to the LLC (the Plan Loan).

(3) Rights and interests given to the Senior Lender under the Collateral Assignment.

(f) In the event the Plan engages in any of the specified ''bad acts'' that are described in the Guaranty, the Plan's total potential liability does not exceed the greater of $32.98 million or the outstanding principal amount of the loan serving as the primary funding vehicle for the Project (the Senior Loan).

EFFECTIVE DATE: If granted, this proposed exemption will be effective as of April 1, 2003.

Summary of Facts and Representations

1. The Plan, also referred to herein as ''the Applicant,'' is a multiemployer, defined benefit plan covering approximately 489,261 participants and beneficiaries as of December 31, 2003. As of December 31, 2003, which is the most recent date that financial information is available, the Plan had net assets available for benefits of approximately $9.5 billion.

2. The fiduciaries generally responsible for investment decisions in real estate matters on behalf of the Plan, including the subject transactions,[2] are D.R. Borden,[3] Jr. and Jeremiah J. O'Connor (the Trustees). In addition, the Plan currently utilizes CS Capital Management, Inc. (CSM), an unrelated party, to provide advisory services with respect to the management of the LLC investment described herein on an ongoing basis. However, CSM did not review or recommend to the Trustees the making of this investment.

3. The Plan is one of two members of the LLC, a Delaware limited liability company formed in May 2002 for the sole purpose of developing and owning the Project, a senior living facility located at 1104 King Street, Rye Brook, New York. The only other member of the LLC is the Managing Member, FC Bellefair, LLC, a New York limited liability company and an unrelated party. The Plan and the Managing Member are referred to herein collectively as the ''Members,'' or each individually, as a ''Member.'' The Plan and the Managing Member each own 50% of the LLC. Eighty percent of the Managing Member is owned by Forest City Residential Group, Inc. (FCRG), an Ohio corporation whose sole shareholder is Forest City Rental Properties Corporation (FCRPC). The remaining 20% of the Managing Member is owned by Four Corners Ownership II, LLC (FCO), a New York single asset limited liability company. FCRG and FCO are each a ''managing member'' of FC Bellefair, LLC. The Applicant represents that the LLC qualifies as a ''real estate operating company'' (*i.e.*, a REOC) under the ''plan asset'' regulations issued by the Department, 29 CFR 2510.3–101(e).[4]

4. The transactions at issue arise in the context of the financing obtained by the LLC to fund construction of the Project. The Project has a total budget of approximately $59,805,349, of which $32,980,000 is being primarily funded in the form of a loan (*i.e.*, the Senior Loan) dated May 24, 2002 from the Senior Lender (*i.e.*, M&T Real Estate, Inc.) to the LLC and another entity known as ''FCD Ryebrook, LLC,'' the operator of the completed facility. In order to comply with New York law, the Senior Loan has been bifurcated into a primary loan in the amount of $28,750,995 for the ''hard'' costs evidenced by a Building Loan Agreement, and a smaller loan in the amount of $4,229,005 for ''soft'' costs evidenced by a Non-Cost of Improvement Loan. The Senior Loan requires a balloon payment of the outstanding principal and interest on the maturity date of May 1, 2007. The amount of the balloon is projected at $31,000,000. However, this amount is subject to fluctuation based upon such variables as the actual monthly construction/operating draw, the number of occupied units in the Project, and the market rent for each unit. Interest only payments are being made for the first 3 years the Senior Loan is in effect. Then, these payments will be amortized, commencing June 1, 2005, based on a 25 year amortization schedule. The interest rate, which is an adjustable rate, was initially set at 6 percent per annum. Effective October 31, 2002, the interest rate floor was reduced to 5.25 percent, and then lowered to 4%, effective June 1, 2003.

The Senior Loan is secured by ''[a]ll property, tangible or intangible, real or personal, or fixtures, now or hereafter subject to any security instrument or mortgage in favor of the [Senior] Lender securing payment of the obligations of the [LLC], including without limitation membership interests in the [LLC], permits, licenses and the Debt Reserve Account.''[5] The documents that specifically collateralize the Senior Loan are (a) the Collateral Assignment; (b) the Guaranty; (c) certain Senior Mortgages; (d) general Security Agreements contained in the Senior Mortgages; and (e) Assignments of

[2] The Plan has an in house real estate division that makes recommendations concerning the Plan's real estate investments, including the subject investment in the Project. With respect to the Plan's investment in the Project, the Trustees also received assistance and advice from The Weitzman Group (Weitzman), a New York-based real estate appraisal/advisory firm, which advises the Trustees on real estate acquisition and divestiture decisions. In addition to conducting ongoing discussions with Weitzman, the Trustees relied on the following written reports in making their investment decision for the Plan: (a) An Investment Summary, prepared by the Plan's in house real estate investment staff; (b) an Executive Summary of the Project investment provided by Weitzman; (c) a Real Property Valuation of the Project; (d) a Legal Review Letter regarding a construction loan and equity investment in the Project; and (e) a Closing Update prepared by the Plan's investment staff.

[3] On May 22, 2002, the date the transactions closed, the Trustee was John M. Grau, not D. R. Borden. Mr. Borden replaced Mr. Grau in January of 2003.

[4] As noted above, the Applicant believes that the LLC is a REOC for purposes of the plan asset regulations. Therefore, the Applicant requests no ruling or determination with respect to this issue. Furthermore, the Applicant states that according to the Department's position in 29 CFR 2510.3–101(a), once plan assets are invested in a REOC, they lose their character as ''plan assets.'' Thus, the Applicant explains that the equity it contributed to the REOC in the form of a capital contribution would cease being an asset of the Plan as soon as it is transferred to the REOC. Thereafter, the Applicant indicates that the asset belongs to the REOC, which in turn, may transfer these assets to a party in interest with respect to the Plan without invoking the prohibited transaction provisions of the Act. Accordingly, the Applicant explains that any use of the Plan's capital contribution to repay the Senior Loan described herein would not give rise to a prohibited transaction.

Notwithstanding the Applicant's assumption about the REOC status of the LLC, the Department expresses no opinion herein on whether the LLC would be considered a REOC.

[5] The Debt Reserve Account is an account in which an amount equal to six months of principal and interest payable to the Senior Lender is kept in reserve.

Leases and Rents from Tenants contained in the Senior Mortgages.

During the construction loan period for the Senior Loan, interest was calculated on the basis of a 360 day year consisting of 12 months with the actual number of days of each month. However, during the permanent loan period, interest is being calculated on the basis of a 360 day year consisting of 12, thirty day months.

Once the Senior Loan was fully funded, an additional $13,412,674 in Project budget costs were funded by the Plan to the LLC in the form of a loan (*i.e.*, the Plan Loan). The Plan Loan, dated May 24, 2002, requires a balloon payment of the outstanding principal and interest on the maturity date of April 30, 2006. The amount of the balloon will be $10,747,583. However, this amount is also subject to fluctuation based upon such variables as the actual monthly construction/operating draw, the number of occupied units in the project, and the market rent for each unit. Payments of principal and interest can be made only after the Senior Lender has determined that funds are available to pay the Plan and no default of the Senior Loan has occurred. Interest on the Plan Loan is equal to 15 percent per annum.

Like the Senior Loan, the Plan Loan is bifurcated to comply with New York law. The Plan Loan is thus evidenced by a Building Loan Agreement dated May 24, 2002, in the amount of $2,956,505 for ''hard costs'' and a Non-Cost of Improvement Loan of the same date for $10,456,169 for ''soft costs.''

In addition, the Plan Loan is secured by ''all of the property and interests encumbered by the Security Documents.'' Such collateral includes (a) certain Subordinate Mortgages on the Project;[6] (b) certain Lease Assignments; (c) the Assignment of Project Documents and Development Rights; (d) the Limited Liability Interest Pledge Agreement; (e) the Guaranty of Completion; (f) the Non-Recourse Exception Guaranty; and (g) certain UCC Financing Statements.

In accordance with a General Subordination and Intercreditor Agreement, dated May 24, 2002, between the Applicant and the Senior Lender, the Senior Loan was made senior in priority to the Plan Loan. The remaining Project budget costs were funded to the LLC by the Plan's initial capital contribution of $6,706,337 (or 11.2 percent of the total Project budget costs) and by the Managing Member's initial capital contribution of $6,706,337 (or 11.2 percent of the total Project budget costs). As of January 31, 2004, each Member had made capital contributions to the LLC totaling $7,060,774 and the Senior Lender had funded $27,780,337 of the Senior Loan. The remainder of the Senior Loan was funded as of April 2004. The Plan began making monthly disbursements on the Plan Loan in June 2004.

5. In addition to the Plan's agreement to subordinate the Plan Loan in favor of the Senior Loan, the Plan executed two documents in favor of the Senior Lender which are intended to provide additional comfort to the Senior Lender that the Senior Loan will be repaid. First, on May 24, 2002, both the Plan and the Managing Member executed the Collateral Assignment of Membership Interests Agreement (*i.e.*, the Collateral Assignment) in favor of the Senior Lender, which provided that, in order to induce the Senior Lender to make the Senior Loan, each of the Members agreed to assign all their respective rights and interests to the LLC in such things as compensation, voting, access to the LLC's records, proceeds or payments due the assignors, etc., in the event the LLC defaults on the Senior Loan. Second, the Plan executed an Unconditional and Continuing Limited Liability Guaranty and Indemnity Agreement (*i.e.*, the Guaranty) in favor of the Senior Lender, which provided that the Plan would indemnify the Senior Lender for any losses incurred by the Senior Lender in connection with any affirmative ''bad acts''[7] of the Plan in its capacity as a Member of the LLC.[8] The subject transactions involve less than 1 percent of the fair market value of the total assets of the Plan.[9]

As a Member of the LLC, the Plan's total potential liability with respect to its investment in the Project, is limited to: (a) Capital contributions it has made to the LLC; (b) amounts funded to the LLC under the Plan Loan; and (c) rights and interests given to the Senior Lender under the Collateral Assignment. Also, in the event the Plan ever engages in any of the specified ''bad acts'' that are described in the Guaranty, the Plan's total potential liability will not exceed the greater of $32.98 million or the outstanding principal amount of the Senior Loan.

6. In December 2002, shareholders of M&T Bank (MTB), the Senior Lender's parent company, and Allied Irish Banks, PLC, (AIB) approved MTB's acquisition of Allfirst (Allfirst), AIB's U.S. subsidiary, with the resulting merger (the Merger) being consummated on April 1, 2003. Under the terms of the acquisition agreement, AIB received 26.7 million shares of MTB common stock, plus approximately $886 million in cash, in exchange for all of the outstanding stock of Allfirst. (For purposes of this proposed exemption, the enlarged entity is referred to as

[6] The Subordinate Mortgages refer to two components of the Plan Loan, *i.e.*, the Building Loan Agreement covering the ''hard costs'' and the Non-Cost of Improvement Loan covering the ''soft costs.''

[7] According to Article II, Section 2.1 of the Unconditional and Continuing Limited Guaranty and Indemnity Agreement, ''bad acts'' include, but are not limited to, the following: fraud, material misrepresentation, concealment, failure to pay real estate taxes, misappropriation of rents, revenues, profits or security deposits by the Guarantor or at the direction of the Guarantor, or other acts of willful misconduct. It should be noted that the Guaranty does not extend to ''bad acts'' of any other party that could be imputed to the Plan, or to any passive conduct on the part of the Plan (*e.g.*, a failure to investigate or disclose).

Besides the Plan's Guaranty, the Managing Member of the LLC and other entities provided Guaranties to the Senior Lender in the form of (a) Unconditional and Continuing Limited Guaranty and Indemnity Agreements similar to those executed by the Plan (These agreements were entered into by (i) the Managing Member; (ii) FCRG (the 80 percent owner of the Managing Member); (iii) FCO (the 20 percent owner of the Managing Member); (iv) FCRPC (FCRG's parent); and (v) Forest City Enterprises, Inc. (FCEI)(FCRPC Corporation's parent.); (b) a Completion Guaranty (A Guaranty of Completion was executed by the Managing Member's parent, FFCEI. This blanket guaranty obligates FCEI (to the extent necessary) to complete the Project in accordance with the plans and specifications); and (c) Guaranties of the Plan Loan and the Plan's Equity Interest in the Project (The Managing Member has provided the following guaranties in favor of the Plan as the subordinated lender: (i) A Non-Recourse Exception Guaranty; (ii) a Guaranty of Completion; (iii) a Guaranty of Completion (Equity); and (iv) a Guaranty of Fraudulent Acts (Equity)).

[8] In order to induce a construction lender to fund a construction loan, the Applicant states that it is customary for the lending bank to be provided with certain guaranties of repayment from a party other than the borrower. Such a guaranty by a ''deep pocket'' is often required to make the lender comfortable that all or a portion of the loan it will make to the borrower will be repaid in the event of a default of the borrower. When the borrower is a REOC, the Applicant explains that it is customary for the construction lender to require the guaranty from one or more constituent members of the REOC. In the event that the lender will begin funding the construction loan before the members of the REOC have fully funded their equity commitments to the REOC, as is the case here, the Applicant indicates that the members will assign their interests in the REOC to the lender in the event of default.

[9] According to the Applicant, the Plan's total potential liability in connection with its capital contribution, the Plan Loan, and the Collateral Assignment will not exceed the value of the investment the Plan actually makes in the Project. The total potential investment by the Plan in the Project equals the potential capital contribution of $7,206,337, plus a maximum Plan Loan of $13,412,674. Thus, the Plan's total liability in connection with this investment will not exceed $20,619,011. Although the Guaranty separately provides that the Plan may be liable in connection with any wrongful acts it takes for losses incurred by the Senior Lender in connection with these wrongful acts, this potential liability, according to the Applicant, is akin to liability the Plan would incur with any willful and tortious actions it may take, and would not likely exceed $32.98 million or the amount of the outstanding loan.

MTB/Allfirst). As a result of the Merger, the Senior Lender is now a company that is wholly owned by MTB/Allfirst. The Plan is obligated to the Senior Lender (a) to the extent of the Plan's equity interest in the LLC in the event that the LLC defaults on the Senior Loan pursuant to the Collateral Assignment; and (b) in the form of the Guaranty in that it will reimburse the Senior Lender in the event the Plan commits certain affirmative ''bad acts'' in connection with the LLC. Accordingly, the Applicant requests an administrative exemption from the Department.

7. The Applicant represents that for reasons unrelated to the transactions described herein, Allfirst is a party in interest with respect to the Plan insofar as it provides two types of banking services to the Plan. First, the Plan maintains an operating checking account with Allfirst that is used to pay day-to-day administrative expenses of the Plan. Second, at least one local collection agent used by the Plan in connection with the collection of employee benefit plan contributions from local covered employers maintains a bank account with Allfirst in which it deposits the pension contributions made by contributing employers in the area. On a regular basis, the Plan sweeps the local Allfirst account of all the contributions that have been accumulated.

8. The Applicant represents that Allfirst does not exercise discretionary authority or discretionary control respecting the management of the funds deposited with it or the administration of the Plan, and thus it is not a fiduciary with respect to the Plan. The Applicant further represents that there are no Plan assets invested in loans to Allfirst, in property leased to Allfirst, or in securities issued by Allfirst. In addition, the Applicant explains that Allfirst is not involved in any manner with the Plan Trustees' decision to engage in these transactions and it will not be involved in any decision making or in an advisory capacity with respect to the Plan.

9. The Applicant represents that prior to the Merger, MTB was not a party in interest with respect to the Plan. Thus, any possible benefits or guarantees given to MTB at the time of the Senior Loan were not prohibited transactions. The Applicant explains that since the Merger, MTB/Allfirst has continued to service the foregoing Allfirst accounts under the name of M&T Bank. As a result, MTB/Allfirst is a service provider to the Plan as defined in section 3(14)(B) of the Act. In addition, the Applicant states that the Senior Lender became a party in interest with respect to the Plan under section 3(14)(G) of the Act insofar as it is a corporation in which 50 percent or more of the combined voting power is owned post-merger by MTB/Allfirst.

10. Finally, the Applicant states that the transactions were not part of an agreement, arrangement or understanding designed to benefit a party in interest. In this regard, the Applicant explains that the Senior Lender was not, at the time the underlying transactions were being entered into, a party in interest to the Plan, nor did the Plan have an expectation that Allfirst would be merged into the parent of the Senior Lender. The Applicant represents that the Plan's primary intent in executing the Guaranty and the Collateral Assignment was to further its investment in the LLC, not to benefit a party in interest.

11. In summary, the Applicant represents that the transactions have satisfied and will satisfy the statutory criteria for an exemption under section 408(a) of the Act for the following reasons:

(a) The Plan's execution of the Collateral Assignment and the Guaranty was on terms no less favorable to the Plan than those which the Plan could obtain in an arm's length transaction with an unrelated party;

(b) The decisions on behalf of the Plan to invest in the LLC and consent to the terms of the Collateral Assignment and Guaranty in favor of the Senior Lender were made by fiduciaries which were independent of and unaffiliated with the Senior Lender;

(c) At the time of the transactions, the Plan had total assets that were in excess of $5 billion, and not more than 1% of the Plan's total assets was invested or will be invested in the LLC;

(d) The other member of the LLC also executed Guaranties in favor of the Senior Lender;

(e) As a Member of the LLC, the Plan's total potential liability with respect to its investment in the real estate Project, will be limited to:

(1) Its capital contributions to the LLC.

(2) Amounts funded under the Plan Loan.

(3) Rights and interests given to the Senior Lender under the Collateral Assignment; and

(f) In the event the Plan engages in any of the specified ''bad acts'' that are described in the Guaranty, the Plan's total potential liability will not exceed the greater of $32.98 million or the outstanding principal amount of the Senior Loan.

Notice to Interested Persons

Notice of the proposed exemption will be given to interested persons by either hand delivery or overnight mail within 4 days of the date of publication of the notice of pendency in the **Federal Register**. Such notice will include a copy of the notice of proposed exemption, as published in the **Federal Register**, and a supplemental statement, as required pursuant to 29 CFR 2570.43(b)(2), which will inform interested persons of their right to comment on the proposed exemption. All comments are due within 34 days after publication of the proposed exemption in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mr. Arjumand A. Ansari of the Department, telephone (202) 693–8566. (This is not a toll-free number.)

Roy A. Herberger Defined Benefit Pension Plan (the Plan) Located in Phoenix, Arizona

[Application No. D–11259]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, August 10, 1990). If the exemption is granted, the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the three past in-kind contributions (the Contribution(s)) to the Plan of common stock (the Stock) of Pinnacle West Capital Corporation (PNW) by Roy A. Herberger, Jr. (the Applicant), a disqualified party with respect to the Plan,[10] provided that the following conditions are met:

(a) The transactions involved publicly traded securities, the fair market values of which were based upon published prices at the time of each Contribution;

(b) The cumulative value of the Contributions represented no more than 18% of the total assets of the Plan;

(c) The Plan has not paid any commissions, costs or other expenses in connection with the Contributions;

(d) The Applicant, who is the only person affected by the transactions, believes that the transactions were in the best interest of the Plan;

(e) The Applicant made the Contributions based on erroneous advice from his tax adviser; and

[10] Since the Applicant is a sole proprietor and the only participant in the Plan, there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510.3–3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

(f) The terms of the transactions between the Plan and the Applicant are no less favorable to the Plan than terms negotiated at arm's length under similar circumstances between unrelated third parties.

Summary of Facts and Representations

1. The Plan is a defined benefit pension plan. The Plan administrator is the Applicant and is the sole participant in the Plan. The Applicant receives income from serving on various boards of directors. A portion of his fees for serving on the board of directors of PNW is paid in the form of common stock of PNW. The Applicant is a non-employee outside director of PNW. PNW is a public company, whose stock is publicly traded on the New York Stock Exchange. The Applicant beneficially owns 8660 shares of the Stock.

2. On July 23, 2002, the Applicant contributed 900 shares of the Stock from his brokerage account to the Plan. On August 14, 2002, the Applicant contributed another 2700 shares of the Stock from his brokerage account to the Plan. Finally, on July 7, 2003, the Applicant contributed another 900 shares of the Stock to the Plan. However, these 900 shares were transferred back to the Plan months later and cash was contributed in its place when it was discovered that the Contributions constituted prohibited transactions. The Applicant represents that the third transaction was corrected within the meaning of the Code.[11] The values of the Stock used for purposes of the contributions were as follows: (1) July 23, 2002 (900 shares) $28.05 (Closing Price); (2) August 14, 2002 (2700 shares) $33.53 (Closing Price); and (3) July 7, 2003 (900 shares) $37.31 (Closing Price).

3. The Applicant's motivation for contributing the Stock, rather than selling the Stock, contributing the cash proceeds and then repurchasing the Stock, was to save brokerage fees. The Stock contributed to the Plan was and is publicly traded on the New York Stock Exchange and the price was determined based on the closing price of the Stock on the day of each Contribution.

4. Prior to making the first Contribution, the Applicant consulted a Deloitte & Touche LLP (Deloitte & Touche) tax specialist regarding the Contributions and was mistakenly advised that the Contributions were not prohibited transactions. Deloitte & Touche acknowledges providing the erroneous advice regarding the Contributions.

5. On a cumulative basis, the Contributions never constituted more than 18% of the assets of the Plan. The value of the Stock has increased since the Contributions.

6. In summary, the Applicant represent that the transactions satisfy the statutory criteria for an administrative exemption under section 4975(c)(2) of the Code because: (a) The Stock was valued at its fair market value at the time of each Contribution; (b) the cumulative value of the Contributions represented no more than 18% of the total assets of the Plan; (c) the Plan has not paid any commissions, costs or other expenses in connection with the Contributions; (d) the Applicant, who is the only person affected by the transactions, believes that the Contributions were in the best interest of the Plan; (e) the Applicant made the Contributions based on erroneous advice from his tax adviser; and (f) the terms of the transactions between the Plan and the Applicant are no less favorable to the Plan than terms negotiated at arm's length under similar circumstances between unrelated third parties.

Notice to Interested Persons

It has been determined that there is no need to distribute the notice of proposed exemption (the Notice) to interested persons. Comments and requests for a hearing are due thirty (30) days after publication of the Notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Khalif Ford of the Department, telephone (202) 693–8540. (This is not a toll-free number.)

The North Texas Electrical Joint Apprenticeship and Training Trust Fund (the Plan) Located in Grand Prairie, Texas

[Application No. L–11245]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, August 10, 1990). If the exemption is granted, the restrictions of section 406(a) of the Act shall not apply to the sale (the Sale(s)) of (1) a 1.112 acres of land (Parcel 1) to the North Texas Chapter, National Electrical Contractors Association (NECA), a party in interest to the Plan; and (2) a 5.383 acres of land (Parcel 2) to Local Union #20, International Brotherhood of Electrical Workers (IBEW), a party in interest to the Plan. This proposed exemption is conditioned upon adherence to the material facts and representations described herein and upon the satisfaction of the following requirements:

(a) The Sales are one-time transactions for cash;

(b) The Plan does not pay any commissions, costs or other expenses in connection with the Sale of Parcel 1 and Parcel 2 (collectively the Parcels); and

(c) The Plan will receive an amount equal to the greater of: (i) $145,000 or the current fair market value of Parcel 1 as established by an independent, qualified, appraiser and updated at the time of the Sale; and (ii) $655,000; or the current fair market value of Parcel 2 as established by an independent, qualified, appraiser and updated at the time of the Sale; and

(d) The terms of the Sales will be no less favorable to the Plan than terms it would have received under similar circumstances in an arm's length negotiation with an unrelated party.

Summary of Facts and Representations

1. The Plan is an apprenticeship training trust fund. The trustees (the Trustees) consist of three members appointed by IBEW and three members representing management appointed by NECA. The Trustees have investment discretion over all assets of the Plan. As of March 25, 2004, the Plan has 230 participants. The Plan's assets have an aggregate fair market value of $1,807,444.63 as of December 2003. The Parcels have an estimated fair market value of $800,000 and constitute approximately 44% of the total value of Plan assets. The Plan is organized exclusively for educational purposes within the meaning of section 501(c)(3) of the Code and operates as a tax exempt nonprofit fund solely and exclusively for the purposes of providing a program for the training and education of electrical apprentices, journeymen, or other appropriate persons, and programs in furtherance thereof and to defray the reasonable expense of administering the apprenticeship and training programs established under the provisions of the collective bargaining agreement.

2. The Trustees represent that the Sale is in the interest of the Plan, and its participants and beneficiaries. The Plan participants (the Participants) currently have to drive from the school in Grand Prairie to the IBEW office in Dallas for job referrals, benefit information, and other business that is handled for them

[11] The Department has no jurisdiction with respect to what constitutes correction with respect to a prohibited transaction under section 4975 of the Code. Therefore, the Department expresses no opinion herein on the whether the transfer of 900 shares of the Stock back to the Plan constituted a correction within the meaning of the Code.

by the union as their collective bargaining representative. These offices are approximately twenty-five miles apart. NECA handles the collection and disbursement of benefit funds for the Participants, and their office is in Arlington, TX which is approximately three miles away from the school. IBEW and NECA seek to purchase the Parcels from the Plan and build offices at this location which would be much more convenient for the Participants.

If the exemption is denied, the parties in interest, IBEW and NECA, will not be able to build their buildings next to the Plan facility. This will cause the Plan participants to have to drive approximately twenty-five miles to the IBEW office and three miles to the NECA office in order to conduct business. NECA and IBEW have not indicated any desire to build a new building unless it is next to Plan. The transactions will be in the best interests of the Plan and will also make the school building more accessible to members of the IBEW and NECA for their training needs.

3. On July 26, 2002 an unimproved 11.7 acre of real property (the Land) was conveyed to the Plan by an unrelated third party. Fifty percent of the Land was donated to the Plan and fifty percent was sold to the Plan for $575,000. The Parcels are sections of the Land that the applicant now seeks to sell. Parcel 1 consists of a vacant unimproved parcel of land containing an area of approximately 1.112 acres located at W. Tarrant Road, Grand Prairie, Dallas County, Texas. Parcel 2 consists of a vacant unimproved parcel of land containing an area of approximately 5.383 acres located at W. Tarrant Road, Grand Prairie, Dallas County, Texas. The remaining Land is road accessible and is surplus property for the Plan.

4. The Parcels were appraised on October 13, 2003, by Donald J. Sherwood (Mr. Sherwood), a MAI Certified General Real Estate Appraiser. Mr. Sherwood is independent of the parties to the transactions and is an appraiser with Integra Realty Resources located in Dallas, Texas.

Mr. Sherwood determined the best use and highest value of the Parcels was associated with valuing the Parcels with the so-called direct sales comparison method. Under this method, sales of similar land in the market area are compared to the subject to arrive at an indication of value. In arriving at value conclusions, the tracts are compared as to the rights conveyed, financing terms, sale conditions, market conditions, location, and physical characteristics. Therefore, based on the valuation procedures employed by Mr. Sherwood, he determined that the fair market value of the Parcels was as follows: (i) Parcel 1 = $145,000; and (ii) Parcel 2 = $655,000.

5. The Plan will receive an amount equal to the greater of: (i) $145,000; or (ii) the current fair market value of Parcel 1 as established by an independent, qualified, appraiser updated at the time of the Sale. The Plan also will receive an amount equal to the greater of: (i) $655,000; or (ii) the current fair market value of Parcel 2 as established by an independent, qualified, appraiser updated at the time of the Sale.

6. In summary, the applicant represents that the subject transaction satisfies the statutory criteria contained in section 408(a) of the Act and section 4975(c)(2) of the Code for the following reasons:

(a) The Sale is a one-time transaction for cash;

(b) The Plan does not pay any commissions, costs or other expenses in connection with the Sale;

(c) The Plan will receive an amount equal to the greater of: (i) $145,000; or (ii) the current fair market value of Parcel 1 as established by an independent, qualified, appraiser and updated at the time of the Sale; and the Plan will receive an amount equal to the greater of: (i) $655,000; or (ii) the current fair market value of Parcel 2 as established by an independent, qualified, appraiser and updated at the time of the Sale; and

(d) The terms of the Sales will be no less favorable to the Plan than terms it would have received under similar circumstances in an arm's length negotiation with an unrelated party.

Notice to Interested Persons: Notice of the proposed exemption shall be given to all interested persons in the manner agreed upon by the applicant and Department within 15 days of the date of publication in the **Federal Register**. Comments and requests for a hearing are due forty-five (45) days after publication of the notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Khalif Ford of the Department, telephone (202) 693–8540 (this is not a toll-free number).

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 1st day of November, 2004.

Ivan Strasfeld,

Director of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. 04–24648 Filed 11–5–04; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Proposal to Revise Method for Estimation of Monthly Labor Force Statistics for Certain Subnational Areas; Request for Comments

AGENCY: Bureau of Labor Statistics, Labor.

ACTION: Request for comments on proposed action.

SUMMARY: The Department of Labor, through the Bureau of Labor Statistics and, specifically, the Local Area Unemployment Statistics (LAUS) program, is responsible for the development and publication of State and local area labor force statistics. In the LAUS program, monthly estimates of the labor force, employment, unemployment, and the unemployment rate for more than 7,000 areas in the Nation are developed and issued. A major program redesign to improve the methodological basis of the LAUS estimates and update the geography and techniques to reflect 2000 Census data was initially funded in FY 2001. After completion of various long-term research projects, the BLS plans to implement improvements to the estimating methods with State and area LAUS estimates for January 2005, to be published in March 2005.

DATES: Written comments must be submitted to the office listed in the Addresses section of this notice on or before December 10, 2004.

ADDRESSES: Send comments to Sharon P. Brown, Chief, Division of Local Area Unemployment Statistics, Bureau of Labor Statistics, Room 4675, 2 Massachusetts Avenue NE., Washington DC 20212.

FOR FURTHER INFORMATION CONTACT: Sharon P. Brown, Chief, Division of Local Area Unemployment Statistics, Bureau of Labor Statistics, telephone number 202–691–6390.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Department of Labor, through the Bureau of Labor Statistics, is responsible for the development and publication of State and local area labor force statistics through the Local Area Unemployment Statistics (LAUS) program. Currently, monthly estimates of employment, unemployment, and the unemployment rate are prepared for more than 7,000 areas, including Census regions, Census divisions, all States and the District of Columbia, Puerto Rico, metropolitan and small labor market areas, counties, cities of 25,000 population or more, and all cities and towns in New England regardless of population. In a multi-year, multi-project initiative that began in FY 2001, the following improvements to State and area labor force estimation were identified:

- State time series estimating models with real-time benchmarking to the national monthly employment and unemployment levels that will address long-standing issues related to accuracy and end-of-year revision,
- the extension of model-based estimation to six additional substate areas and the respective balance-of-State areas, and
- two enhanced procedures for developing other substate areas that employ innovative and dynamic estimating methods.

II. Background

A hierarchy of estimation methods is used to produce the State and area labor force estimates, based in large part on the availability and quality of data from the Current Population Survey (CPS), the office measure of the labor force for the nation.

Improved Time Series Models with Real-time Benchmarking. The estimates for States, the District of Columbia, New York City, Los Angeles metropolitan area, and the balances of New York State and California are developed using signal-plus-noise models. These models rely heavily on monthly CPS data, as well as current wage and salary employment estimates and unemployment insurance statistics. The State CPS annual averages of employment and unemployment are used as benchmarks to the model-based estimates at the end of the year. In general, the current method of model estimation and annual benchmarking results in an overestimate of employment and an underestimate of unemployment and the unemployment rate in States as compared to the national CPS estimates. The annual benchmarking approach reintroduces sampling error into the series and results in significant end-of-year revisions in a large number of States, causes economic anomalies that are an artifact of the benchmarking approach, distorts seasonality in the previous year so that analysis is impaired, and often misses shocks to the economy.

To address these serious issues, the improved model-based approach to estimation will ensure that State estimates add to the national estimates of employment and unemployment each month, through real-time benchmarking. In doing so, the benchmark will change from annual State-level estimates of employment and unemployment to monthly national estimates of these measures. In this way, economic shocks will be reflected in the State estimates on a real-time basis, and end-of-year revisions will be significantly smaller.

The improved State models are signal-plus-noise models, where the signal is a bivariate model of the unemployment or the employment level. The same inputs used in the current models are used in the new models. Seasonal adjustment occurs within the new model structure, with the removal of the seasonal component. The proposed models with real-time benchmarking produce reliability measures for the seasonally adjusted and not seasonally adjusted series, and on over-the-month and over-the-year change.

Under real-time benchmarking, a tiered approach to estimation is used. Model-based estimates (using a univariate form) are developed for the nine Census divisions that geographically exhaust the nation. (Census division groupings are currently used to analyze and publish LAUS estimates.) These estimates are controlled to the national levels of employment and unemployment. State model-based estimates are then made and controlled to the Census Division estimates. In this manner, the monthly State employment and unemployment estimates will add to the national levels, precluding differences between the sum of States and the national estimates, and national shocks related to the business cycle or outliers like September 11 will be addressed.

Annual historical benchmarking will still continue for State estimates but would be greatly altered. The updating of model inputs, model reestimation, and incorporation of updated population controls would be performed each year. However, the impact on the historical series of these benchmark activities is considered to be fairly small.

Extending Model-based Estimation to Additional Areas. Currently, monthly labor force estimates for New York City, the balance of New York State, the Los Angeles metropolitan area, and the balance of California are developed using model-based methods. (These models will be updated to the form used for States and described above.) As part of the LAUS improvement efforts, model-based estimation will be extended to the following areas and the respective balance-of-State areas: Chicago metropolitan division, Cleveland metropolitan area, Detroit metropolitan division, Miami metropolitan division, New Orleans metropolitan area, and Seattle-Everett metropolitan division. This will improve the statistical basis of the estimation for these areas, and provide important tools for analysis such as measures of error and seasonally adjusted series.

These area models will follow the form of the Census divisions (univariate), and will be benchmarked to the State employment and unemployment estimates on a real-time basis. As with the State models, seasonally adjusted series will be

produced, along with measures of error for the seasonally adjusted and not seasonally adjusted series, and on over-the-month and over-the-year change.

New and Reentrant Unemployment. There has been a long-standing concern in the LAUS program regarding the estimation of unemployment at the substate level (for areas other than New York City, Los Angeles, and the balances of New York State and California). Of specific concern is the measurement of unemployed new and reentrants to the labor market. The difficulty in estimating new and reentrants led to the use of a proportionate adjustment of area estimates to the State total unemployed as a way of controlling for the underestimate at the area level. The current research has led to a proposal for an improved methodology.

The new methodology incorporates the CPS new and reentrants State data and utilizes improved econometric modeling techniques. The new model follows the basic form of the model created in 1983 and used today, but has been updated and improved. The proposed model uses a stochastic nonlinear estimation process rather than the global linear procedure used currently. A stochastic, or random, coefficient is one whose value is allowed to change over time. In this model, the values of the model coefficients change from month to month as the models are updated with information from current observations.

The model estimates are distributed to each labor market area in the State based on the area's share of the State population. New entrants are distributed based on the area's share of the State 16–19 year old population, and reentrants are distributed based on the area's share of the State 20 years and older population.

The new method of estimation successfully addresses the issue of underestimation and eliminates the need for significant proportionate adjustment of area estimates to the monthly State levels of unemployment.

Residency Adjustment. The underlying concepts and definitions of all labor force data developed by the LAUS program are consistent with those of the Current Population Survey (CPS), including the requirement that measures relate to the place of residence of the labor force participant. Establishment-based data on the number of nonagricultural wage and salary jobs by place of work from the Current Employment Statistics (CES) or the Quarterly Census of Employment and Wages (QCEW) programs is the only current, geographically comprehensive source of information on employment at the substate level, and are a significant input to LAUS estimation. The establishment series differs from the CPS in that the CPS counts employed persons where they reside rather than jobs by place of work. Thus, the establishment-based data must be adjusted to account for multiple-job holding and residency prior to use in LAUS estimation.

The current procedure utilizes a single adjustment ratio for each estimating area, using Decennial census data and March-April average establishment-based data. The Census estimate of all employed residents in an area is divided by the job count. This ratio is then applied each month to the nonfarm wage and salary estimate for the area to produce the resident nonfarm wage and salary employed estimate for the area.

A basic problem with the current Census-based procedure of adjusting for residency was the limited geographic scope for influencing the area's estimate of resident employed and static nature of the approach. Recognizing that labor market areas often are not defined to the point where commutation is zero, and that, in the intercensal period, job growth can and does occur in the areas surrounding the estimating area, a new approach to developing resident employment was considered.

The proposed method postulates that resident employment in an area is a function not only of the relationship between employed residents and jobs in that area, but in other areas within commuting distance. The procedure is more dynamic than the current method insofar as job count changes in commuting areas can affect resident employment. As in the current procedure, however, the commuting ratios themselves are fixed for the intercensal period.

Detailed descriptions of the current and Redesign approaches are available at the above address and at the BLS LAUS Web site *http://www.bls.gov/lau/home.htm.*

Comments submitted in response to this notice will be summarized and included in the Notice of Decision on this proposal.

This notice is a general solicitation of comments from the public.

Signed in Washington, DC., this 29th day of October, 2004.

John M. Galvin,

Associate Commissioner, Office of Employment and Unemployment Statistics, Bureau of Labor Statistics.

[FR Doc. 04–24733 Filed 11–5–04; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Maritime Advisory Committee for Occupational Safety and Health; Notice of Meeting

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Maritime Advisory Committee for Occupational Safety and Health (MACOSH); Notice of meeting.

SUMMARY: The Maritime Advisory Committee for Occupational Safety and Health (MACOSH) was established to advise the Assistant Secretary of Labor for OSHA on issues relating to occupational safety and health in the maritime industries. The purpose of this **Federal Register** notice is to announce the December 2004 meeting of the committee.

DATES: The committee will meet on December 8 through December 9, 2004. On December 7, the MACOSH work groups will meet from 9 a.m. until 4:30 p.m.; on December 8, the full committee will meet from 8 a.m. until approximately 4:30 p.m.; on December 9, the full committee will meet from 8 a.m. until approximately 5 p.m.

ADDRESSES: The committee will meet at the Norfolk Waterside Marriott, 232 East Main Street, Norfolk, Virginia 23510; phone; (757) 628–6473; fax: (202) 628–6452.

Mail comments, views, or statements in response to this notice to Jim Maddux, Director, Office of Maritime, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue NW., Washington, DC 20210; phone (202) 693–2086; FAX: (202) 693–1663.

FOR FURTHER INFORMATION CONTACT: For general information about MACOSH and this meeting: Jim Maddux, Director, Office of Maritime, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210; phone: (202) 693–2086. For information about the submission of comments, and requests to speak: Vanessa L. Welch, Office of Maritime, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210; Phone: (202) 693–2086. Individuals with disabilities wishing to attend the meeting should contact Vanessa L. Welch at (202) 693–2086 at later than November 17, 2004 to obtain appropriate accommodations.

SUPPLEMENTARY INFORMATION: All MACOSH meetings, including work group meetings, are open to the public. All interested persons are invited to

attend MACOSH at the times and places listed above. The full meeting on December 8 and 9 will include presentations and discussions of OSHA's standard and guidance activities, maritime enforcement, alliances and partnerships, outreach activities, and MACOSH work group reports. Specific topics will include OSHA's proposed standard for Chromium VI, a NIOSH maritime noise study, automatic external defibrillators (AED), and an update on development of the construction crane standard.

MACOSH has several active work groups. The container safety, longshoring, and shipyard work groups will meet on the morning of December 7. The work groups dealing with health issues, traffic safety, and safety culture will meet on the afternoon of December 7. The work groups will report to the full committee on December 8 and 9.

Public Participation: Written data, views or comments for consideration by MACOSH on the various agenda items listed above may be submitted to Vanessa L. Welch at the address listed above. Submissions received by November 17, 2004, will be provided to committee members and will be included in the record of the meeting. Requests to make oral presentations to the Committee may be granted as time permits. Anyone wishing to make an oral presentation to the Committee on any of the agenda items listed above should notify Vanessa L. Welch by November 17, 2004. The request should state the amount of time desired, the capacity in which the person will appear, and a brief outline of the content of the presentation.

Authority: John L. Henshaw, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice under the authority granted by 6(b)(1) and 7(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655, 656, the Federal Advisory Committee Act (5 U.S.C. App. 2), and 29 CFR part 1912.

Signed at Washington, DC., this 2nd day of November, 2004.

John L. Henshaw,

Assistant Secretary of Labor.

[FR Doc. 04–24838 Filed 11–5–04; 8:45 am]

BILLING CODE 4510–26–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–286]

Entergy Nuclear Operations, Inc.; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–64 issued to Entergy Nuclear Operations, Inc., (the licensee) for operation of the Indian Point Nuclear Generating Unit No. 3, located in Westchester County, New York.

The proposed amendment would revise Technical Specification (TS) 3.7.11, ''Control Room Ventilation System (CRVS),'' to add a note in limiting condition for operation (LCO) 3.7.11 and surveillance requirement (SR) 3.7.11.4 to allow, on a one-time basis, the placement of the CRVS in an alternate configuration to support tracer gas testing. The one-time allowance was proposed for the remaining period of the current operating cycle 13. The proposed amendment would also allow self-contained breathing apparatus and potassium iodide pill to be used as compensatory measures for the control room operators in the event that the tracer gas test results are not bounded by the dose consequence evaluations for the test.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in Title 10 of the Code of Federal Regulations (10 CFR), section 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change involves a modification to the design and operation of the control room ventilation system (CRVS). The primary effect of the proposed modification is an increase in the flow rate of filtered outside air into the control room. Industry experience and analyses indicate that this change will tend to reduce the amount of unfiltered outside air migrating through the control room envelope. The proposed change also establishes compensatory measures that could be invoked in the event that a measurement of unfiltered inleakage indicates the dose analysis assumptions are not bounding. Neither of these proposed changes is related to accident initiators so that the probability of a previously evaluated accident is not affected. The scope of previously evaluated accidents includes the dose consequences to control room operators. Dose consequence analyses have been updated, using existing dose acceptance criteria based on 10 CFR [Part] 50, Appendix A, GDC [General Design Criterion]—19, to reflect the proposed modification of the CRVS. In addition, establishing compensatory measures available to control room operators, provides further [assurance] that the dose consequences of previously evaluated accidents meet existing limits.

Therefore the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

There are no new accident precursors being created by the proposed modification of the CRVS or by establishing compensatory measures that could be used if unfiltered inleakage through the control room envelope is higher than assumed in dose consequence analyses. The CRVS will continue to function as required to provide protection to the control room operators and the availability of compensatory measures provides further assurance that dose limits will be met.

Therefore, the proposed changes described in this license amendment request will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The existing dose limits established in 10 CFR [Part] 50, Appendix A, GDC 19 for control room operators are being maintained. Dose consequence analyses have been prepared that account for the proposed new configuration of the CRVS and a limit for unfiltered inleakage has been established as an acceptance criterion for the performance of tracer gas testing. In the event that tracer gas test results conclude that additional measures are needed for the control room envelope, compensatory measures are available to provide further assurance that dose limits will be met.

Therefore, the proposed changes described in this license amendment request will not involve a significant reduction in [a] margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*.(**Note:** Public access to ADAMS has been temporarily suspended so that security reviews of publicly available documents may be performed and potentially sensitive information removed. Please check the NRC Web site for updates on the resumption of ADAMS access.) If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestors/petitioner's interest. The petition must also identify the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Nontimely requests and/or petitions and contentions will not be entertained absent a determination by the Commission or the presiding officer of the Atomic Safety and Licensing Board that the petition, request and/or the contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309(a)(1)(i)–(viii).

A request for a hearing or a petition for leave to intervene must be filed by:

(1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; (2) courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff; (3) e-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, *hearingdocket@nrc.gov*; or (4) facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff at (301) 415–1101, verification number is (301) 415–1966. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov*. A copy of the request for hearing and petition for leave to intervene should also be sent to Mr. John Fulton, Assistant General Counsel, Entergy Nuclear Operations, Inc., 440 Hamilton Avenue, White Plains, NY 10601, attorney for the licensee.

For further details with respect to this action, *see* the application for amendment dated October 26, 2004, which is available for public inspection at the Commission's PDR, located at One White Flint North, File Public Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, (301) 415–4737, or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 2nd day of November 2004.

For the Nuclear Regulatory Commission.

Patrick D. Milano,

Senior Project Manager, Section I, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 04–24807 Filed 11–5–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Meeting Postponement: USEC American Centrifuge Plant

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Meeting postponement.

SUMMARY: The NRC is postponing the public scoping meeting for the proposed USEC Inc. American Centrifuge Plant that was to be held on November 15, 2004. The original meeting announcement appeared in the **Federal Register** on October 15, 2004 (69 FR 61268).

On October 25, 2004, the NRC initiated an additional security review, by agency experts, of publicly available documents to ensure that potentially sensitive information is removed from the agency Web site. During this review, ADAMS, the NRC's on-line document library, will be temporarily unavailable to the public. This meeting postponement is appropriate to allow members of the public adequate access to USEC Inc.'s license application and environmental report before the scoping meeting. After the documents related to this application are made publically available the NRC will announce a new meeting.

FOR FURTHER INFORMATION CONTACT: For general or technical information associated with the license review of the USEC Inc., application, please contact Yawar Faraz at (301) 415–8113. For general information on the NRC NEPA process, or the environmental review process related to the USEC Inc. application, please contact Matthew Blevins at (301) 415–7684.

Signed in Rockville, MD, this 2nd day of November, 2004.

For the Nuclear Regulatory Commission.

B. Jennifer Davis,

Chief, Environmental and Low-Level Waste Section, Division of Waste Management and Environmental Protection, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 04–24805 Filed 11–5–04; 8:45 am]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

Submission of Information Collection for OMB Review; Comment Request; Survey of Frozen Defined Benefit Pension Plans

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of request for OMB approval.

SUMMARY: The Pension Benefit Guaranty Corporation (''PBGC'') is requesting that the Office of Management and Budget (''OMB'') approve a new collection of information under the Paperwork Reduction Act. The purpose of the information collection, which will be conducted via a mail survey, is to help the PBGC assess the extent to which the plans it insures have been frozen, the intentions of the plans' sponsors regarding those frozen plans, and the extent to which plan sponsors are considering freezing plans that are not frozen. This notice informs the public of the PBGC's request and solicits public comment on the collection of information.

DATES: Comments should be submitted by December 8, 2004.

ADDRESSES: Comments should be mailed to the Office of Information and Regulatory Affairs of the Office of Management and Budget, Attention: Desk Officer for Pension Benefit Guaranty Corporation, Washington, DC 20503.

Copies of the request (including the collection of information) may be obtained by writing to the PBGC's Communications and Public Affairs Department, suite 240, 1200 K Street, NW., Washington, DC 20005–4026, or by visiting that office or calling 202–326–4040 during normal business hours. (TTY and TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4040.)

FOR FURTHER INFORMATION CONTACT: James L. Beller, Attorney, Office of the General Counsel, PBGC, 1200 K Street, NW., Washington, DC 20005–4026; 202–326–4024. (TTY and TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: The PBGC is requesting that OMB approve a mail survey designed to gather information about frozen defined benefit plans. Findings about these plans' characteristics, sponsor rationales for freezing these plans, sponsor intentions to either terminate or unfreeze these plans, and sponsor intentions to freeze plans that are not frozen will allow the PBGC to better forecast future trends in the plans it insures. In addition, the Government Accountability Office has recommended that the PBGC ''conduct a pilot study to identify frozen [defined benefit] plans it insures and assess the usefulness of information on the characteristics and consequences of plan freezes.'' This collection of information would address that recommendation.

Participation in this voluntary collection of information will put a slight burden on a very small percentage of the public. The PBGC estimates that there will be 750 respondents with an annual burden of approximately 188 hours and $5,200. 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.

Issued in Washington, DC, this 3rd day of November 2004.

Stuart A. Sirkin,

Director, Corporate Policy and Research Department, Pension Benefit Guaranty Corporation.

[FR Doc. 04–24858 Filed 11–5–04; 8:45 am]

BILLING CODE 7708–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Rule 45, SEC File No. 270–164, OMB Control No. 3235–0154.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for extension of the previously approved collection of information discussed below.

Rule 45 imposes a filing requirement on registered holding companies and their subsidiaries under section 12(b) of the Act. Under the requirement, the companies must file a declaration seeking authority to make loans or otherwise extend credit to other companies in the same holding company system. Among others, the rule provides an exception from the filing requirement the performance of payment obligations under consolidated tax agreements. The Commission estimates 15 recordkeepers together incur about 46 annual burden hours to comply with these requirements.

The estimates of average burden hours are made for the purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.

There is no recordkeeping duty under rule 45. Further, there is no requirement to keep information obtained under rule 45, because it is public information. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid control number.

General comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or e-mail to: *David_Rostker@omb.eop.gov*; and (ii) R. Corey Booth, Director/Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: October 29, 2004.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4–3033 Filed 11–5–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extensions: Rule 425, OMB Control No. 3235–0521, SEC File No. 270–462.

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.

Securities Act Rule 425 (OMB Control No. 3235–0521; SEC File No. 270–462) requires the filing of certain prospectuses and communications under Rules 135 and 165 in connection with business combination transactions. The purpose of the rule is to relax existing restrictions on oral and written communications with shareholders about tender offers, mergers and other business combination transactions by permitting the dissemination of more information on a more-timely basis as long as the written communications are filed on the date of first use. Approximately 2,000 issuers file communications under Rule 425 at an estimate .25 hours per response for a total of 500 annual burden hours.

Written comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collections of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written 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: October 29, 2004.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4–3034 Filed 11–5–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Rule 71 and Forms U–12(I) –(A) and –(B); SEC File No. 270–61; OMB Control No. 3235–0173.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for extension of the previously approved collection of information discussed below.

Rule 71 [17 CFR 250.71], under the Public Utility Holding Company Act of 1935, as amended (''Act''), (15 U.S.C. 79 *et seq.*), requires that certain information be filed by employees of registered holding companies who represent the companies' interests before Congress, the Commission or the

Federal Energy Regulatory Commission on either Form U–12(I)–A or Form U–12(I)–B. The filings must provide, among other things, the identity of the representative, the person's position and compensation and a quarterly statement of those expenses not incurred in the ordinary course of business. Employees appearing for the first time must file this information on Form U–12(I)–A within ten days of an appearance. Employees appearing on a regular basis may file the information in advance on Form U–12(I)–B, which will remain valid for the remainder of the year in which it was first filed and for the following two calendar years. Thereafter, it may be renewed for additional three-year periods within thirty days of the expiration of the prior filing. The information collection prescribed by Form U–12(I)–A and Form U–12(I)–B is required by rule 71 under the Act. Rule 71 implements section 12(i) of the Act, which expressly requires the filing of the prescribed disclosure information with the Commission in the interest of investors and consumers. The Commission estimates that the total annual reporting burden of collections under rule 71 is 167 hours (250 responses × forty minutes = 167 burden hours).

The estimates of average burden hours are made for the purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.

There is no recordkeeping requirement for the rule 71 reporting duty. It is mandatory that qualifying employees provide the information required by rule 71. There is no requirement to keep the information confidential, because it is public information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

General comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or e-mail to: *David_Rostker@omb.eop.gov*; and (ii) R. Corey Booth, Director/Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: November 2, 2004.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4–3035 Filed 11–5–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Rule 58 and Form U–9C–3; SEC File No. 270–400; OMB Control No. 3235–0457.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget for extension of the previously approved collection of information discussed below.

Rule 58 [17 CFR 250.58], under the Public Utility Holding Company Act of 1935 (''Act''), as amended (15 U.S.C. 79 *et seq.*) allows registered holding companies and their subsidiaries to acquire energy-related and gas-related companies. Under that rule, acquisitions are made, within certain limits, without prior Commission approval under section 10 of the Act. To monitor compliance, the rule requires that within sixty days after the end of the first calendar quarter in which any exempt acquisition is made, and each calendar quarter thereafter, the registered holding company is required to file with the Commission a Certificate of Notification on Form U–9C–3 containing the information prescribed by that form. The information collection by the Commission is required by rule 58. The Commission uses this information to determine the existence of financial detriment, regarding the acquisition of certain energy-related companies, to the interests the Act is designed to protect. The Commission estimates that the total annual reporting burden is 464 annual burden hours to comply with these requirements, *i.e.*, 29 respondents × 16 = 464 burden hours.

The estimates of average burden hours are made for the purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Please direct general comments regarding the above information to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or e-mail to *David_Rostker@omb.eop.gov*; and (ii) R. Corey Booth, Director/Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: November 2, 2004.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4–3036 Filed 11–5–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50617; File No. SR–FICC–2004–01]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Order Approving Proposed Rule Change to Amend the Government Securities Division and the Mortgage-Backed Securities Division Membership Rules

November 1, 2004.

I. Introduction

On January 9, 2004, the Fixed Income Clearing Corporation (''FICC'') filed with the Securities and Exchange Commission (''Commission'') and on April 28, 2004, amended proposed rule change SR–FICC–2004–01 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] Notice of the proposal was published in the **Federal Register** on September 23, 2004.[2] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description

FICC is amending the membership rules of its Government Securities Division (''GSD'') and its Mortgage-Backed Securities Division (''MBSD'') to (1) eliminate the requirement that the conversion to U.S. dollars be made by the applicant or member prior to

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 50402 (September 16, 2004), 69 FR 57111.

submitting financial information to FICC unless such conversion is specifically requested by FICC, (2) eliminate the requirement that FICC make a determination as to the adequacy of an applicant's personnel, physical facilities, books and records, accounting systems, or internal procedures, (3) require that a non-U.S. applicant represent to FICC in writing that it is regulated in a way that is generally comparable to the way in which domestic FICC members are regulated, (4) add a requirement to the GSD's rules that a non-U.S. netting applicant represent in writing that it is in compliance with the financial reporting and responsibility standards of its home country, and (5) eliminate the requirement that GSD comparison-only applicants submit financial information to FICC.

1. Amend the Rules of the GSD and MBSD That Require Financial Information Submitted by an Applicant To Be in Dollar Equivalents

When FICC receives financial information from non-U.S. members and applicants, FICC's credit risk staff will perform the conversion to U.S. dollars whenever it is necessary. The credit risk staff will perform the conversion as of the date of the financial statements. Therefore, FICC is eliminating the current requirement that the conversion to U.S. dollars be made by the applicant or member prior to submitting financial information to FICC unless such conversion is specifically requested by FICC.

2. Amend the Operational Capability Requirement Contained in the Rules of the GSD and the MBSD

FICC's current operational capability rules are too broad and impose upon FICC an obligation to make determinations with respect to the operational capability of an applicant or member that FICC staff is not equipped or trained to make.[3] Such determinations are more appropriately left to the applicant or member's designated examining authority. The operational capability aspect that is relevant to FICC and upon which FICC must make a determination is the ability of an applicant or member to send input to FICC and to receive output from FICC on a timely and accurate basis. Therefore, FICC is eliminating the requirement that it make a determination as to the adequacy of an applicant's personnel, physical facilities, books and records, accounting systems, or internal procedures.

3. Amend the Comparability Requirement of the GSD's Rules for Non-U.S. Members

The GSD rules currently provide that a non-U.S. entity shall be eligible to become a netting member if FICC has determined that the entity is regulated in its home country in a way that is generally comparable to the way in which similar domestic members are regulated. The comparability determination has been difficult to make because there is no objective set of guidelines that FICC can use to confirm the comparability requirement. As a result, comparability determinations have necessarily become judgment calls made by FICC staff using information provided by the applicant.

Because the netting service is a guaranteed service and because FICC only accepts regulated entities as members, FICC should focus on making sure that its non-U.S. members (as is the case with its domestic members) are regulated by a financial regulatory authority in their home country in certain key areas as opposed to being concerned with ''comparability'' of regulation. These key areas are maintenance of relevant books and records, regular inspections and examinations, and minimum financial standards. Therefore, FICC is amending the comparability requirement to require that the applicant represent to FICC in writing that it is regulated in these key areas.[4] In conjunction with this change, FICC is adding a requirement to the GSD's rules that a non-U.S. netting applicant represent in writing that it is in compliance with the financial reporting and responsibility standards of its home country.[5]

4. Amend the GSD's Rules That Require Comparison-Only Applicants and Members To Submit the Same Financial Information as Netting Applicants and Members

The GSD's comparison-only service is not a guaranteed service. Comparison-only members do not have minimum financial requirements and are not required to make clearing fund deposits. Therefore, FICC is eliminating the requirement that GSD comparison-only applicants submit financial information to FICC. The GSD's rules will continue to give FICC the ability to require comparison-only members to submit financial information.

In addition to these proposed rule changes, FICC is making a technical change to the rules of the MBSD to move language relating to cross-guaranty agreements to a more appropriate place in the rules.

III. Discussion

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to remove impediments to the perfection of a national system for the prompt and accurate clearance and settlement of securities transactions and must not be designed to permit unfair discrimination in the admission of participants or among participants in the use of FICC.[6] The Commission finds that FICC's proposed rule change is consistent with these requirements because it refines and improves FICC's rules and procedures with regard to applicants and members.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–FICC–2004–01) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E4–3051 Filed 11–5–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50604; File No. SR–NASD–2004–155]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. to Establish Access Fees for Non-NASD Members Using Nasdaq's Brut Facility

October 28, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

[3] For example, the GSD rules currently require that a determination be made with respect to whether the membership applicant has adequate personnel, physical facilities, and accounting systems, among other things, to satisfactorily handle transactions.

[4] This approach is currently used by the Emerging Markets Clearing Corporation (''EMCC'').

[5] Id.

[6] 15 U.S.C. 78q–1(b)(3)(F).

[7] 17 CFR 200.30–3(a)(12).

(''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 18, 2004, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by Nasdaq. On October 26, 2004, Nasdaq submitted Amendment No. 1 to the proposed rule change.[3] Nasdaq has filed the proposal pursuant to Section 19(b)(3)(A)(iii) of the Act[4] and Rule 19b–4(f)(6) thereunder,[5] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to establish access fees for non-NASD members using its Brut trading facility. The text of the proposed rule change is available at the Office of the Secretary, Nasdaq, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq represents that, on September 7, 2004, Nasdaq completed its purchase of the Brut ECN (''Brut''). Once purchased by Nasdaq, Brut became a ''facility'' of a national securities association,[6] thereby making the pricing for Brut's services subject to Section 15A(b)(5) of the Act, which requires that the fees of a national securities association be equitably allocated among members and issuers and other persons using the facility.[7] In a separate filing in October 2004, Nasdaq established such a fee structure for NASD members who access orders residing in Brut's system.[8] In that proposal, Nasdaq created a tiered fee structure in which the per share fee charged to a member to access liquidity in Brut varies based on the amount of liquidity added to Brut by that member. Members that provide an average daily volume of 50,000 shares or less over a calendar month are charged $0.003 per share when accessing liquidity in the Brut system for that same month. Members that provide an average daily volume of 50,001 shares or more over a calendar month are charged $0.0027 per share when accessing liquidity in the Brut system for that same month. In this filing, Nasdaq proposes to make the same fee structure applicable to non-NASD members that use the Brut system, likewise starting in October 2004. Nasdaq notes that Brut has only twelve non-NASD members using its system and believes that this proposal would ensure that all users (members and non-members) are subject to a uniform and objective pricing schedule.

2. Statutory Basis

Nasdaq believes that the proposed rule change, as amended, is consistent with the provisions of Section 15A of the Act,[9] in general, and with Section 15A(b)(5) of the Act,[10] in particular, in that the proposed rule change provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which the association operates or controls.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change, as amended, will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change, as amended, is subject to Section 19(b)(3)(A)(iii) of the Act[11] and Rule 19b–4(f)(6) thereunder[12] because the proposal: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative prior to 30 days after the date of filing or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that Nasdaq has given the Commission notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Act.[13]

Nasdaq has requested that the Commission waive the five-day pre-filing notice requirement and the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver will permit Nasdaq to make Brut's fee structure consistent for both NASD members and non-NASD members. In addition, the Commission has determined to waive the five-day pre-filing notice requirement. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.[14]

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Edward S. Knight, Executive Vice President and General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated October 26, 2004 (''Amendment No. 1''). Amendment No. 1 made technical corrections to the proposed rule text of the originally filed proposed rule change.

[4] 15 U.S.C. 78s(b)(3)(A)(iii).

[5] 17 CFR 240.19b–4(f)(6).

[6] *See* Section 3(a)(2) of the Act, 15 U.S.C. 78c(a)(2).

[7] 15 U.S.C. 78*o*–3(b)(5). Nasdaq currently operates Brut pursuant to a Temporary Conditional Exemption (''Exemption'') issued by the Commission pursuant to Section 36(a) of the Act. *See* Securities Exchange Act Release No. 50311 (September 3, 2004), 69 FR 54818 (September 10, 2004). The Exemption requires Nasdaq to file proposed rule changes under Section 19(b) of the Act if it seeks to modify Brut's fee schedule.

[8] *See* Securities Exchange Act Release No. 50502 (October 7, 2004), 69 FR 61275 (October 15, 2004) (SR–NASD–2004–149).

[9] 15 U.S.C. 78*o*–3.

[10] 15 U.S.C. 78*o*–3(b)(5).

[11] 15 U.S.C. 78s(b)(3)(A)(iii).

[12] 17 CFR 240.19b–4(f)(6).

[13] *See* Section 19(b)(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C).

[14] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASD–2004–155 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–NASD–2004–155. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASD–2004–155 and should be submitted on or before November 29, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4–3038 Filed 11–5–04; 8:45 am]

BILLING CODE 8010–01–P

efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50615; File No. SR–NYSE–2004–58]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to its Original Financial Listing Standards Pilot Program

October 29, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 12, 2004, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The proposed rule change has been filed by the NYSE as a ''non-controversial'' rule change pursuant to Rule 19b–4(f)(6) under the Act.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange seeks to extend its original financial listing standards pilot program (the ''Pilot Program'')[4] until the earlier of January 31, 2005, or such date as the Commission may approve File Number SR–NYSE–2004–20,[5] which seeks permanent approval of the Pilot Program. The Pilot Program established revised financial standards applicable to the listing of equity securities on the Exchange. The Pilot Program is currently in effect on an extended basis until the earlier of October 31, 2004, or such date as the Commission may approve File Number SR–NYSE–2004–20.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On January 29, 2004, the Commission granted accelerated approval to the Pilot Program on a six-month pilot basis through July 30, 2004.[6] Two comments were received in response to File Number SR–NYSE–2003–43.[7] The NYSE thereafter filed File Number SR–NYSE–2004–15 on March 16, 2004 for immediate effectiveness,[8] which suspended portions of the original Pilot Program regarding minimum numerical continued listing set forth in Section 802.01B of the NYSE's Listed Company Manual. In File Number SR–NYSE–2004–15, the Exchange noted its intention to publish the requirements of the original Pilot Program regarding minimum numerical continued listing standards set forth Section 802.01B for public comment on a non-accelerated timeframe. SR–NYSE–2004–15 did not, however, affect the Pilot Program with respect to original listing standards set forth in Sections 102.01C and 103.01B of the NYSE's Listed Company Manual or the Pilot Program's non-substantive change to the language of Section 802.01C.

On April 4, 2004, the Exchange filed File Number SR–NYSE–2004–20, which seeks permanent approval for the Pilot Program currently in effect with respect

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] *See* Securities Exchange Act Release Nos. 49154 (January 29, 2004), 69 FR 5633 (February 5, 2004) (approving File No. SR–NYSE–2003–43); and 50123 (July 29, 2004), 69 FR 57474 (August 5, 2004) (File No. SR–NYSE–2004–40).

[5] *See* Securities Exchange Act Release No. 49917 (June 25, 2004), 69 FR 40439 (July 2, 2004).

[6] *See* Securities Exchange Act Release No. 49154, *supra* note 4. The Exchange subsequently extended the Pilot Program until the earlier of October 31, 2004, or such date as the Commission may approve File Number SR–NYSE–2004–20. *See* Securities Exchange Act Release No. 50123, *supra* note 4.

[7] *See* letters to Jonathan G. Katz, Secretary, Commission, from W. Randy Eaddy, Kilpatrick Stockton LLP, dated March 11, 2004, and Kenneth A. Hoogstra, von Briesen & Roper, s.c., dated February 25, 2004.

[8] *See* Securities Exchange Act Release No. 49443 (March 18, 2004), 69 FR 13929 (March 24, 2004).

to the Exchange's original minimum listing standards, and approval of the continued minimum listing standards as originally proposed in File Number SR–NYSE–2003–43. File Number SR–NYSE–2004–20 was published in the **Federal Register** on July 2, 2004.[9] Three comment letters were received in response to File Number SR–NYSE–2004–20.[10] Following consideration of these comment letters, the Exchange filed Amendment No. 2 to NYSE–2004–20 on August 31, 2004.[11] The Exchange believes it is appropriate to extend the amended Pilot Program until the earlier of January 31, 2005, or such date as the Commission may approve File Number SR–NYSE–2004–20.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act[12] because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms, does not become operative until 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, and the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission, it has become effective pursuant to Section 19(b)(3)(A) of the Act[13] and Rule 19b–4(f)(6) thereunder.[14] At any time within 60 days of the filing of this proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Although Rule 19b–4(f)(6) under the Act[15] requires that an Exchange submit a notice of its intent to file at least five business days prior to the filing date, the Commission is waiving this requirement at the Exchange's request in view of the fact that the proposed rule change seeks to continue the existing Pilot Program. The NYSE has also requested that the Commission waive the 30-day operative delay. The Commission believes waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Waiver of the operative date will allow the Exchange's Pilot Program to continue without any interruption in service to issuers and investors. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.[16]

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–NYSE–2004–58 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–NYSE–2004–58. 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 NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2004–58 and should be submitted on or before November 29, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4–3037 Filed 11–5–04; 8:45 am]

BILLING CODE 8010–01–P

[9] *See supra* note 5.

[10] *See* letters to Jonathan G. Katz, Secretary, Commission, from Richard F. Latour, President & CEO, MicroFinancial Incorporated, July 15, 2004, Kenneth A. Hoogstra, von Briesen & Roper, s.c., dated July 20, 2004, and John L. Patenaude, Vice President Finance and Chief Financial Officer, Nashua Corporation, dated July 22, 2004.

[11] *See* letter to Nancy J. Sanow, Assistant Director, Division, Commission, from Darla C. Stuckey, Corporate Secretary, NYSE, dated August 31, 2004.

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] CFR 240.19b–4(f)(6).

[15] *Id.*

[16] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[17] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3642]

Commonwealth of Virginia; Amendment #2

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency—effective September 30, 2004, the above

numbered declaration is hereby amended to establish the incident period for this disaster as beginning September 27, 2004, and continuing through September 30, 2004.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is December 17, 2004 and for economic injury the deadline is July 18, 2005.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: November 1, 2004.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 04–24816 Filed 11–5–04; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages that will require clearance by the Office of Management and Budget (OMB) in compliance with Pub. L. 104–13 effective October 1, 1995, The Paperwork Reduction Act of 1995. The information collection packages that may be included in this notice are for new information collections, revisions to OMB-approved information collections, and extensions (no change) of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Written comments and recommendations regarding the information collection(s) should be submitted to the OMB Desk Officer and the SSA Reports Clearance Officer.

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

(SSA), Social Security Administration, DCFAM, Attn: Reports Clearance Officer, 1338 Annex Bldg., 6401 Security Blvd., Baltimore, MD 21235; Fax: 410–965–6400.

I. The information collections listed below are pending at SSA and will be submitted to OMB January 7, 2005. Therefore, your comments should be submitted to SSA by this date. You can obtain copies of the collection instruments by calling the SSA Reports Clearance Officer at 410–965–0454, or by writing to the address listed above.

1. *Disability Determination and Transmittal—20 CFR 404.1615(e), 416.1015(f)—0960–0437.* The information collected on Form SSA–831–C3/U3 is used by SSA to document the State agency determination as to whether an individual who applies for disability benefits is eligible for those benefits based on his/her alleged disability. SSA also uses the information for program management and evaluation. The respondents are State Disability Determination Services adjudicating Title II and Title XVI disability determinations for SSA.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 3,155,120.

Frequency of Response: 1.

Average Burden Per Response: 15 minutes.

Estimated Average Burden: 788,780 hours.

2. *Non-Attorney Representative Demonstration Project Application—0960–NEW.* Section 303 of the Social Security Protection Act of 2004 (SSPA) provides for a 5-year demonstration project to be conducted by SSA under which the direct payment of SSA-approved fees is extended to certain non-attorney claimant representatives. Under the SSPA, to be eligible for direct payment of fees, a non-attorney representative must fulfill the following statutory requirements: (1) Possess a bachelors degree or have equivalent qualifications derived from training and work experience; (2) pass an examination that tests knowledge of the relevant provisions of the Social Security Act; (3) secure professional liability insurance or equivalent insurance; (4) pass a criminal background check; and (5) demonstrate completion of relevant continuing education courses. Through the services of a private contractor, SSA must collect the requested information to determine if a non-attorney representative has met the statutory requirements to be eligible for direct payment of fees for his or her claimant representation services. The information collection is needed to comply with the legislation. The respondents are non-attorney representatives who apply for direct payment of fees.

Type of Request: New information collection.

Number of Respondents: 500.

Frequency of Response: 1.

Average Burden Per Response: 1 hour.

Estimated Annual Burden: 500 hours.

3. *Request For Review of Hearing Decision/Order—20 CFR 404.967–.981, 20 CFR 416.1467–.1481—0960–0277.* SSA collects the information on Form HA–520 from each claimant for Title II or Title XVI benefits who is dissatisfied with the hearing decision or the dismissal of a hearing request and wants to request review of the decision by the Appeals Council. An individual may request Appeals Council review by filing a written request. However, a completed HA–520 ensures that SSA receives the information necessary to establish that the claimant filed the request for review within the prescribed time, that the claimant is a proper party, and that the claimant has completed the requisite steps to permit review by the Appeals Council. The Appeals Council also uses the information provided by the claimant to document the claimant's reason(s) for disagreeing with the ALJ decision or dismissal, to determine whether the claimant has additional evidence to submit, and to determine whether the claimant has a representative or wants to appoint one.

Type of Request: Extension of an approved OMB information collection.

Number of Respondents: 107,485.

Frequency of Response: 1.

Average Burden Per Response: 10 minutes.

Estimated Annual Burden: 17,914 hours.

4. *State Mental Institution Policy Review—20 CFR 416 subpart U, 20 CFR 416 subpart F, 20 CFR 404.2035 and .2065, 20 CFR 416.635 and .665—0960–0110.* SSA sends Form SSA–9584–BK to State mental institutions that participate in SSA's representative payee onsite review program. As a representative payee, the State mental institution has the responsibility to receive and administer payments to beneficiaries who have been determined by SSA to be incapable of managing benefits. SSA is required by law and regulations to monitor representative payees' use of benefits. Under the onsite review program, SSA conducts a triennial review of State mental institutions in order to determine whether the institutions' policies and practices conform with SSA's regulations in the use of benefits, and the other duties and responsibilities required of representative payees.

The form obtains information needed by the SSA review team (comprised of representatives from SSA's regional and field offices) and provides a basis for conducting the actual onsite review. In addition, the information is used in the preparation of the subsequent report of findings and recommendations, which is issued to the institutions.

Type of Request: Extension of an approved OMB information collection.

Number of Respondents: 100.

Frequency of Response: 1.

Average Burden Per Response: 60 minutes.

Estimated Annual Burden: 100 hours.

II. The information collections listed below have been submitted to OMB for clearance. Written comments and recommendations regarding the information collections should be submitted to the OMB Desk Officer and the SSA Reports Clearance Officer. In order for your comments to be considered, you must send them by December 8, 2004. You can obtain a copy of the OMB clearance package by calling the SSA Reports Clearance Officer at 410–965–0454, or by writing to the address listed above.

1. *Acknowledgement of Receipt (Notice of Hearing)—20 CFR 404.938 and 416.1438—0960–0671.* The information collected by form HA–504 is used by the Social Security Administration to process requests for hearings about unfavorable determinations of entitlement or eligibility to disability payments. Specifically, this form is used to acknowledge receipt of the notice of hearing issued by an Administrative Law Judge. The respondents are applicants for Title II disability payments who want to have a hearing to appeal an unfavorable entitlement or eligibility decision.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 670,000.

Frequency of Response: 1.

Average Burden Per Response: 1 minute.

Estimated Annual Burden: 11,167 hours.

2. *Early Intervention Project/ Employment Services Provider Survey/ 0960–NEW.*

Background

The Employment Services Provider Survey is being conducted as part of a process demonstration authorized by the Ticket to Work and Work Incentives Improvement Act of 1999. The process demonstration, Early Intervention (EI), will provide employment services and supports to certain applicants for Social Security disability insurance.

The purpose of the EI Project is to encourage applicants to begin the return to work process immediately after the onset of a disability. Many experts believe early intervention to be one of the most important factors in successful rehabilitation. Therefore, EI will immediately focus on a person's ability to work as opposed to proving they are unable to work as they do during the existing Title II disability determination process. The proposed process demonstration is necessary to test the instruments and procedures targeted towards these objectives.

The EI Survey

Beginning in early 2005, EI will be piloted in three states. In New Mexico, EI will be piloted in the Albuquerque, Roswell/Carlsbad/Hobbs and Clovis areas. In Vermont, EI will be piloted throughout the entire state. In Wisconsin, EI will be piloted in the following counties: Green, Jefferson, Rock, Walworth, and Waukesha.

Information collected through the EI survey will be used by SSA for the purposes of project design, implementation and evaluation. The information will assist in designing how linkages are formed between participants and providers for EI. SSA's EI project staff will use the information to identify appropriate employment service providers for project participants. Project evaluators will use the information collected from the survey as a baseline assessment of the provider market in each area. The respondents to the EI survey are employment service providers in the pilot states.

Type of Request: New information collection.

Number of Respondents: 150.

Frequency of Response: 1.

Average Burden Per Response: 30 minutes.

Estimated Annual Burden: 75 hours.

3. *Request for Hearing by Administrative Law Judge—20 CFR 404.933 and 416.1433, 42 CFR 405.722—0960–0269.* The information collected by form HA–501 is used by SSA to process a request for a hearing on an unfavorable determination of entitlement or eligibility to benefits administered by SSA. The respondents are individuals whose claims for benefits are denied and who request a hearing to appeal the denial.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 667,236.

Frequency of Response: 1.

Average Burden Per Response: 10 minutes.

Estimated Annual Burden: 111,206 hours.

4. *Contact with the Representative Payee and Contact with Beneficiary—0960–0639.* SSA will use the SSA–L4945, Contact with the Representative Payee, and SSA–L4947, Contact with Beneficiary, to inform respondents and conduct quality reviews of payments made under the titles II and XVI programs. Cases for the review will be selected randomly and the information solicited will be used for verification of payment data on record in the claims folder and SSA's Master Beneficiary Record. Form SSA–L4945 will be used to notify Representative Payees who have the responsibility of managing payments for a beneficiary that the case has been selected for the review process and to request the required information. Form SSA–L4947 will be used to notify beneficiaries that their case has been selected for the review process and request the needed information. Both letters contain information that must be verified and returned to SSA under the review process. The respondents are beneficiaries and representative payees for beneficiaries receiving Title II and Title XVI benefits.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 200.

Frequency of Response: 1.

Average Burden Per Response: 15 minutes.

Estimated Annual Burden: 50 hours.

5. *Employer Report of Special Wage Payments—20 404.428–404.429—0960–0565.* SSA gathers the information on Form SSA–131 to prevent earnings-related overpayments to employees, and to avoid erroneous withholding of benefits. The respondents are employers who provide special wage payment verification.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 30,000.

Frequency of Response: 1.

Average Burden of Response: 20 minutes.

Estimated Average Burden: 10,000 hours.

6. *Disability Hearing Officer's Report of Disability Hearing (DC)—20 CFR 416.1407—0906–0507.* The information collected on form SSA–1204–BK is used by the Disability Hearing Officer (DHO) to conduct and document disability hearings, and to provide a structured format that covers all conceivable issues relating to Title XVI claims for disabled children. The completed SSA–1204–BK will aid the DHO in preparing the disability decision and will provide a record of what transpired in the hearing. The respondents are DHOs in the State Disability Determination Services.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 35,000.

Frequency of Response: 1.

Average Burden per Response: 60 minutes.

Estimated Average Burden: 35,000 hours.

7. *Medical Report (Individual with Childhood Impairment)—20 CFR 404.1512–404.1515, 20 CFR 416.912–*

416.915—0960–0102. The information collected on Form SSA–3827 is needed to determine the claimant's physical and mental status prior to making a childhood disability determination. The respondents are medical sources.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 12,000.

Frequency of Response: 1.

Average Burden per Response: 30 minutes.

Estimated Average Burden: 6,000 hours.

8. *RS/DI Quality Review Case Analysis: Sampled Number Holder, Auxiliaries/Survivors, Parents: Stewardship Annual Earnings Test Workbook—0960–0189.* SSA uses the information collected by forms SSA–2930, SSA–2931, and SSA–2932 to establish a national payment accuracy rate for all cases in payment status; to measure the accuracy rate for newly adjudicated claims for beneficiaries receiving old-age, survivors, or disability insurance; and to serve as a source of information regarding problem areas in the RSI/DI programs. Form SSA–4569 is used to evaluate and determine the effectiveness of the annual earnings test and to use the results to develop ongoing improvements in the process. The respondents are beneficiaries and representative payees for beneficiaries receiving old age, survivors, or disability insurance.

Type of Request: Extension of an OMB-approved information collection.

	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated annual burden (hours)
SSA–2930	3,000	1	30	1,500
SSA–2931	1,500	1	30	750
SSA–2932	650	1	20	217
SSA–4659	325	1	10	54
Totals	5,475			2,521

Total Estimated Annual Burden: 2,521 hours.

Dated: November 2, 2004.

Elizabeth A. Davidson,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 04–24810 Filed 11–5–04; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 4887]

Culturally Significant Objects Imported for Exhibition Determinations: ''Salvador Dali''

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 ''Salvador Dali,'' 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 Philadelphia Museum of Art, from on or about February 16, 2005 until on or about May 30, 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. 04–24844 Filed 11–5–04; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 4886]

Bureau of Nonproliferation: Determination Under the Foreign Assistance Act and Several Foreign Operations and Related Programs Appropriations Acts

AGENCY: 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 Deputy Secretary of State has made a determination pursuant to section 620H of the Foreign Assistance Act, and Section 543 of the Foreign Operations, Export Financing and Related Programs Appropriations, Division D, of the Consolidated Appropriations Resolution, 2004 (Pub. L. 108–199) and similar provisions in previous year Foreign Operations, Export Financing, and Related Programs Appropriations Acts, and Executive Order 12163, as amended. The Deputy Secretary of State has concluded that publication of the determination would be harmful to the national security of the United States.

Dated: October 28, 2004.

Susan F. Burk,

Acting Assistant Secretary of State for Nonproliferation, Department of State.

[FR Doc. 04–24845 Filed 11–5–04; 8:45 am]

BILLING CODE 4710–27–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Availability of a Written Re-evaluation of an Environmental Assessment and Finding of No Significant Impact/Record of Decision (FONSI/ROD) for the Evaluation of New Information Regarding a New Memorandum of Agreement Executed by the Federal Aviation Administration, Michigan State Historic Preservation Officer, and Lenawee County for the Lenawee County Airport located in Adrian, MI

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability of a Written Re-evaluation of an Environmental Assessment and FONSI/

ROD for the evaluation of new information regarding a new Memorandum of Agreement executed by the Federal Aviation Administration, Michigan State Historic Preservation Officer, and Lenawee County for the Lenawee County Airport located in Adrian, Michigan.

SUMMARY: The Federal Aviation Administration (FAA) is making available a written Re-evaluation of an Environmental Assessment and FONSI/ROD for the evaluation of a new Memorandum of Agreement executed by the Federal Aviation Administration, Michigan State Historic Preservation Officer, and Lenawee County for the Lenawee County Airport located in Adrian, Michigan.

Point of Contact: Mr. Brad Davidson, Environmental Protection Specialist, FAA Great Lakes Region, Detroit Airports District Office, 11677 South Wayne Road, Suite 107, Romulus, MI 48174 (734) 229–2900.

SUPPLEMENTARY INFORMATION: The FAA is making available a Written Re-evaluation of an Environmental Assessment and FONSI/ROD for the evaluation of a new Memorandum of Agreement executed by the Federal Aviation Administration, Michigan State Historic Preservation Officer, and Lenawee County for the Lenawee County Airport located in Adrian, Michigan. The purpose of the FONSI/ROD and Written Re-evaluation was to evaluate potential environmental impacts arising from the preparation and execution of a Memorandum of Agreement between the Federal Aviation Administration, Michigan State Historic Preservation Officer, and Lenawee County.

These documents will be available during normal business hours at the following locations: FAA Detroit Airports District Office, 11677 South Wayne Road, Suite 107, Romulus, MI 48174 Due to current security requirements, arrangements must be made with the point of contact prior to visiting this office.

Issued in Detroit, Michigan, October 27, 2004.

Irene R. Porter,

Manager, Detroit Airport District Office, FAA, Great Lakes Region.

[FR Doc. 04–24853 Filed 11–5–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

First Meeting: RTCA Special Committee 203/Minimum Performance Standards for Unmanned Aircraft Systems and Unmanned Aircraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 203, Minimum Performance Standards for Unmanned Aircraft Systems and Unmanned Aircraft.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 203, Minimum Performance Standards for Unmanned Aircraft Systems and Unmanned Aircraft.

DATES: The meeting will be held November 30–December 2, 2004 starting at 9 a.m.

ADDRESSES: The meeting will be held at RTCA, 1828 L Street, NW., Suite 805, Washington, DC, 20036–5133.

FOR FURTHER INFORMATION CONTACT: (1) RTCA Secretariat, 1828 L Street, NW., Suite 803, Washington, DC, 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a) (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., appendix 2), notice is hereby given for a Special Committee 135 meeting. The agenda will include:

- November 30–December 2:
- Opening Plenary Session (Welcome and Introductory Remarks, Review/Approval of Meeting Agenda)
- Federal Committee Advisory Act (FACA)/RTCA Procedures
- Review of Committee Terms of Reference
- Key Note Commentary
- Special Committee Structure, Organization and Work Plan
- Presentations—Unmanned Aircraft Systems
- Closing Plenary Session (New/Unfinished Business, Date and Place of Next Meeting, Review Actions Items/Work Program)

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on October 26, 2004.

Robert Zoldos,

FAA System Engineer, RTCA Advisory Committee.

[FR Doc. 04–24849 Filed 11–5–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Bradley International Airport, Windsor Locks, Connecticut; FAA Approval of Noise Compatibility Program

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by the Connecticut Department of Transportation under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Public Law 96–193) and 14 CFR part 150. These findings are made in recognition of the description of Federal and non-federal responsibilities in Senate Report No. 96–52 (1980). On April 21, 2004, the FAA determined that the noise exposure maps submitted by the Connecticut Department of Transportation under Part 150 were in compliance with applicable requirements. On October 18, 2004, the Associate Administrator approved the Bradley International Airport noise compatibility program. Of the 17 proposed program elements, 15 were approved and two were partially approved.

DATES: *Effective Date:* The effective date of the FAA's approval of the Bradley International Airport noise compatibility program is October 18, 2004.

FOR FURTHER INFORMATION CONTACT: John C. Silva, Federal Aviation Administration, New England Region, Airports Division, 12 New England Executive Park, Burlington, Massachusetts 01803, Telephone (617) 238–7602.

Documents reflecting this FAA action may be obtained from the same individual.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the Bradley International Airport noise compatibility program, effective October 18, 2004.

Under section 104(a) of the Aviation Safety and Noise Abatement Act of a

1979 (hereinafter the Act), an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing non-compatible land uses and prevention of additional non-compatible land uses within the area covered by the noise exposure maps.

The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulation (FAR), Part 150 is a local program, not a Federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR Part 150 program recommendation is measured according to the standards expressed in Part 150 and the Act, and is limited to the following determinations:

(a) The noise compatibility program was developed in accordance with the provisions and procedures of FAR Part 150;

(b) program measures are reasonably consistent with achieving the goals of reducing existing non-compatible land uses around the airport and preventing the introduction of additional non-compatible land uses;

(c) program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government; and

(d) program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator as prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in FAR Part 150, Section 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, State, or local law. Approval does not by itself constitute a FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action.

Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA under the Airport and Airway Improvement Act of 1982. Where Federal funding is sought, requests for project grants must be submitted to the FAA Regional Office in Burlington, Massachusetts.

The Connecticut Department of Transportation submitted to the FAA, on March 2, 2004, noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from February 1999 to March 2004. The Bradley International Airport noise exposure maps were determined by FAA to be in compliance with applicable requirements on April 21, 2004. Notice of this determination was published in the **Federal Register** on May 3, 2004.

The Bradley International Airport study contains a proposed noise compatibility program comprised of actions designed for implementation by airport management and adjacent jurisdictions from the date of study completion to beyond the year 2008. The Connecticut Department of Transportation requested that the FAA evaluate and approve this material as a noise compatibility program as described in Section 104(b) of the Act. The FAA began its review of the program on April 21, 2004, and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such a program within the 180-day period shall be deemed to be an approval of such a program.

The submitted program contained 17 proposed actions for noise mitigation on and off the airport. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR Part 150 have been satisfied. The overall program, therefore, was approved by the Acting Associate Administrator effective October 18, 2004.

Of the 17 proposed program elements, 15 were approved and the remaining 2 were partially approved. The 17 program elements include noise abatement departure flight tracks, air carrier departure flight profiles, zoning for compatible land use, amending building codes, a real estate fair disclosure policy, purchase of undeveloped land, purchase of development rights, avigation easements, an airport noise overlay zone, a property purchase assurance program, purchase on non-compatible land, residential sound insulation, a public information program, establishment of a standing airport noise committee, acquisition of an operations and noise monitoring system, periodic evaluation of noise exposure, and the addition of a noise abatement officer to the airport staff.

FAA's determinations are set forth in detail in a Record of Approval endorsed by the Acting Associate Administrator on October 18, 2004. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the administrative offices of Bradley International Airport, Windsor Locks, CT.

Issued in Burlington, Massachusetts on October 26, 2004.

LaVerne Reid,

Acting Manager, Airports Division, New England Region.

[FR Doc. 04–24850 Filed 11–5–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Policy Statement No. ANE–2004–33.4–4]

Policy for Design Approval Procedures for Parts Manufacturer Approval of Critical Engine and Propeller Parts

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed policy statement; request for comments.

SUMMARY: The Federal Aviation Administration (FAA) announces the availability of proposed policy for Design Approval Procedures for Parts Manufacturer Approval of Critical Engine and Propeller Parts.

DATES: Comments must be received by December 31, 2004.

ADDRESSES: Send all comments on the proposed policy to the individual identified under **FOR FURTHER INFORMATION CONTACT**

FOR FURTHER INFORMATION CONTACT: Karen M. Grant, FAA, Engine and Propeller Standards Staff, ANE–110, 16 New England Executive Park, Burlington, MA 01803; e-mail: *karen.m.grant@faa.gov;* telephone: (781) 238–7119; fax: (781) 7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

The proposed policy statement is available on the Internet at the following address: *http://www.airweb.faa.gov/rgl.* If you do not have access to the Internet, you may request a copy of the proposed policies by contacting the individual listed under **FOR FURTHER INFORMATION CONTACT.** The FAA invites interested parties to comment on the proposed policies. Comments should identify the subject of the proposed policy and be submitted to the individual identified under **FOR FURTHER INFORMATION CONTACT**. The FAA will consider all comments received by the closing date before issuing the final policies.

Background

This proposed policy memorandum provides guidance to Aircraft Certification Offices when establishing their process for evaluating Parts Manufacturer Approval (PMA) applications for critical engine and propeller parts. This proposed policy also requires applicants to complete a failure assessment and to consider a continuous operational safety plan for all engine and propeller PMA proposed parts. This policy does not supersede previous ANE–110, Engine & Propeller Directorate policy.

[Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44704.]

Francis A. Favara,

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

[FR Doc. 04–24852 Filed 11–5–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Policy Statement No. ANM–115–05–001]

Installation of ''No Stowage'' Placards on a Surface Not Designed or Intended to be Used for Stowage

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of final policy.

SUMMARY: The Federal Aviation Administration (FAA) announces the availability of final policy on installation of ''no stowage'' placards on surfaces not designed or intended to be used for stowage.

DATES: This final policy was issued by the Transport Airplane Directorate on October 28, 2004.

FOR FURTHER INFORMATION CONTACT: Michael T. Thompson, Federal Aviation Administration, Transport Airplane Directorate, Transport Standards Staff, Airframe and Cabin Safety Branch, ANM–115, 1601 Lind Avenue SW., Renton, WA 98055–4056; telephone (425) 227–1157; fax (425) 227–1232; e-mail: *Michael.T.Thompson@faa.gov.*

SUPPLEMENTARY INFORMATION:

Disposition of Comments

A notice of proposed policy was published in the **Federal Register** on March 26, 2004 (as Policy Statement No. PS–ANM100–2004–10021). One (1) commenter responded to the request for comments.

Background

It has been brought to the attention of the Transport Airplane Directorate, Transport Standards Staff that an aircraft certification office has, in some instances, required an applicant to install ''No Stowage'' or ''No Stowage During Taxi, Takeoff and Landing'' placards on some surfaces that were not designed or intended to be used for stowage. Although not designed for stowage, these surfaces could, because of their shapes and locations, accommodate the placement of articles upon them. The placards were intended to address a concern that carry-on or other articles, not on the airplane type design, could be inappropriately stowed there and, in case of an accident or severe turbulence, become injurious projectiles. The Staff investigated this practice and determined that the part 25 regulations relating to the stowage of cargo, baggage, carry-on articles, and equipment do not require the installation of these placards for surfaces such as these. Therefore, while an applicant may be encouraged to install such placards, they cannot be required to install the placards.

This policy memorandum addresses surfaces that are clearly not intended to be stowage compartments. Areas intended to be stowage compartments must meet the requirements of § 25.787.

The final policy as well as the disposition of public comments received is available on the Internet at the following address: *http://www.airweb.faa.gov/rgl.* If you do not have access to the Internet, you can obtain a copy of the policy by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.**

Issued in Renton, Washington, on October 28, 2004.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–24851 Filed 11–5–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2004–19477]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of applications for exemption from the vision standard; request for comments.

SUMMARY: This notice publishes the FMCSA's receipt of applications from 29 individuals for an exemption from the vision requirement in the Federal Motor Carrier Safety Regulations. If granted, the exemptions will enable these individuals to qualify as drivers of commercial motor vehicles (CMVs) in interstate commerce without meeting the vision standard prescribed in 49 CFR 391.41(b)(10).

DATES: Comments must be received on or before December 8, 2004.

ADDRESSES: You may submit comments identified by any of the following methods. Please identify your comments by the DOT DMS Docket Number FMCSA–2004–19477.

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

Instructions: All submissions must include the agency name and docket number for this notice. For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the Supplementary Information section of this document. Note that all comments received will be posted without change to *http://dms.dot.gov,* including any personal information provided. Please see the Privacy Act heading under Regulatory Notices.

Docket: For access to the docket to read background documents or

comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Maggi Gunnels, Office of Bus and Truck Standards and Operations, (202) 366–2987, FMCSA, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 8 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Public Participation: The DMS is available 24 hours each day, 365 days each year. You can get electronic submission and retrieval help guidelines under the ''help'' section of the DMS Web site. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review the Department of Transportation'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.*

Background

Under 49 U.S.C. 31315 and 31136(e), the FMCSA may grant an exemption for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' The statute also allows the agency to renew exemptions at the end of the 2-year period. The 29 individuals listed in this notice have recently requested an exemption from the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce. Accordingly, the agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by the statute.

Qualifications of Applicants

1. Leonida R. Batista

Mr. Batista, age 53, has decreased vision in his left eye due to an injury he sustained 40 years ago. His best-corrected visual acuity in the right eye is 20/20 and in the left, hand motion. Following an examination in 2004, his ophthalmologist certified, ''It is my medical opinion that Mr. Batista has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Batista reported that he has driven straight trucks for 2 years, accumulating 50,000 miles, and tractor-trailer combinations for 29 years, accumulating 1.0 million miles. He holds a Class AM commercial driver's license (CDL) from New York. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

2. Johnny Becerra

Mr. Becerra, 36, has amblyopia in his left eye. The best-corrected visual acuity in his right eye is 20/20 and in the left, 20/200. His optometrist examined him in 2004 and stated, ''In my professional opinion, Mr. Johnny Becerra has sufficient vision to perform the tasks in order to operate a commercial vehicle.'' Mr. Becerra submitted that he has driven straight trucks for 5 years, accumulating 390,000 miles. He holds a Class A CDL from Texas. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

3. Larry W. Burnett

Mr. Burnett, 44, has amblyopia in his left eye. The best-corrected visual acuity in his right eye is 20/20 and in the left, 20/200. His optometrist examined him in 2004 and stated, ''In my opinion, Mr. Burnett has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Burnett reported that he has driven straight trucks for 11 years, accumulating 418,000 miles, and tractor-trailer combinations for 6 years, accumulating 600,000 miles. He holds a Class A CDL from Colorado. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

4. Ross E. Burroughs

Mr. Burroughs, 41, has a congenital visual field defect in his right eye. The best-corrected visual acuity in his right eye is 20/25 and in the left, 20/30. His field of vision in the horizontal meridian in the right eye is 60° and in the left, 100°. Following an examination in 2004, his ophthalmologist stated, In my medical opinion, patient has sufficient vision to perform driving tasks and to drive a truck as he has been doing his entire life.'' Mr. Burroughs submitted that he has driven tractor-trailer combinations for 19 years, accumulating 1.2 million miles. He holds a Class A CDL from New Jersey. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

5. Roger C. Carson

Mr. Carson, 47, is blind in his left eye due to an accident in 1982. The visual acuity in his right eye is 20/20. Following an examination in 2004, his optometrist certified, ''In my opinion, the patient has sufficient vision to operate a commercial vehicle.'' Mr. Carson reported that he has driven straight trucks for 22 years, accumulating 336,000 miles. He holds a chauffeur's license from Indiana. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

6. Lester W. Carter

Mr. Carter, 42, has amblyopia in his right eye. His best-corrected visual acuity in the right eye is 20/60 and in the left, 20/15. Following an examination in 2004, his optometrist certified, ''In my opinion Mr. Carter has sufficient vision to drive a commercial vehicle of the type he has been driving the past 8 years, using glasses to correct his vision.'' Mr. Carter reported that he has driven straight trucks for 4 years, accumulating 52,000 miles, and tractor-trailer combinations for 14 years, accumulating 1.8 million miles. He holds a Class A CDL from California. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

7. Larry Chinn

Mr. Chinn, 54, has a macular scar in his left eye due to trauma at age 19. His best-corrected visual acuity in the right eye is 20/20 and in the left, 20/80. Following an examination in 2004, his optometrist certified, ''In my medical opinion, Mr. Chinn is visually safe to operate a commercial vehicle.'' Mr. Chinn reported that he has driven straight trucks and tractor-trailer combinations for 25 years, accumulating 2.1 million miles in each. He holds a Class ABCD CDL from Wisconsin. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

8. Christopher L. DePuy

Mr. DePuy, 30, has amblyopia in his right eye. His best-corrected visual acuity in the right eye is 20/80 and in the left, 20/20. Following an examination in 2004, his optometrist certified, ''I feel he has sufficient vision to perform the driving tasks required to

operate a commercial vehicle.'' Mr. DePuy reported that he has driven straight trucks for 4 years, accumulating 160,000 miles, and tractor-trailer combinations for 6 years, accumulating 390,000 miles. He holds a Class A CDL from Ohio. His driving record for the last 3 years shows no crashes and one conviction for a moving violation—speeding—in a CMV. He exceeded the speed limit by 14 mph.

9. John B. Ethridge

Mr. Ethridge, 43, has amblyopia in his left eye. His best-corrected visual acuity in the right eye is 20/25 and in the left, 20/150. Following an examination in 2004, his ophthalmologist certified, ''It is my medical opinion that this patient has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Ethridge reported that he has driven tractor-trailer combinations for 19 years, accumulating 1.9 million miles. He holds a Class A CDL from Georgia. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

10. Larry J. Folkerts

Mr. Folkerts, 37, has amblyopia in his left eye. His best-corrected visual acuity in the right eye is 20/20, and in the left, 20/400. Following an examination in 2004, his optometrist certified, ''In my medical opinion, Larry has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Folkerts reported that he has driven straight trucks for 13 years, accumulating 325,000 miles. He holds a Class B CDL from Iowa. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

11. Randolph D. Hall

Mr. Hall, 64, has a macular scar in his right eye due to an infection as a child. The best-corrected visual acuity in his right eye is 20/800 and in the left, 20/20. His optometrist examined him in 2004 and stated, ''In my medical opinion, Mr. Hall has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Hall submitted that he has driven tractor-trailer combinations for 40 years, accumulating 3.0 million miles. He holds a Class A CDL from Florida. His driving record for the last 3 years shows no crashes and one conviction for a moving violation—''failure to obey traffic signal''—in a CMV.

12. Richard T. Hatchel

Mr. Hatchel, 56, lost his left eye as a child due to an injury. The visual acuity in his right eye is 20/20. His ophthalmologist examined him in 2004 and certified, ''It is my medical opinion that the right eye is certainly good enough for Mr. Hatchel to perform the tasks required for operating a commercial vehicle.'' Mr. Hatchel reported that he has driven straight trucks for 13 years, accumulating 845,000 miles, and tractor-trailer combinations for 16 years, accumulating 1.4 million miles. He holds a Class A CDL from North Carolina. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

13. Paul W. Hunter

Mr. Hunter, 44, has a macular scar in his right eye due to an injury in 1991. The best-corrected visual acuity in his right eye is 20/200 and in the left, 20/20. Following an examination in 2004 his optometrist stated, ''In my opinion, patient has more than enough vision to safely perform driving tasks required to operate a commercial vehicle.'' Mr. Hunter reported that he has driven tractor-trailer combinations for 10 years, accumulating 1.3 million miles. He holds a Class AM CDL from Alabama. His driving record for the last 3 years shows no crashes and two convictions for speeding in a CMV. He exceeded the speed limit by 18 mph in one instance and 12 mph in another.

14. Harold D. Jones

Mr. Jones, 38, has amblyopia in his left eye. The best-corrected visual acuity in his right eye is 20/20 and in the left, 20/400. His optometrist examined him in 2004 and certified, ''In my opinion, this patient has sufficient vision to operate a commercial vehicle.'' Mr. Jones submitted that he has driven tractor-trailer combinations for 6 years, accumulating 600,000 miles. He holds a Class A CDL from Kentucky. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

15. Lester G. Kelley II

Mr. Kelley, 44, has a macular scar in his left eye due to trauma in 1982. The best-corrected visual acuity in his right eye is 20/20 and in the left, light perception. His ophthalmologist examined him in 2004 and certified, ''I believe the patient should be able to adequately operate a commercial vehicle and drive without difficulty secondary to having good vision in only one eye.'' Mr. Kelley reported that he has driven tractor-trailer combinations for 17 years, accumulating 1.7 million miles. He holds a Class A CDL from Ohio. His driving record for the last 3 years shows no crashes and one conviction for a moving violation—speeding—in a CMV. He exceeded the speed limit by 9 mph.

16. Robert L. Lafollette

Mr. Lafollette, 60, has amblyopia in his left eye. The best-corrected visual acuity in his right eye is 20/20 and in the left, 20/300. His optometrist examined him in 2004 and certified, ''I believe that this condition poses no hindrance to Mr. Lafollette's ability to operate a commercial vehicle.'' Mr. Lafollette reported that he has driven straight trucks for 35 years, accumulating 420,000 miles, and tractor-trailer combinations for 25 years, accumulating 250,000 miles. He holds a Class A CDL from Virginia. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

17. Ray P. Lenz

Mr. Lenz, 59, sustained an injury to his left eye at age 5. His visual acuity in the right eye is 20/20 and in the left, light perception. Following an examination in 2004, his optometrist certified, ''I feel that Ray Lenz has sufficient vision to operate a commercial vehicle.'' Mr. Lenz reported that he has driven straight trucks for 41 years, accumulating 717,000 miles, and tractor-trailer combinations for 19 years, accumulating 950,000 miles. He holds a Class A CDL from Iowa. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

18. John M. Lonergan

Mr. Lonergan, 60, has amblyopia in his left eye. His best-corrected visual acuity in the right eye is 20/20 and in the left, 20/200. Following an examination in 2004, his ophthalmologist certified, ''In my medical opinion the patient has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Lonergan reported that he has driven tractor-trailer combinations for 39 years, accumulating 3.1 million miles. He holds a Class A CDL from Illinois. His driving record for the last 3 years shows one crash and no convictions for moving violations in a CMV. According to the police report, Mr. Lonergan, driving a tractor-trailer combination, was attempting to make a right turn when another driver passing on the right struck his vehicle. The other driver was charged with failing to yield the right of way. Mr. Lonergan was not cited.

19. Michael B. McClure

Mr. McClure, 54, has a retinal detachment in his left eye due to an injury 33 years ago. His best-corrected visual acuity in the right eye is 20/15 and in the left, 20/200. Following an examination in 2004, his optometrist certified, ''In my medical opinion he has sufficient vision to operate a commercial vehicle.'' Mr. McClure submitted that he has driven tractor-trailer combinations for 23 years, accumulating 1.7 million miles. He holds a Class A CDL from California. His driving record for the last 3 years shows one crash and one conviction for a moving violation in a CMV. The moving violation was exceeding the speed limit by 10 mph. According to the police report for the crash, the driver of the other vehicle involved failed to stop for a red traffic light and collided with Mr. McClure's vehicle in the intersection. The other driver was charged with failing to stop for a red traffic light. Mr. McClure was not cited.

20. Lamont S. McCord

Mr. McCord, 58, has a macular scar in his left eye due to injury at age 12. His best-corrected visual acuity in the right eye is 20/20 and in the left, hand motion. Following an examination in 2004, his ophthalmologist certified, ''In my medical opinion, Lamont McCord has ample vision to operate a commercial vehicle.'' Mr. McCord reported that he has driven straight trucks for 15 years, accumulating 86,000 miles, and tractor-trailer combinations for 24 years, accumulating 902,000 miles. He holds a Class CA CDL from Michigan. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

21. Francis M. McMullin

Mr. McMullin, 38, has amblyopia in his right eye. The best-corrected visual acuity in his right eye is 20/400 and in the left, 20/20. His optometrist examined him in 2004 and certified, ''The patient has sufficient vision to perform all driving tasks needed to operate a commercial vehicle.'' Mr. McMullin submitted that he has driven straight trucks for 21 years, accumulating 315,000 miles, and tractor-trailer combinations for 12 years, accumulating 480,000 miles. He holds a Class AM CDL from Pennsylvania. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

22. Joe L. Meredith, Jr.

Mr. Meredith, 37, lost vision in his left eye as a child due to an ocular tumor. His visual acuity in the right eye is 20/20. Following an examination in 2004, his ophthalmologist noted, ''In my opinion this patient has sufficient field of vision and visual acuity to drive a commercial motor vehicle over the road.'' Mr. Meredith reported that he has driven tractor-trailer combinations for 5 years, accumulating 600,000 miles. He holds a Class A CDL from Virginia. His driving record for the last 3 years shows one crash and two convictions for moving violations—both ''failure to obey a traffic sign''—in a CMV. According to the police report for the crash, Mr. Meredith's vehicle side-swiped another vehicle that was entering the highway from the on ramp. The other driver was charged with failing to yield the right of way. Mr. Meredith was not cited.

23. Norman Mullins

Mr. Mullins, 51, has nerve damage in his right eye due to an accident in 1980. His visual acuity in the right eye is 20/80 and in the left, 20/20. Following an examination in 2004, his optometrist certified, ''In my medical opinion, Norman Mullins has sufficient vision to operate a commercial vehicle.'' Mr. Mullins reported that he has driven straight trucks for 33 years, accumulating 660,000 miles, and tractor-trailer combinations for 28 years, accumulating 2.7 million miles. He holds a Class A CDL from Ohio. His driving record for the last 3 years shows one crash and no convictions for moving violations in a CMV. According to the police report for the crash, the other vehicle entered the roadway from a controlled intersection and was rear-ended by Mr. Mullins' vehicle. The other driver was charged with failing to yield the right of way. Mr. Mullins was not cited.

24. Harold W. Mumford

Mr. Mumford, 60, lost his left eye due to an injury in 1971. The visual acuity in his right eye is 20/20. Following an examination in 2004, his optometrist stated, ''In my opinion, Harold has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Mumford submitted that he has driven straight trucks for 4 years, accumulating 400,000 miles. He holds a Class C driver's license from Kansas. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

25. Charles R. O'Connell

Mr. O'Connell, 60, underwent surgery for a tumor in his left eye in 1977. The best-corrected visual acuity in his right eye is 20/25. Following an examination in 2004, his ophthalmologist certified, ''In my opinion he has more than sufficient vision to perform and operate a commercial vehicle.'' Mr. O'Connell reported that he has driven straight trucks and tractor-trailer combinations for 42 years, accumulating 1.4 million miles in the former and 210,000 miles in the latter. He holds a Class A CDL from Massachusetts. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

26. Dennis R. O'Dell, Jr.

Mr. O'Dell, 38, has amblyopia in his right eye. The best-corrected visual acuity in his right eye is 20/80 and in the left, 20/30. His optometrist examined him in 2004 and certified, ''My opinion, due to the fact that he has adjusted over time to use monocular clues for his depth of perception, is that I see no reason why he couldn't perform his tasks as a commercial driver.'' Mr. O'Dell reported that he has driven tractor-trailer combinations for 12 years, accumulating 1.0 million miles. He holds a Class A CDL from New York. His driving record for the last 3 years shows one crash and no convictions for moving violations in a CMV. According to the police report, Mr. O'Dell's truck was struck by a driver who was entering the highway from an on ramp. The report stated the other driver failed to yield the right of way and contributed to the crash by failing to control speed. Mr. O'Dell was not cited.

27. Virgil A. Potts

Mr. Potts, 49, has amblyopia in his left eye. The best-corrected visual acuity in his right eye is 20/20 and in the left, 20/70. His ophthalmologist examined him in 2004 and stated, ''I certify that in my medical opinion, Virgil Potts has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Potts reported that he has driven straight trucks and tractor-trailer combinations for 20 years, accumulating 1.0 million miles in the former and 1.6 million miles in the latter. He holds a Class A CDL from Colorado. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

28. Clarence H. Redding

Mr. Redding, 65, experienced a central retinal vein occlusion in his right eye in 2000. His visual acuity in the right eye is 20/400 and in the left, 20/30. Following an examination in 2004, his optometrist certified, ''It is my medical opinion that Mr. Redding has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Redding reported that he

has driven straight trucks for 3 years, accumulating 79,000 miles, and tractor-trailer combinations for 44 years, accumulating 6.2 million miles. He holds a Class A CDL from Utah. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

29. David J. Triplett

Mr. Triplett, 42, has amblyopia in his right eye. His best-corrected visual acuity in the right eye is 20/40 and in the left, 20/20. Following an examination in 2004, his optometrist certified, ''It is my opinion that Mr. Triplett has sufficient vision to perform any driving tasks required to operate a commercial vehicle.'' Mr. Triplett reported that he has driven straight trucks for 16 years, accumulating 640,000 miles. He holds a Class A CDL from Kentucky. His driving record for the last 3 years shows no crashes or convictions for moving violations in a CMV.

Request for Comments

In accordance with 49 U.S.C. 31315 and 31136(e), the FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments received before the close of business on the closing date indicated earlier in the notice.

Issued on: November 3, 2004.

Rose A. McMurray,

Associate Administrator, Policy and Program Development.

[FR Doc. 04–24867 Filed 11–5–04; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket Nos. FMCSA–99–5748, FMCSA–2000–7006, FMCSA–2000–7165, FMCSA–2000–7363, FMCSA–2000–8203]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemption; request for comments.

SUMMARY: This notice publishes the FMCSA decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 24 individuals. The FMCSA has statutory authority to exempt individuals from vision standards if the exemptions granted will not compromise safety. The agency has concluded that granting these exemptions will provide a level of safety that will be equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

DATES: This decision is effective December 8, 2004. Comments from interested persons should be submitted by December 8, 2004.

ADDRESSES: You may submit comments identified by DOT DMS Docket Numbers FMCSA–99–5748, FMCSA–2000–7006, FMCSA–2000–7165, FMCSA–2000–7363, and FMCSA–2000–8203 by any of the following methods:

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

Instructions: All submissions must include the agency name and docket numbers for this notice. For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the Supplementary Information section of this document. Note that all comments received will be posted without change to *http://dms.dot.gov,* including any personal information provided. Please see the Privacy Act heading under Regulatory Notices.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Maggi Gunnels, Office of Bus and Truck Standards and Operations, (202) 366–2987, FMCSA, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 8 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Public Participation: The DMS is available 24 hours each day, 365 days each year. You can get electronic submission and retrieval help guidelines under the ''help'' section of the DMS Web site. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review the Department of Transportation'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.*

Exemption Decision

Under 49 U.S.C. 31315 and 31136(e), the FMCSA may renew an exemption from the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381. This notice addresses 24 individuals who have requested renewal of their exemptions in a timely manner. The FMCSA has evaluated these 24 applications for renewal on their merits and decided to extend each exemption for a renewable two year period. They are:

Henry W. Adams
Delbert R. Bays
Robert F. Berry
Robert W. Brown
David D. Bungori, Jr.
David R. Cox
Rosalie A. Gifford
Eugene A. Gitzen
Donald Grogan
Nelson V. Jaramillo
Jimmie W. Judkins
Bruce T. Loughary
Demetrio Lozano
Wayne R. Mantela
Kenneth D. May
Gordon L. Nathan
Bernice R. Parnell
Frances C. Ruble

Patrick W. Shea
Rick N. Ulrich
Roy F. Varnado, Jr.
Larry D. Wedekind
Wonda L. Wooten
Rick A. Young

These exemptions are extended subject to the following conditions: (1) That each individual have a physical exam every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retain a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless rescinded earlier by the FMCSA. The exemption will be rescinded if: (1)The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31315 and 31136(e).

Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two year periods. In accordance with 49 U.S.C. §§ 31315 and 31136(e), each of the 24 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (63 FR 30285, 63 FR 54519, 65 FR 77069, 67 FR 71610, 64 FR 40404, 64 FR 66962, 67 FR 10475, 65 FR 20245, 65 FR 57230, 65 FR 33406, 65 FR 57234, 67 FR 57266, 65 FR 45817, 65 FR 77066). Each of these 24 applicants has requested timely renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the standard specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption standards. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, the FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

Comments

The FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31315 and 31136(e). However, the FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by December 8, 2004.

In the past the FMCSA has received comments from Advocates for Highway and Auto Safety (Advocates) expressing continued opposition to the FMCSA's procedures for renewing exemptions from the vision requirement in 49 CFR 391.41(b)(10). Specifically, Advocates objects to the agency's extension of the exemptions without any opportunity for public comment prior to the decision to renew, and reliance on a summary statement of evidence to make its decision to extend the exemption of each driver.

The issues raised by Advocates were addressed at length in 69 FR 51346 (August 18, 2004). The FMCSA continues to find its exemption process appropriate to the statutory and regulatory requirements.

Issued on: November 3, 2004.

Rose A. McMurray,

Associate Administrator, Policy and Program Development.

[FR Doc. 04–24868 Filed 11–5–04; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Reports, Forms and Record Keeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collections and their expected burden. The **Federal Register** Notice with a 60-day comment period was published on June 16, 2004, (69 FR 33694). No comments were received.

DATES: Comments must be submitted on or before December 8, 2004.

FOR FURTHER INFORMATION CONTACT: John Lee, the National Highway Traffic Safety Administration, Office of Rulemaking (NVS–112), (202) 366–4924, 400 Seventh Street, SW., Room 5320, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

National Highway Traffic Safety Administration

Title: 49 CFR 571.205, Glazing Materials.

OMB Number: 2127–0038.

Type of Request: Extension of a currently approved collection.

Abstract: In order to ensure that glazing and motor vehicle manufacturers are complying with Federal Motor Vehicle Safety Standard No. 205, ''Glazing Materials,'' NHTSA requires a certification label on each piece of glazing. As part of that certification label, the company must identify itself with a simple two or three digit number assigned by the agency. Failure to clearly identify the manufacturer would make the certification label, and therefore the safety compliance, unenforceable.

Affected Public: New prime glazing manufacturers (A prime glazing manufacturer is a manufacturer that fabricates, laminates, or tempers glazing materials).

Estimated Total Annual Burden: 10.5 hours.

ADDRESSES: Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 7th Street, NW., Washington, DC 20503, Attention: NHTSA Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A Comment to OMB is most effective if OMB receives it within 30-days of publication.

Issued in Washington, DC, on November 3, 2004.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 04–24854 Filed 11–5–04; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

October 26, 2004.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before December 8, 2004 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1083.

Regulation Project Number: INTL–399–88 Final.

Type of Review: Extension.

Title: Treatment of Dual Consolidated Losses.

Description: Section 1503(d) denies use of the losses of one domestic corporation by another affiliated domestic corporation where the loss corporation is also subject to the income tax of another country. The regulation allows an affiliate to make use of the loss if the loss has not been used in the foreign group to take the loss into income upon future use of the loss in the foreign country. The regulation also requires separate accounting for a dual consolidated loss where the dual resident corporation files a consolidated return.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 500.

Estimated Burden Hours Respondent: 3 hours, 14 minutes.

Frequency of response: Annually.

Estimated Total Reporting Burden: 1,620 hours.

OMB Number: 1545–1318.

Regulation Project Number: REG–209545–92 NPRM.

Type of Review: Extension.

Title: Earning and Profits of Foreign Corporations.

Description: Application of the proposed regulations may result in accounting method changes which ordinarily require the filing of Form 3115. However, the proposed regulations waive this filing requirement if certain conditions are met, with the net result that no burdens are imposed.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 1.

Estimated Burden Hours Respondent: 1 hour.

Frequency of response: On occasion.

Estimated Total Reporting Burden: 1 hour.

OMB Number: 1545–1339.

Regulation Project Number: IA–33–92 Final.

Type of Review: Extension.

Title: Information Reporting for Reimbursements of Interest on Qualified Mortgages.

Description: To encourage compliance with the tax laws relating to the mortgage interest deduction, the regulations require the reporting on form 1098 of reimbursements of interest overcharged in a prior year. Only businesses that receive mortgage interest in the course of that business are affected by this reporting requirement.

Respondents: Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 1.

Estimated Burden Hours Respondent/Recordkeeper: 1 hour.

Frequency of response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 1 hour.

OMB Number: 1545–1360.

Regulation Project Number: PS–102–88 Final.

Type of Review: Extension.

Title: Income, Gift and Estate Tax.

Description: The regulation provides guidance to individuals or fiduciaries: (1) For making a qualified domestic trust election of the estate return of a decedent whose surviving spouse is not a United States citizen in order that the estate may obtain the marital deduction, and (2) for filing the annual returns that such an election may require.

Respondents: Individuals or households.

Estimated Number of Respondents: 2,300.

Estimated Burden Hours Respondent: 2 hours, 40 minutes.

Frequency of response: Annually.

Estimated Total Reporting Burden: 6,150 hours.

OMB Number: 1545–1378.

Regulation Project Number: PS–4–89 Final.

Type of Review: Extension.

Title: Disposition of an Interest in a Nuclear Power Plant.

Description: The regulations require that certain information be submitted as part of a request for a schedule of ruling amounts. The regulations also require certain taxpayers to file a request for a revised schedule of ruling amounts.

Respondents: Business or other for-profit .

Estimated Number of Respondents: 70.

Estimated Burden Hours Respondent: 8 hours, 13 minutes.

Frequency of response: On occasion.

Estimated Total Reporting Burden: 575 hours.

OMB Number: 1545–1464.

Regulation Project Number: IA–44–94 Final.

Type of Review: Extension.

Title: Deductibility, Substantiation, and Disclosure of Certain Charitable Contributions.

Description: The regulation provides guidance regarding the allowance of certain charitable contribution deductions, the substantiation requirements for charitable contributions of $250 or more, and the disclosure requirements for quid pro quo contributions of $75 or more. These regulations will affect donee organizations and individuals and entities that make payments to donee organizations.

Respondents: Individuals or households, Business or other for-profit, Not-for-profit institutions.

Estimated Number of Respondents/Recordkeepers: 1,750,000.

Estimated Burden Hours Respondent/Recordkeeper: 1 hour, 8 minutes.

Frequency of response: On occasion.

Estimated Total Reporting/Recordkeeping Burden: 1,975,000 hours.

OMB Number: 1545–1774.

Regulation Project Numbers: REG–135898–04 NPRM and Temporary; REG–152524–02 NPRM and Temporary; REG–123305–02 (formerly REG–102305–02) NPRM and Temporary; and REG–102740–02 NPRM and Temporary.

Type of Review: Extension.

Title: REG–135898–04 NPRM and Temporary Regulations: Extension of Time to Elect Method for Determining Allowable Loss; *REG–152524–02 NPRM and Temporary Regulations:* Guidance under Section 1502; Amendment of Waiver of Loss Carryovers from Separate Return Limitation Years; *REG–123305–*

02 (formerly REG–102305–02) NPRM and Temporary Regulations; and REG–102740–02 NPRM and Temporary Regulations: Loss Limitation Rules.

Description: The information is necessary to allow the taxpayer to make certain elections to determine the amount of allowable loss under § 1.337(d)–2T, § 1.1502–20 as currently in effect or under § 1.1502–20 as modified; to allow the taxpayer to waive loss carryovers up to the amount of the § 1.1502–20(g) election; and to ensure that loss is not disallowed under § 1.337(d)–2T and basis is not reduced under § 1.337(d)–2T to the extent the taxpayer establishes that the loss or basis is not attributable to the recognition of built in gain on the disposition of an asset. With respect to § 1.1502–20T, the information also is necessary to allow the common parent of the selling group to reapportion a separate, subgroup or consolidated section 382 limitation when the acquiring group amends its § 1.1502–32(b)(4) election. Furthermore, regarding § 1.1502–32(b)(4), the information also is necessary to allow the taxpayer that acquired a subsidiary of a consolidated group to amend its election under § 1.1502–32(b)(4), so that the acquiring group can use the acquired subsidiary's losses to offset its income. The information also is necessary to allow the taxpayer to make certain elections to determine the amount of allowable loss pursuant to a new due date, and to amend or revoke certain prior elections to determine the amount of allowable loss.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 18,360.

Estimated Burden Hours Respondent: 2 hours.

Frequency of response: Other (once per transaction).

Estimated Total Reporting Burden: 36,720 hours.

OMB Number: 1545–1891.

Form Number: IRS Forms 13560 and 13561.

Type of Review: Extension.

Title: Form 13560: HCTC Health Plan Administrator (HPA) Return of Funds Form; and *Form 13561:* HCTC Health Plan Administrators Operations Guide.

Description: Form 13560 is completed by Health Plan Administrators (HPAs) and accompanies a return of funds in order to ensure proper handling. This form serves as supporting documentation for any funds returned by an HPA and clarifies where the payment should be applied and why it is being sent. *Form 13561* will be provided in the HCTC (Health Coverage Tax Credit) Health Plan Administrator Operations Guide. *Form 13561* is an evaluation form intended to gather feedback from HPAs on the quality of the HCTC HPA Registration and Operations Guides.

Respondents: Business or other for-profit, Federal Government, State, Local or Tribal Government.

Estimated Number of Respondents: 200.

Estimated Burden Hours Respondent: 15 minutes.

Frequency of response: On occasion.

Estimated Total Reporting Burden: 50 hours.

Clearance Officer: R. Joseph Durbala, (202) 622–3634, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building,Washington, DC 20503.

Lois K. Holland,

Treasury PRA Clearance Officer.

[FR Doc. 04–24837 Filed 11–5–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Fiscal Service Surety Companies Acceptable on Federal Bonds

IMT Insurance Company (Mutual)

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 4 to the Treasury Department Circular 570; 2004 Revision, published July 1, 2004, at 69 FR 40224.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–1033.

SUPPLEMENTARY INFORMATION: A Certificate of Authority as an acceptable surety on Federal bonds is hereby issued to the following Company under 31 U.S.C. 9304 to 9308. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 2004 Revision, on page 40243 to reflect this addition: *Company Name:* IMT Insurance Company (Mutual). *Business Address:* P.O. Box 1336, Des Moines, Iowa 50305–1336. *Phone:* (515) 327–2755. *Underwriting Limitation b/:* $6,630,000. *Surety Licenses c/:* IL, IN, IA, MO, NE, SD, WI. *Incorporated In:* Iowa.

Certificates of Authority expire on June 30 each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (31 CFR Part 223). A list of qualified companies is published annually as of July 1 in Treasury Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information.

The Circular may be viewed and downloaded through the Internet at *http://www.fms.treas.gov/c570.* A hard copy may be purchased from the Government Printing Office (GPO) Subscription Service, Washington, DC, Telephone (202) 512–1800. When ordering the Circular from GPO, use the following stock number: 769–004–04926–1.

Questions concerning this Notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6F07, Hyattsville, MD 20782.

Dated: October 29, 2004.

Vivian L. Cooper,

Director, Financial Accounting and Services Division, Financial Management Service.

[FR Doc. 04–24855 Filed 11–5–04; 8:45 am]

BILLING CODE 4810–35–M

Federal Register

Monday,
November 8, 2004

Part II

Securities and Exchange Commission

17 CFR Part 270

Definition of Eligible Portfolio Company Under the Investment Company Act of 1940; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 270

[Release No. IC–26647; File No. S7–37–04]

RIN 3235–AJ31

Definition of Eligible Portfolio Company Under the Investment Company Act of 1940

AGENCY: Securities and Exchange Commission (the ''Commission'').

ACTION: Proposed rule.

SUMMARY: The Commission is proposing for comments two new rules under the Investment Company Act of 1940 (''Investment Company Act'' or ''Act''). The proposed new rules are designed to realign the definition of eligible portfolio company set forth under the Investment Company Act, and the investment activities of business development companies (''BDCs''), with the purpose of the Small Business Investment Incentive Act of 1980 (''SBIIA''). These rules are intended to expand the definition of eligible portfolio company in a manner that would promote the flow of capital to small, developing and financially troubled companies.

DATES: Comments should be received on or before January 7, 2005.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/proposed*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number S7–37–04 on the subject line; or
- Use the Federal eRulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

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 S7–37–04. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/proposed*). Comments are also available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Rochelle Kauffman Plesset, Senior Counsel, or Elizabeth G. Osterman, Assistant Chief Counsel, Office of Chief Counsel, (202) 942–0660, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0506.

SUPPLEMENTARY INFORMATION: The Commission today is requesting public comment on proposed new Rule 2a–46 [17 CFR 270.2a–46] and proposed new Rule 55a–1 [17 CFR 270.55a–1], both under the Investment Company Act [15 U.S.C. 80a].

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I. Background

In 1980, Congress enacted the SBIIA,[1] which, among other things, amended the Investment Company Act to establish BDCs as a new type of closed-end investment company.[2] Importantly, Congress emphasized that the primary purpose of the amendments to the Investment Company Act (the ''BDC Amendments'') was to make capital more readily available to small developing and financially troubled businesses.[3] To accomplish this purpose, the BDC Amendments relieved BDCs from the application of some of the restrictions applicable to registered closed-end investment companies under the Investment Company Act, while also retaining important investor protections.[4]

In amending the Investment Company Act, Congress underscored that the new provisions would apply only to BDCs that are operated for the purpose of investing in the securities of certain issuers and that make available significant managerial assistance to those issuers.[5] Accordingly, Section 55(a) of the Investment Company Act generally prohibits a BDC from making any investment unless, at the time of the investment, at least 70 percent of its total assets (other than certain specified non-investment assets[6]) are invested in securities of certain specified issuers (''70% basket'').[7] Among other things,

[1] Pub. L. 96–477, 94 Stat. 2275 (1980) (codified at scattered sections of the United States Code).

[2] *See* H.R. Rep. No. 1341, 96th Cong., 2d Sess. 21 (1980) (''House Report''). An issuer generally may qualify for BDC status if it: (1) Is a closed-end investment company (*i.e.*, it does not offer for sale or have outstanding redeemable securities) that is organized and operated in the United States; (2) is operated for purposes of investing in securities described in paragraphs (1) through (3) of Section 55(a) of the Investment Company Act [15 U.S.C. 80a–54(a)]; (3) makes available significant managerial assistance to most of its portfolio companies; and (4) registers a class of its equity securities under Section 12 of the Securities Exchange Act of 1934 [15 U.S.C. 78l] (''Securities Exchange Act''). *See* Section 2(a)(48) of the Investment Company Act [15 U.S.C. 80a–2(a)(48)] (defining ''business development company'') and Section 54 of the Investment Company Act [15 U.S.C. 80a–53] (setting forth the requirements for election as a BDC). The SBIIA also amended the Investment Advisers Act of 1940, the Securities Act of 1933, and the Trust Indenture Act of 1939 in such a manner as to promote small business capital formation.

[3] House Report at 23.

[4] For example, unlike with respect to traditional closed-end investment companies, the Investment Company Act does not prohibit persons that a BDC controls or of which the BDC holds at least five percent of the outstanding securities (so-called downstream affiliates) from engaging in transactions with the BDC. *See* House Report at 48. The BDC Amendments also provide some relief from the Investment Company Act's general prohibitions against affiliated transactions set forth in Section 17 of the Act [15 U.S.C. 80a–17] with certain non-controlling affiliates of BDCs. *See* Section 57(f) of the Investment Company Act [15.U.S.C. 80a–56(f)]. *See also* House Report at 24 and 47. In addition, BDCs have greater ability to invest in securities and issue debt securities because their asset coverage limit for debt is 200% (rather than 300%, as required for traditional closed-end investment companies); BDCs may offer other forms of executive compensation (such as stock options, warrants, and rights) in order to recruit experienced management; and BDCs have greater access to the capital markets because they may sell their stock at less than current net asset value. *See* Sections 57(j)(1), 61(a)(1) and (3), and 63(2) of the Investment Company Act [15 U.S.C. 80a–56(j)(1), –60(a)(1), –60(a)(3) and –62(2)]. *See also* Reginald L. Thomas and Paul F. Roye, *Regulation of Business Development Companies under the Investment Company Act,* 55 S. Cal. L. Rev. 895 (1982) (discussing the 1980 amendments to the Investment Company Act and regulatory issues affecting BDCs).

[5] House Report at 22.

[6] These assets include, for example, office furniture and equipment, deferred organization and operating expenses and notes of indebtedness of corporate insiders relating to certain executive compensation plans. *See* Section 55(a)(7) of the Investment Company Act.

[7] Section 55(a) of the Investment Company Act. *See* House Report at 23 (''The restrictions are designed to assure that companies electing special treatment as [BDCs] are in fact those that [the SBIIA] is intended to aid—companies providing capital and assistance to small, developing or financially troubled businesses that are seeking to expand, not passive investors in large, well-established businesses.'').

the 70% basket may include securities of eligible portfolio companies, as defined in Section 2(a)(46) of the Investment Company Act, purchased in transactions not involving any public offering,[8] securities of eligible portfolio companies, as defined in Section 2(a)(46)(C)(ii), without regard to the nature of the offering,[9] and securities of financially troubled issuers purchased in transactions not involving any public offering.[10] At the same time, Congress allowed BDCs to invest in certain other assets that would not count toward the 70% basket (''30% basket''). Congress clarified, however, that a BDC would be required to invest its 30% basket consistent with the overall purpose of the SBIIA.[11]

Eligible portfolio company is defined in Section 2(a)(46) of the Investment Company Act to include any issuer that (1) is organized under the laws of, and has its principal business in, the United States and (2) generally does not meet the definition of an investment company under Section 3 of the Investment Company Act [12] or is excluded from the definition of investment company by Section 3(c) of that Act.[13] These provisions are intended to ensure that BDCs will invest most of their assets in domestic operating issuers.[14] In addition to these requirements, an eligible portfolio company must meet one of the criteria set forth in Section 2(a)(46)(C). Many BDCs invest in issuers that historically met the criteria set forth in Section 2(a)(46)(C)(i).[15]

Under Section 2(a)(46)(C)(i), an eligible portfolio company includes any issuer that does not have any class of securities with respect to which a member of a national securities exchange, broker, or dealer may extend margin credit pursuant to the rules or regulations adopted by the Federal Reserve Board under Section 7 of the Securities Exchange Act. This provision generally reflects Congress's view in 1980 that the issuers of margin securities ''generally are reasonably mature, at least from the standpoint that they generally have access to conventional public capital markets,'' [16] and that the Federal Reserve Board's definition of ''margin security'' would serve ''as a rational and objective test for determining whether a issuer has ready access to the securities markets.'' [17] Nevertheless, Congress recognized that the definition of eligible portfolio company as adopted, and, in particular, the definition's reliance on the Federal Reserve Board's margin rules, might need to be adjusted in the future. Accordingly, Congress specifically gave the Commission rulemaking authority under Section 2(a)(46)(C)(iv) of the Investment Company Act to expand the definition of eligible portfolio company.[18]

Since 1980, the Federal Reserve Board has periodically amended its definition of margin security under Regulation T, the regulation governing the securities credit activities of broker-dealers, for reasons unrelated to small business capital formation. In 1998, the Federal Reserve Board amended the definition of margin security to reduce regulatory distinctions between broker-dealers and other lenders.[19] This amendment had the unintended consequence of limiting the investment opportunities of BDCs by expanding the definition of margin security to include all securities that trade on a national securities exchange (''Exchange'') or are listed on the NASDAQ Stock Market (both NASDAQ's National Market System and the NASDAQ's SmallCap Market).[20]

More significantly, however, the 1998 amendment also expanded the definition of margin security to include any security, regardless of whether it is publicly or privately offered, that is not an ''equity security'' within the meaning of Section 3(a)(11) of the Securities Exchange Act.[21] Thus, because the definition of eligible portfolio company is linked, in part, to the Federal Reserve Board's margin rules, the 1998 amendment appears to have had the effect of precluding most issuers that have issued debt securities from qualifying as an eligible portfolio

[8] Section 55(a)(1) of the Investment Company Act.

[9] *See* Section 55(a)(2) of the Investment Company Act, referring to Section 2(a)(46)(C)(ii) of the Act [15 U.S.C. 80a–2(a)(46)(C)(ii)], which generally includes in the definition of eligible portfolio company an issuer of which the BDC (either alone, or as part of a group acting together) owns a controlling interest.

[10] Section 55(a)(3) of the Investment Company Act. In addition, a BDC generally may purchase the securities of an eligible portfolio company from any person in a non-public offering if there is no ready market for the securities and, immediately before the purchase, the BDC owns at least 60% of the issuer's outstanding equity securities. Section 55(a)(4) of the Investment Company Act. BDCs may also invest in securities received in exchange for, or distributed on or with respect to, the securities described in paragraphs (a)(1) through (a)(4) of Section 55(a) or pursuant to the exercise of options, warrants or other rights relating to these securities and in cash and certain short-term securities. Sections 55(a)(5) and (6) of the Investment Company Act.

[11] House Report at 39–40 (''One such purpose would be to allow an investment * * * in a publicly-held company whose success may be stimulated or revived by the infusion of new capital or managerial assistance * * *. A second purpose might be to recognize the need for [BDCs] * * * to have a source of cash flow to fund current operations or to meet contingencies which may arise.'').

[12] Section 3 of the Investment Company Act [15 U.S.C. 80a–3].

[13] Sections 2(a)(46)(A) and 2(a)(46)(B) of the Investment Company Act. Section 2(a)(46)(B) also includes as an eligible portfolio company a small BDC which is licensed by the Small Business Administration and which is a wholly-owned subsidiary of a BDC.

[14] *See* House Report at 29.

[15] Section 2(a)(46)(C)(i) of the Investment Company Act. Section 2(a)(46)(C)(ii) includes in the definition of eligible portfolio company an issuer in which the BDC or certain affiliates own a controlling interest. *See supra* note 9. In addition, in 1996, Congress expanded the definition of eligible portfolio company to include issuers that have total assets of not more than $4 million, and capital and surplus (shareholder equity minus retained earnings) of no less than $2 million. Section 2(a)(46)(C)(iii) of the Investment Company Act. A BDC is not required to make available significant managerial assistance to any issuer that meets the requirements of Section 2(a)(46)(C)(iii). Section 2(a)(48)(B) of the Investment Company Act.

[16] House Report at 30.

[17] *See* House Report at 30–31 (Section 2(a)(46)(C)(i) was ''intended to include companies which are unable to borrow money through conventional sources or which do not have ready access to the public capital markets.'').

[18] Under Section 2(a)(46)(C)(iv), the term eligible portfolio company includes any issuer that, in addition to meeting the requirements of Sections 2(a)(46)(A) and (B), ''meets such other criteria as the Commission may, by rule, establish as consistent with the public interest, the protection of investors, and the purposes fairly intended by the policy and provisions of the [Act].'' *See* House Report at 23 (''* * * the Commission is given rulemaking authority to expand the class of eligible portfolio companies, following certain specified standards''). *See also* House Report at 31 (discussing the expectation that ''the Commission would institute proceedings to consider whether the definition of eligible portfolio company can be expanded, consistent with the purpose of the legislation, to increase the flow of capital to small, developing businesses or financially troubled businesses. Among the objective factors which the Commission may consider in such proceedings are the size of such companies, the extent of their public ownership, and their operating history as going concerns and public companies.''). In addition, Section 38(a) of the Investment Company Act [15 U.S.C. 80a–37(a)] authorizes the Commission to, among other things, adopt such rules as are necessary to define technical terms used in the Investment Company Act.

[19] Securities Credit Transactions; Borrowing By Brokers and Dealers, 63 FR 2805 (1998) (adopting final rule amendment).

[20] 12 CFR 220.2 (definition of margin security). Before the 1998 amendment, certain securities that were listed on NASDAQ's SmallCap Market were not considered to be margin securities. As such, the issuers of such securities could be treated as eligible portfolio companies for purposes of BDC investment.

[21] Section 3(a)(11) of the Securities Exchange Act [15 U.S.C. 78c(a)(11)]. That section defines an ''equity security'' as any stock or similar security; or any security future on any such security; or any security convertible, with or without consideration, into such a security, or carrying any warrant or right to subscribe to or purchase such a security; or any such warrant or right; or any other security which the Commission shall deem to be of similar nature and consider necessary or appropriate, by such rules and regulations as it may prescribe in the public interest or for the protection of investors, to treat as an equity security.

company.[22] As a result, issuers that would have been considered eligible portfolio companies in 1980 may no longer meet that definition.[23] Rules adopted and amended by the Federal Reserve Board for reasons unrelated to small business development therefore have resulted in reducing the number of businesses eligible for BDC investment. Congress clearly intended us to exercise our rulemaking authority under Section 2(a)(46)(C)(iv) when necessary to accomplish the purposes and policies of the SBIIA.[24] Thus, we are today proposing two rules that will realign the definition of eligible portfolio company, and the investment activities of BDCs, with the purpose intended by Congress when it enacted the SBIIA.

II. Discussion

The new rules that we propose today address the effect that the amendment to the margin rules had on the definition of eligible portfolio company under the Investment Company Act. The new rules are intended to realign the definition of eligible portfolio company with the purpose of the SBIIA by (1) defining eligible portfolio company with reference to whether an issuer has any class of securities listed on an Exchange or on an automated interdealer quotation system of a national securities association (''NASDAQ'') and (2) permitting BDCs to make certain additional (''follow-on'') investments in those issuers even after they list their securities on an Exchange or on NASDAQ.

Proposed Rule 2a–46 would modernize the definition of eligible portfolio company by creating a new, objective standard. The proposed rule is intended to recapture the type of issuers that Congress originally intended to make eligible for BDC investment as part of a BDC's 70% basket, *i.e.*, those issuers that do not have ready access to the public capital markets, but that may have lost their status as eligible portfolio companies because they have issued marginable securities. The proposed rule also would include certain financially troubled issuers that would not have been eligible portfolio companies before the 1998 amendment to the margin rules because they likely had a class of marginable securities outstanding.

Proposed Rule 55a–1 conditionally would permit a BDC to include in its 70% basket follow-on investments in an issuer that met the definition of eligible portfolio company under proposed Rule 2a–46 at the time of the BDC's initial investment(s) in it, but that subsequently lost its eligible portfolio company status because it listed a class of securities on an Exchange or on NASDAQ. The proposed rule incorporates the conditions set forth in Section 55(a)(1)(B), which permit a BDC to make follow-on investments in an issuer that was an eligible portfolio company at the time of the BDC's initial investment(s), but that subsequently lost its eligible portfolio company status because it issued marginable securities.

The proposed rules and their provisions are discussed in more detail below.

A. Proposed Rule 2a–46

Proposed Rule 2a–46 incorporates the requirements set forth in Sections 2(a)(46)(A) and (B) of the Investment Company Act. The proposed rule thus requires an eligible portfolio company, as defined under the rule, to be organized under the laws of, and have its principal business in, the United States. It also generally excludes from the definition any issuer that meets the definition of an investment company under Section 3(a) of the Investment Company Act or that is excluded from the definition of investment company by Section 3(c) of that Act. These requirements are intended to ensure that BDCs relying on the proposed rule will continue to invest most of their assets in domestic operating issuers.[25]

The proposed rule would further define eligible portfolio company to include either (1) any issuer that does not have any class of securities listed on an Exchange or on NASDAQ[26] or (2) any issuer that has a class of securities listed on an Exchange or on NASDAQ, but (a) that has received notice from the Exchange or NASDAQ that it does not meet the quantitative continued listing standards of the Exchange or NASDAQ and (b) does not satisfy the initial quantitative requirements for listing a class of its securities on *any* Exchange or NASDAQ.[27]

These provisions are further discussed below.

1. No Securities Listed on an Exchange or on NASDAQ

Paragraph (a) of proposed Rule 2a–46 links the definition of eligible portfolio company to whether an issuer has a class of securities listed on an Exchange or on NASDAQ.[28] As noted previously, Congress intended eligible portfolio companies to include those issuers that ''are unable to borrow through conventional sources or which do not have ready access to the public capital markets.''[29] We generally believe that most issuers that are able to list their securities on an Exchange or on NASDAQ have access to the public capital markets.[30]

In contrast, quotation mediums, such as the over-the-counter bulletin board (''OTCBB'') and Pink Sheets LLC (''Pink Sheets''), do not provide the capital formation benefits that an Exchange or NASDAQ offers to its members,[31] but

[22] Convertible debt falls within the definition of margin security if the security received upon the conversion is marginable. *See id.*

[23] It is difficult to quantify how many issuers may no longer meet the definition of eligible portfolio company as a result of the changes to the margin rules, as minimal information is available regarding which issuers have privately issued debt securities. Some industry participants, however, have informed us that, subsequent to the 1998 amendment, investments that previously were counted as part of a BDC's 70% basket were more likely to be required to be counted as part of the 30% basket.

[24] *See supra* note 18.

[25] *See supra* notes 12–14 and accompanying text.

[26] *See* proposed Rule 2a–46(a).

[27] *See* proposed Rule 2a–46(b).

[28] Under this provision, an issuer would be an eligible portfolio company if it does not have a class of securities listed on any of the New York Stock Exchange (''NYSE''), the American Stock Exchange (''Amex''), the NASDAQ National Market System or the NASDAQ SmallCap Market.

[29] *See supra* note 17.

[30] An issuer is eligible to list its securities on an Exchange or on NASDAQ if it, among other things, complies with initial quantitative listing standards. These include minimum financial requirements relating to, among other things, the issuer's total revenues, distribution, market capitalization and bid price. Listing standards serve to facilitate fair and orderly markets by screening issuers and providing listed status only to bona fide companies with sufficient float, investor base and trading interest. Once a security has been approved for initial listing, maintenance criteria allow an Exchange or NASDAQ to monitor the status and trading characteristics of that issue to ensure that it continues to meet the Exchange's or NASDAQ's standards for market depth and liquidity. Securities Act Release No. 7494 (Jan. 13, 1998) [63 FR 3032 (Jan. 21, 1998)]. Listing on an Exchange or on NASDAQ generally provides an issuer with visibility, marketability, third party established valuations and liquidity, all of which aid in capital formation.

[31] For example, issuers with securities traded solely through these quotation mediums do not have the same visibility and marketability benefits as issuers with securities listed on an Exchange or on NASDAQ. Few analysts cover these issuers and many databases do not include price and quotation data for their securities, making it difficult for investors to obtain information about them. Further, as a general matter, many of the securities trading on these markets are penny stocks, which are subject to heightened sales practice requirements. Section 3(a)(51) of the Securities Exchange Act [15 U.S.C. 78c(a)(51)] and Rule 3a51–1 thereunder [17 CFR 240.3a51–1] generally define ''penny stocks'' as equity securities that are not: (a) Reported securities as defined in Rule 11Aa3–1(a) under the Securities Exchange Act [17 CFR 240.11Aa3–1(a)]; (b) securities issued by an investment company registered under the Investment Company Act; (c) put or call options issued by the Options Clearing Corporation; (d) securities that have a price of five dollars or more; (e) securities that are registered or approved for registration upon notice of issuance on

serve as mediums for the over-the-counter securities market by collecting and distributing market maker quotes to subscribers. These quotation mediums do not maintain or impose listing standards or enter into listing agreements with issuers whose securities are quoted through them.[32] Moreover, most issuers that rely on these mediums for the trading of their securities do not meet the listing requirements of an Exchange or NASDAQ.[33] Thus, we believe that the proposed rule, which essentially includes in the definition of eligible portfolio company issuers that do not list their securities on an Exchange or on NASDAQ, is a rational, objective and workable test for determining whether an issuer is an eligible portfolio company, consistent with Congress's intent when it enacted the SBIIA.

We considered a variety of alternative approaches in proposing a standard that would capture the type of issuers that Congress intended to benefit from the SBIIA (*i.e.*, small, developing businesses or financially troubled businesses). In particular, we considered an approach based on market capitalization.[34]

It is unclear, however, what level of market capitalization would be appropriate to set as a measure of small, developing or financially troubled businesses. ''Small business'' is used to mean different things in different contexts.[35] Further, issuers that are near a specified cutoff level may be able to adjust their capital structure so that they fall below the specified level. In addition, given that an issuer's market capitalization fluctuates depending on various market and economic conditions, issuers near the cutoff may find their eligibility changing frequently over time. Finally, it is possible that defining eligible portfolio company using a market capitalization standard could result in some registered investment companies electing BDC status to take advantage of the less restrictive provisions of the Investment Company Act generally applicable to BDCs.[36] Although we would not necessarily object to such a result, we would need to engage in additional study before we could conclude that such regulatory arbitrage would be appropriate.[37]

We request comment on our proposal to link the definition of eligible portfolio company to whether an issuer has a class of securities listed on an Exchange or on NASDAQ and, in particular, the following issues:

- Does our approach adequately describe issuers that meet the purpose of the SBIIA, *i.e.*, small, developing or financially troubled businesses that do not have ready access to the public capital markets? Is there an alternative approach that would (1) better describe those issuers and (2) be more objective and workable than our proposal? For example, would linking the definition of eligible portfolio company to whether an issuer has market capitalization equal to the lowest initial quantitative listing standard of any Exchange or NASDAQ, regardless of whether it lists its securities on an Exchange or on NASDAQ, more appropriately describe the category of issuers that Congress intended to capture in 1980? Is there enough public information available so that BDCs may readily ascertain whether an issuer is an eligible portfolio company under such an alternative approach? Please include in your response a detailed description of any alternative approach that you may propose and an explanation of its benefits compared with our proposal.
- What is the likelihood that registered investment companies would determine to elect BDC status if the definition of eligible portfolio company was linked to an issuer's market capitalization? Are there investment companies that could easily reorganize themselves as BDCs to take advantage of a rule that defines eligible portfolio company based on market capitalization? Among other things, please provide information about the composition of the portfolios of registered investment companies that might determine to elect BDC status if we adopted a market capitalization test (*e.g.*, what percentage of such companies' portfolios consists of issuers that would meet the proposed rule's definition of eligible portfolio company) and whether those investment companies would be in a position to make significant managerial experience available to issuers.
- We recognize that, before the 1998 amendment to the margin rules, Section 2(a)(46)(C)(i) would have included in the definition of eligible portfolio company certain large, financially healthy issuers that had ready access to capital, but that did not have any class of marginable securities outstanding. Our proposed rules similarly would permit BDCs to invest in certain large, financially healthy issuers that choose not to list their securities on an Exchange or on NASDAQ. Please comment on whether we should modify proposed Rule 2a–46 to exclude from the definition of eligible portfolio company any issuer that would meet the initial listing standards (quantitative and qualitative) of an Exchange or NASDAQ, regardless of whether the issuer enters a listing agreement with the Exchange or NASDAQ.

2. Financially Troubled Companies

Paragraph (b) of the proposed rule would include in the definition of eligible portfolio company any issuer that has a class of securities listed on an Exchange or on NASDAQ subject to two conditions discussed below. In comparison to proposed paragraph (a), which includes as an eligible portfolio company only issuers that either have never had, or no longer have, a class of securities listed on an Exchange or on NASDAQ, proposed paragraph (b) is intended to include certain issuers that exhibit financial distress while their

an Exchange; (f) securities that are authorized or approved for authorization upon notice of issuance on NASDAQ; or (g) securities issued by companies that have net tangible assets or average annual revenues exceeding certain specified minimums. Solicited sales of penny stocks are subject to, among other things, enhanced suitability and disclosure obligations. *See* Rules 15g–1 through 15g–9 under the Securities Exchange Act [17 CFR 240.15g–1—240.15g–9], collectively known as the ''Penny Stock Rule.''

[32] In order for a security to be eligible for quotation on the OTCBB, however, its issuer must either make current filings with the Commission pursuant to Sections 13 and 15(d) of the Securities Exchange Act [15 U.S.C. 78m, 78o(d)], be a depository institution that is exempt from Securities Exchange Act filing requirements but file publicly available reports with the appropriate regulatory agency, be a registered closed-end investment company or be an insurance company that is exempt from registration under Section 12(g)(2)(G) of the Securities Exchange Act [15 U.S.C. 78*l*(g)(12)G)]. There are no such requirements with respect to issuers of securities quoted on the Pink Sheets.

[33] We recognize that, although many of the securities that are traded on the OTCBB or the Pink Sheets are small or financially troubled companies, there are a few, large, financially sound companies that have chosen not be listed on an Exchange or on NASDAQ, even though they may meet applicable listing requirements.

[34] H.R. 3170, 108th Cong. 1st Sess. (2003) (passed in the House of Representatives, Apr. 28, 2004) embodies such an approach.

[35] For example, for purposes of its compliance with the Regulatory Flexibility Act [5 U.S.C. 601 *et seq.*], and the Securities Exchange Act, the Commission has classified a securities issuer (other than an investment company) as a small business if it has total assets of $5 million or less. *See* Rule 0.0–10(a) under the Securities Exchange Act [17 CFR 240.0–10a]. Regulation S–B under the Securities Act of 1933 and the Securities Exchange Act defines a ''small business issuer'' as, among other things, an issuer that has revenues of less than $25 million, but would not include an issuer that has public float of $25 million or more. Rule 10 of Regulation S–B [17 CFR 228.10].

[36] *See supra* note 4.

[37] Certain investment companies make investments similar to those of BDCs in that they also purchase privately offered securities of small issuers. It is possible that defining eligible portfolio company using a market capitalization standard would result in investment companies deciding to elect BDC status based on the level of regulation under the Investment Company Act, instead of based on their investment objectives and the best interests of their shareholders.

securities are listed on an Exchange or on NASDAQ.

Paragraph (b) of the proposed rule is consistent with Congress's intent of providing financially troubled issuers with a more readily available source of capital.[38] Although Section 55(a)(3) of the Investment Company Act generally permits BDCs to invest in certain issuers that are experiencing financial difficulties, those issuers generally must be in dire financial straits before BDC capital will be readily available to them.[39] Paragraph (b) of the proposed rule addresses the need of other financially troubled issuers to access BDC capital more readily by including in the definition of eligible portfolio company certain issuers that are in danger of losing their listing status.

Paragraph (b) of the proposed rule is subject to two conditions. These conditions are designed to ensure that only an issuer that is at risk of having its securities delisted from the Exchange or NASDAQ, and that cannot list its securities on any other Exchange or on NASDAQ because of its inability to meet initial quantitative listing standards, falls within the definition of eligible portfolio company.

Paragraph (b)(1) of the proposed rule provides that an issuer that has securities listed on an Exchange or on NASDAQ will meet the definition of eligible portfolio company if the issuer has received a notice from the Exchange or NASDAQ that it does not satisfy a rule or standard setting forth quantitative requirements for continued listing[40] on that Exchange or on NASDAQ. We have determined that an issuer's receipt of such a notice is an early indication that an issuer is experiencing some degree of financial distress. Every year issuers are forced to delist their securities because they can no longer satisfy the minimum quantitative requirements for the continued listing of their securities.[41] Delisting is highly detrimental to an issuer and its shareholders.[42] We have therefore designed the proposed rule to permit BDCs to provide capital to issuers at risk of losing their listing status as evidenced by the issuer's receipt of a notice from an Exchange or NASDAQ stating that the issuer does not meet relevant continued quantitative listing requirements on that Exchange or NASDAQ.

Paragraph (b)(2) of the proposed rule would exclude from the definition of eligible portfolio company an issuer that otherwise meets the conditions of paragraph (b)(1) of the proposed rule if that issuer meets the initial quantitative listing requirements of *any* Exchange or NASDAQ. An issuer that is able to meet the initial quantitative listing requirements of an Exchange or NASDAQ, which generally are higher than the continued listing requirements, is not the type of issuer that Congress intended to aid through the establishment of BDCs. Thus, proposed paragraph (b)(2) is designed to preclude an issuer from qualifying as an eligible portfolio company if it is able to list its securities on one of those markets, even though its securities are delisted from another.

We request comment on our proposal to define as an eligible portfolio company an issuer whose securities are listed on an Exchange or on NASDAQ but that (1) has received a notice from the Exchange or NASDAQ that it does not satisfy the continued quantitative listing requirements of that Exchange or NASDAQ and (2) does not meet the initial quantitative listing standards on any Exchange or NASDAQ. In particular, we request comment on the following issues:

- Does the proposal capture those financially troubled issuers that could benefit from BDC financing? If not, please provide an alternative approach that would better capture these issuers but yet ensure that financially healthy issuers are not included.
- We recognize that an issuer may continue to have a class of securities listed on an Exchange or on NASDAQ long after receiving a notice that it does not satisfy a rule or standard setting forth quantitative requirements for continued listing on an Exchange or on NASDAQ.[43] Should the proposed rule be modified so that an issuer would be an eligible portfolio company for only a specified period of time after it has received such notice? If so, what would be the appropriate time period (*e.g.*, 12 months following the receipt of the notice)? Please include in your response a detailed description of any alternative that you may propose and an explanation of its benefits compared with our proposal.
- Rule 2a–46(b)(1) requires that an issuer that has a class of securities listed on an Exchange or on NASDAQ must have received a notice from the Exchange or NASDAQ that the issuer does not satisfy a quantitative listing standard of such Exchange or NASDAQ before it qualifies as an eligible portfolio company. Is there another objective factor that would serve as a clearer indicator that an issuer listed on an Exchange or NASDAQ is beginning to experience financial distress? In your response, please discuss whether you believe using that factor as a different or alternate condition under the rule would more accurately identify financially troubled issuers that are likely to lose their ability to access the public capital markets. Please also discuss the benefits and burdens of using such a factor as a condition.
- Proposed Rule 2a–46(b)(2) excludes any issuer from the definition of eligible

[38] Absent this provision, a BDC could invest in such issuers, but that investment would be counted as part of the BDC's 30% basket. *See supra* notes 5–11 and accompanying text.

[39] Section 55(a)(3) permits a BDC to count in its 70% basket securities of an issuer purchased from the issuer or certain affiliates of the issuer in specific situations demonstrating financial distress, including bankruptcy proceedings.

[40] The Exchanges and NASDAQ all have quantitative continued listing requirements with which an issuer must comply in order for its securities to remain listed. The quantitative continued listing requirements are lower than the quantitative initial listing requirements. Although actual procedures differ among the Exchanges and NASDAQ, as a general matter, all send a deficiency notice to a listed issuer upon detecting noncompliance with quantitative listing requirements, and the issuer typically is given a grace period—the amount dependent on the requirement in noncompliance—to rectify the situation before delisting proceedings begin.

The Exchanges and NASDAQ also have qualitative standards that an issuer must meet to list its securities. These standards include certain corporate governance and shareholder voting requirements, and require that the issuer's securities be registered with the Commission under Section 12(g) of the Securities Exchange Act. An issuer that is subject to delisting because the issuer did not comply with these standards would not be treated as an eligible portfolio company under the proposed rule. *But see infra* text accompanying note 44.

[41] While we cannot quantify how many additional companies would be treated as eligible portfolio companies by virtue of meeting the requirements of proposed paragraph (b)(i), we note that the percentage of issuers that ultimately were delisted as of December 31, 2003, after trading while noncompliant with their markets' quantitative standard at any time during calendar year 2003 was as follows: Amex—43% (40/94); NYSE—59% (40/68) and NASDAQ—31% (191/617). According to NASDAQ, 486 of the 617 noncompliant issuers (79%) were noncompliant with standards related to bid price. GAO Report: Securities Markets—Opportunities Exist to Enhance Investor Confidence and Improve Listing Program Oversight (April 2004), available at *www.gao.gov/cgi-bin/getrpt?GAO–04–75 at 19.*

[42] Economic studies have shown that companies whose shares are delisted face potentially higher costs of capital and operating costs and greater difficulty in obtaining financing due to the loss of suppliers, customers, employees, analyst coverage, institutional investor interest and business development opportunities. Shareholders suffer because the value of their securities typically declines and they may face significantly higher trading costs. *See, e.g.*, Ventagesh Panchapagesan and Ingrid M. Werner, *From Pink Slips to Pink Sheets: Market Quality Around Delisting From NASDAQ,* available at *http://papers.ssrn.com/sol3/papers.cfm?abstract_id=565325,* at pp. 3, 9, and 23.

[43] *See, e.g.,* Section 802.02 of the NYSE Listed Company Manual, and Section 1009 of Amex Company Guide, which provide up to 18 months for an issuer to regain compliance with continued listing standards if the Exchange accepts the issuer's plan for regaining compliance.

portfolio company if it meets the initial quantitative listing requirements of any Exchange or NASDAQ. How burdensome would it be for BDCs to determine whether an issuer meets such requirements? What public information is available that would enable BDCs to make this determination? Can we be confident that an issuer will make publicly available information that will enable BDCs to readily ascertain that the issuer is not an eligible portfolio company? If you believe that another alternative may better address the purpose of this provision, please describe that alternative in detail and explain what public information is available that would allow BDCs to readily ascertain that an issuer meets your proposal.

• We considered, but did not tie paragraph 2a–46(b) of the proposed rule to, whether an issuer may lose its listing because of its failure to comply with qualitative listing standards,[44] generally based on our belief that such standards generally are directly under the control of the issuer, and are not necessarily indicative of the issuer's ability to access the public markets in the future. Should the proposal include an issuer's failure to meet qualitative listing standards, as well as quantitative listing standards, as a measure of whether that issuer is financially troubled? If you believe that it should, please provide your analysis of why such standards objectively help to measure an issuer's financial stability.

• In light of the purpose of paragraph 2a–46(b) of the proposed rule, would it be more appropriate for this provision to be set forth as a separate exemption to Section 55(a) rather than as part of a definitional rule?

B. Proposed Rule 55a–1

In enacting the SBIIA, Congress took note of BDCs' interest in providing additional capital to issuers that had prospered after receiving BDC capital.[45] As a result, Section 55(a)(1)(B) permits a BDC to include in its 70% basket certain follow-on investments in issuers that were eligible portfolio companies at the time of the BDC's initial investment(s), but that subsequently lost that status because they issued marginable securities. Section 55(a)(1)(B) requires such investments to be acquired in private transactions from the issuer or certain of the issuer's affiliates. In addition, the section is conditioned on the BDC having at the time of the follow-on investment, and subsequently maintaining, a significant investment presence in the issuer.[46]

Proposed Rule 55a–1 would mirror the approach established in Section 55(a)(1)(B). It would conditionally permit a BDC to make follow-on investments in certain issuers that met the definition of eligible portfolio company under proposed Rule 2a–46 when the BDC made its initial investment(s) in the issuer, but that do not meet that definition at the time of the follow-on investment because the issuer subsequently listed a class of securities on an Exchange or on NASDAQ.[47] As in follow-on investments under Section 55(a)(1)(B), the proposed rule would permit BDCs to purchase the securities only in non-public offerings from the issuer or certain of its affiliates.

We request comment on our proposal to permit a BDC to include in its 70% basket certain follow-on investments in an issuer that no longer meets the definition of eligible portfolio company because it has a class of securities listed on an Exchange or on NASDAQ and, in particular, on the following issues:

• We have not proposed any time restriction on follow-on investments under the proposed rule. Should we modify the proposed rule to apply a time restriction to such follow-on investments (*e.g.*, 12 months following the date of the issuer's receipt of the notice referred to in Rule 2a–46(b)(1))? Please address whether any such a restriction would interfere with a BDC's ability to manage its investments in the best interests of shareholders and consistent with the purposes and policies of the Act. Would such a restriction provide necessary discipline to the markets by providing an incentive to issuers to delist their securities promptly?

• If you believe that restricting some follow-on investments is appropriate, please provide us with a description of those restrictions, including your analysis of the benefit that such restrictions would provide, and to whom those benefits would inure.

III. General Request for Comment

We request comment on the rules proposed in this Release and on other matters that might have an effect on our proposals. For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, we also request information regarding the potential impact of the proposed rules on the economy on an annual basis. Commenters should provide empirical data to support their views.

IV. Cost-Benefit Analysis

We are sensitive to the costs and benefits that result from our rules. Proposed Rules 2a–46 and 55a–1 seek to realign the definition of eligible portfolio company under the Investment Company Act, and investment activities of BDCs, with the original purpose of the SBIIA. Proposed Rule 2a–46(a) would define eligible portfolio company with reference to whether an issuer has securities that are listed on an Exchange or on NASDAQ. Proposed Rule 2a–46(b) would also include in the definition of eligible portfolio company certain financially troubled issuers that are listed on an Exchange or on NASDAQ but are in danger of losing their listing status. Proposed Rule 55a–1 would permit BDCs to make follow-on investments in issuers that meet the new definition, subject to certain conditions.

We have identified certain costs and benefits that may result from the proposed rules. We encourage commenters to identify, discuss, analyze, and supply relevant data regarding these or any additional costs and benefits.

A. Benefits

The proposed rules would benefit small, developing and financially troubled companies by making them more accessible to BDC financing. These companies often need capital for continued development and growth but are unable to borrow money through conventional sources or do not have ready access to the capital markets.

As discussed previously, Congress established BDCs in 1980 in order to promote the flow of capital and provide assistance to these small, developing or financially troubled companies. A significant number of such issuers, however, may have lost their eligible portfolio company status because, as a result of a 1998 amendment to the Federal Reserve Board's margin rules, they have a class of securities outstanding that are now considered to

[44] *See supra* note 40.

[45] House Report at 23.

[46] Section 55(a)(1)(B)(i) requires BDCs making follow-on investments in an issuer that no longer meets the definition of eligible portfolio company because it issued marginable securities to own, at the time of the follow-on investment, at least 50% of (1) the greatest number of equity securities of such issuer, including securities convertible into or exchangeable for such securities and (2) the greatest amount of certain debt securities of such issuer held by the BDC at any time during the period when such issuer was an eligible portfolio company. Section 55(a)(1)(B)(ii) requires a BDC that makes such a follow-on investment to be one of the twenty largest holders of record of the issuer's outstanding voting securities.

[47] Proposed Rule 55a–1 incorporates by reference the conditions set forth in Section 55(a)(1)(B). *See supra* note 46.

be marginable. Accordingly, BDCs are currently required to include in their 30% basket—rather than in their 70% basket—any investment in these issuers notwithstanding the fact that they are the type of issuers that Congress intended to benefit from BDC financing.[48] Proposed Rule 2a–46 is intended to recapture the type of issuers that Congress originally intended to make eligible for BDC investment as part of a BDC's 70% basket. The proposed rule would also benefit certain financially troubled issuers that would not have been eligible portfolio companies before the 1998 amendment to the margin rules because they likely had a class of marginable securities outstanding. Proposed Rule 55a–1 would provide additional benefits to certain issuers that meet the definition of eligible portfolio company under proposed Rule 2a–46 by allowing BDCs to make follow-on investments in such companies under certain conditions, notwithstanding the fact that they no longer meet the definition of eligible portfolio company because the issuer subsequently listed a class of securities on an Exchange or on NASDAQ.

Although it is difficult to quantify how many issuers would benefit under the proposed rules, the Office of Economic Analysis has estimated that 60% of public issuers currently do not have securities that trade on an Exchange or on NASDAQ, and thus would meet the definition of eligible portfolio company in proposed Rule 2a–46(a). Even more public issuers should qualify as eligible portfolio companies by virtue of meeting the requirements of proposed paragraph (b) of that rule, although we cannot quantify how many additional issuers this would be.[49]

The proposed rules would benefit BDCs by expanding the universe of investments that may be included in their 70% basket. Industry participants have informed us that the 1998 amendment to the margin rules has substantially reduced the number of issuers which BDCs may include in their 70% basket and accordingly has adversely affected their business operations.

B. Costs

The proposed rules might impose certain administrative compliance costs on BDCs. Under Proposed Rule 2a–46, a BDC would need to determine, prior to investing in an issuer, whether the issuer has a class of securities listed on an Exchange or on NASDAQ. If the issuer has a class of securities listed on an Exchange or on NASDAQ, a BDC could invest in the issuer only if the BDC determines that the issuer (1) has received a notice from the Exchange or NASDAQ that it does not satisfy a rule or standard setting forth quantitative requirements for continued listing on that Exchange or on NASDAQ and (2) does not meet the initial quantitative listing requirements of any Exchange or NASDAQ. We expect the costs involved in a BDC complying with these requirements to be minimal. Furthermore, it is our understanding that these costs are similar to the types of compliance costs that a BDC currently undertakes when it invests in an issuer. We do not anticipate that the proposed rule would impose any costs on issuers.

We also expect that the costs involved in a BDC complying with the requirements of Proposed Rule 55a–1 to be minimal. Proposed Rule 55a–1 would permit a BDC to include in its 70% basket follow-on investments in an issuer that met the definition of eligible portfolio company under Proposed Rule 2a–46 when the BDC made its initial investment(s), but that does not meet that definition at the time of the follow-on investment because the issuer subsequently listed a class of securities on an Exchange or on NASDAQ. A BDC generally may make follow-on investments under the proposal only if, at the time of the follow-on investment, the BDC owns at least 50% of (1) the greatest number of equity securities of such issuer, including securities convertible into or exchangeable for such securities and (2) the greatest amount of certain debt securities of such issuer held by the BDC at any time during the period when such issuer was an eligible portfolio company. In addition, the proposal would require a BDC that makes such a follow-on investment to be one of the twenty largest holders of record of the issuer's outstanding voting securities. These requirements are the same requirements set forth in Section 55(a)(1)(B) of the Investment Company Act, the provision that permits a BDC to include in its 70% basket certain follow-on investments in issuers that were eligible portfolio companies at the time of the BDC's initial investment(s), but that subsequently lost that status because they issued marginable securities. Accordingly, BDCs already make similar types of determinations when considering whether to make follow-on investments in issuers that had lost their eligible portfolio company status because they had issued marginable securities. We also do not anticipate that the proposed rule would impose any costs on issuers.

C. Request for Comments

We request comment on the potential costs and benefits identified in the proposal and any other costs and benefits that may result from the proposed rules. For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, the Commission also requests information regarding the impact of the proposed rules on the economy on an annual basis. Commenters are requested to provide data to support their views.

V. Consideration of Promotion of Efficiency, Competition, and Capital Formation

Section 2(c) of the Investment Company Act mandates that the Commission, when engaging in rulemaking that requires it to consider or determine whether an action is necessary or appropriate in the public interest, consider, in addition to the protection of investors, whether the action will promote efficiency, competition and capital formation.[50]

As discussed above, the two proposed rules would expand the definition of eligible portfolio company set forth in Section (2)(a)(46) of the Investment Company Act and provide for certain follow-on investments in issuers meeting the expanded definition. We intend for these new rules to promote efficiency by realigning the definition of eligible portfolio company with the purpose of the SBIIA.

We do not anticipate that these proposed rules would harm competition. The proposed rules are designed to recapture within the definition of eligible portfolio company those issuers originally intended to be funded by BDCs under the SBIIA. BDCs would be able to take advantage of the new rules equally. Moreover, the proposed rules would not affect investment opportunities generally available to other investors, including registered investment companies. The proposed rules also could foster greater competition among small, developing or financially troubled issuers for BDCs' initial and follow-on investments of capital and provision of managerial assistance. Thus, the proposed rules are designed to enhance competition.

We anticipate that the proposed new rules would promote capital formation by increasing the flow of capital from BDCs to small, developing businesses or financially troubled businesses. Thus,

[48] *See* Section I of this Release.

[49] *But see supra* note 41.

[50] 15 U.S.C. 80a–2(c).

we anticipate that the proposed new rules would promote capital formation.

We request comment on whether the proposed new rules will affect efficiency, competition and capital formation. Comments will be considered by the Commission in satisfying its responsibilities under Section 2(c) of the Investment Company Act. Commenters are requested to provide empirical data and other factual support for their views to the extent possible.

VI. Paperwork Reduction Act

The Commission has determined that these rules do not involve a collection of information pursuant to the provisions of the Paperwork Reduction Act [44 U.S.C. 3501 *et seq.*].

VII. Initial Regulatory Flexibility Analysis

This Initial Regulatory Flexibility Analysis (''IRFA'') has been prepared in accordance with 5 U.S.C. 603. It relates to proposed new Rules 2a–46 and 55a–1, both under the Investment Company Act, which would modernize the definition of eligible portfolio company set forth under that Act.

A. Reasons for the Proposed Action

As described more fully in Section I of this Release, the proposed rules are designed to recapture the type of issuers that Congress originally intended to include as eligible portfolio companies when it established BDCs in 1980, but may have lost their eligible portfolio company status as a result of the 1998 amendment to the Federal Reserve Board's margin rules.

B. Objectives of the Proposed Action

As described more fully in Section II of this Release, the objectives of the proposed rules are to realign the definition of eligible portfolio company set forth under the Investment Company Act, and the investment activities of BDCs, with the purpose intended by Congress when it established BDCs in 1980.

C. Legal Basis

Rule 2a–46 is being proposed pursuant to the authority set forth in Section 2(a)(46)(C)(iv) [15 U.S.C. 80a–2(a)(46)(c)(iv)] of the Investment Company Act. Rule 55a–1 is being proposed pursuant to the authority set forth in Section 6(c) [15 U.S.C. 80a–6(c)] of the Investment Company Act and Section 55(a)(1) [15 U.S.C. 80a–54(a)(1)] of the Investment Company Act. Both rules are also being proposed pursuant to the authority set forth in Section 38(a) [15 U.S.C. 80a–37(a)] of the Investment Company Act.

D. Small Entities Subject to the Rule

The proposed rules affect both BDCs and issuers that qualify as small entities under the Regulatory Flexibility Act. For purposes of the Regulatory Flexibility Act, a BDC is a small entity if it, together with other investment companies in the same group of related investment companies, has net assets of $50 million or less as of the end of its most recent fiscal year.[51] There are 64 BDCs, of which 46 are small entities. An issuer other than an investment company is a small entity under the Regulatory Flexibility Act if it had total assets of $5 million or less on the last day of its most recent fiscal year.[52] We estimate that there are approximately 2,500 issuers, other than investment companies, that may be considered small entities.

As discussed in this Release, the proposed rules are intended to benefit small, developing and financially troubled companies by making BDC capital more accessible to them. The proposed rules would also benefit BDCs, including those that are small entities, by expanding their universe of investment opportunities. We have no reason to expect that those BDCs and issuers that are small entities for purposes of the Regulatory Flexibility Act would be disproportionately affected by the proposed rules. We request comment on the effects and costs of the proposed rules on small entities.

E. Reporting, Recordkeeping and Other Compliance Requirements

The proposed rules do not include any new reporting or recordkeeping requirements on BDCs or on issuers. While the proposed rules would not impose any compliance requirements on issuers, they would impose minimal compliance requirements on all BDCs, including small entities. Under Proposed Rule 2a–46, a BDC, prior to investing in an issuer, must determine whether that issuer has listed a class of its securities on an Exchange or on NASDAQ. In the event that the issuer does have securities listed on an Exchange or on NASDAQ, the BDC may only invest in the issuer if the BDC determines that the issuer (1) has received notice that it does not meet the quantitative continued listing requirements of the Exchange or NASDAQ and (2) does not satisfy the initial quantitative requirements for listing a class of its securities on any Exchange or on NASDAQ. We believe that all BDCs, including those that are small entities, already make similar types of determinations when considering whether to invest in an issuer.

Proposed Rule 55a–1 would permit a BDC to include in its 70% basket follow-on investments in an issuer that met the definition of eligible portfolio company under Proposed Rule 2a–46 when the BDC made its initial investment(s), but that does not meet that definition at the time of the follow-on investment because the issuer subsequently listed a class of securities on an Exchange or on NASDAQ. A BDC generally may make follow-on investments under the proposal only if, at the time of the follow-on investment, the BDC owns at least 50% of (1) the greatest number of equity securities of such issuer, including securities convertible into or exchangeable for such securities and (2) the greatest amount of certain debt securities of such issuer held by the BDC at any time during the period when such issuer was an eligible portfolio company. In addition, the proposal would require a BDC that makes such a follow-on investment to be one of the twenty largest holders of record of the issuer's outstanding voting securities. These requirements are the same requirements set forth in Section 55(a)(1)(B) of the Investment Company Act, the provision that permits a BDC to include in its 70% basket certain follow-on investments in issuers that were eligible portfolio companies at the time of the BDC's initial investment(s), but that subsequently lost that status because they issued marginable securities. Accordingly, BDCs, including those that are small entities, already make similar types of determinations when considering whether to make follow-on investments in issuers that had lost their eligible portfolio company status because they had issued marginable securities.

F. Duplicative, Overlapping, or Conflicting Federal Rules

There are no rules that duplicate, overlap, or conflict with the proposed rules.

G. Significant Alternatives

The Regulatory Flexibility Act directs us to consider significant alternatives that would accomplish our stated objectives, while minimizing any significant adverse impact on small entities. Alternatives in this category would include: (1) Establishing different compliance or reporting standards that

[51] 17 CFR 270.0–10.

[52] 17 CFR 230.157; 17 CFR 240.0–10.

take into account the resources available to small entities; (2) clarifying, consolidating, or simplifying the compliance requirements under the proposed rules for small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the proposed rules, or any part thereof, for small entities.

Establishing different compliance or reporting requirements for small entities would not be appropriate. As discussed above, the proposed rules do not impose any reporting requirements on BDCs or on issuers. In addition, the proposed rules do not impose any compliance requirements on issuers. While the proposed rules do impose some compliance requirements on BDCs, these requirements are designed to insure that BDCs invest primarily in those issuers that Congress intended them to invest in when it established BDCs in 1980. We believe at this time that these requirements impose minimal burdens on BDCs. Furthermore, we believe that to comply with these requirements, a BDC would be required to engage in the types of activities that they already undertake before making most investments.

We also believe that clarifying, consolidating, or simplifying the compliance requirements under the proposed rules for small entities is inappropriate. As discussed above, the proposed rules do not impose any compliance requirements on issuers. Although the proposed rules do impose some compliance requirements on BDCs, as discussed above, these requirements, which we believe impose minimal burdens on BDCs, are designed to insure that BDCs invest primarily in those issuers that Congress intended them to invest in when it established BDCs in 1980.

We do not believe that the use of performance rather than design standards is feasible. The proposed rules are designed to recapture the type of issuers that Congress originally intended to include as eligible portfolio companies when it established BDCs in 1980—small developing or financially troubled companies that do not have access to capital—but may have lost their eligible portfolio company status as a result of the 1998 amendment to the Federal Reserve Board's margin rules. They are also intended to ensure that BDCs do not invest primarily in those large, established companies that Congress did not intend to receive the benefits of BDC investment.

Finally, it would be inappropriate to exempt small entities from coverage of the proposed rules. The proposed rules are intended to benefit BDCs, including those that are small entities, by expanding the universe of their investment opportunities. The proposed rules are also intended to benefit small, developing and financially troubled issuers, including those that are small entities, by making BDC capital more readily available to them. Exempting small entities from all or part of the proposed rules would be contradictory to the purpose of the proposed rules.

H. Solicitation of Comments

We encourage the submission of comments with respect to any aspect of this IRFA. Comment is specifically requested on the number of small entities that would be affected by the proposed rules, and the likely impact of the proposals on small entities. Commenters are asked to describe the nature of any impact and provide empirical data supporting the extent of the impact. These comments will be considered in connection with the adoption of the proposed rules and will be reflected in the Final Regulatory Flexibility Analysis.[53]

VIII. Statutory Authority

We are proposing Rule 2a–46 pursuant to our rulemaking authority under Sections 2(a)(46)(C)(iv) and 38(a) of the Investment Company Act. We are proposing Rule 55a–1 pursuant to our exemptive authority under Section 6(c) and our rulemaking authority under Sections 38(a) and 55(a)(1) of the Investment Company Act.

List of Subjects in 17 CFR Part 270

Investment companies, Reporting and recordkeeping requirements, Securities.

Text of Proposed Rules

For reasons set forth in the preamble, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

1. The authority citation for Part 270 continues to read in part as follows:

Authority: 15 U.S.C. 80a–1 *et seq.*, 80a–34(d), 80a–37, and 80a–39, unless otherwise noted.

* * * * *

[53] Comments on the IRFA will be placed in the same public file that contains comments on the proposed rules themselves.

2. Section 270.2a–46 is added to read as follows:

§ 270.2a–46 Certain issuers as eligible portfolio companies.

The term eligible portfolio company shall include any issuer that meets the requirements set forth in paragraphs (A) and (B) of section 2(a)(46) of the Act (15 U.S.C. 80a–2(a)(46)(a) and (B)) and that:

(a) Does not have any class of securities listed on a national securities exchange or on an automated interdealer quotation system of a national securities association; or

(b) Has a class of securities listed on a national securities exchange or on an automated interdealer quotation system of a national securities association, but that:

(1) Has received a notice from the national securities exchange or national securities association (or facility thereof) that it does not satisfy a rule or standard setting forth quantitative requirements for continued listing on the exchange or association; and

(2) Does not satisfy the initial quantitative requirements for listing any class of its securities on any national securities exchange or on an automated interdealer quotation system of a national securities association.

3. Section 270.55a–1 is added to read as follows:

§ 270.55a–1 Investment activities of business development companies.

Notwithstanding section 55(a) of the Act (15 U.S.C. 80a–54(a)), a business development company may acquire securities purchased in transactions not involving any public offering from an issuer, or from any person who is an officer or employee of the issuer, if the issuer meets the requirements of section 2(a)(46)(A) and (B) of the Act (15 U.S.C. 80a–2(a)(46)(A) and (B)), but is not an eligible portfolio company because it has a class of securities that is listed on a national securities exchange or on an automated interdealer quotation system of a national securities association, and the BDC meets the requirements of paragraphs (i) and (ii) of Section 55(a)(1)(B) of the Act (15 U.S.C. 80a–54(a)(1)(B)(i) and (ii)).

Dated: November 1, 2004.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 04–24788 Filed 11–5–04; 8:45 am]

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Monday,
November 8, 2004

Part III

Department of Housing and Urban Development

Further Annual Plan Deregulation for High-Performing Public Housing Agencies; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4829–N–01]

Further Annual Plan Deregulation for High-Performing Public Housing Agencies

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: This notice provides for further simplification of the annual plan (Annual Plan) requirements for high-performing public housing agencies (PHAs), in accordance with HUD regulations. HUD's regulations governing the Annual Plan establish streamlined information requirements for high-performing PHAs and authorize HUD to further reduce the requirements with adequate notice. Accordingly, this notice provides that the Annual Plan submitted by a high-performing PHA need only address policies concerning capital improvements and the civil rights certification plus certain discretionary policies for which there is no HUD approval mechanism other than the Annual Plan. For other policies, the PHA would only be required to submit a certification listing the policies the PHA has revised since submission of its last Annual Plan. In addition, a high-performing PHA would be required to provide certain other assurances regarding resident participation in the development of the revised policies. Every fifth fiscal year, in the same year the PHA submits its five-year plan (Five-Year Plan), the high-performing PHA would be required to submit a more detailed Annual Plan.

DATES: *Effective Date:* November 8, 2004.

FOR FURTHER INFORMATION CONTACT: Bessy Kong, Acting Deputy Assistant Secretary for Policy, Program and Legislative Initiatives; Department of Housing and Urban Development; 451 Seventh Street, SW., Room 4116; Washington, DC 20410–5000; telephone (202) 708–0713 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

The PHA plan process provides public housing residents, participants in the tenant-based assistance programs, and other members of the public a source to refer to basic PHA policies, rules, and requirements concerning the PHA's operations, programs, and services. The PHA plan process was established by section 5A of the United States Housing Act of 1937 (1937 Act) (42 U.S.C. 1437 *et seq.*). Through a Five-Year Plan and an Annual Plan, a PHA advises its residents, members of the public, and HUD of the PHA's mission and strategy for serving low-income and very low-income families. HUD's regulations for the PHA plans are located at 24 CFR part 903.

HUD's regulations at § 903.11 currently allow a PHA that is designated to be high-performing, as of the most recent annual or interim public housing assessment system (PHAS) assessment to submit a streamlined Annual Plan. In addition, § 903.11(c) authorizes HUD to reduce further the information requirements of the streamlined Annual Plans with adequate notice. In accordance with § 903.11(c), this notice provides for further simplification of the PHA Annual Plan requirements for high-performing PHAs. This notice will establish streamlined Annual Plan submission requirements for high-performing PHAs identical to the streamlined Annual Plan procedures for small PHAs that HUD has established through rulemaking (see the final rule published on June 24, 2003, at 68 FR 37664 and codified at § 903.12).

The Annual Plan requirements for most PHAs will be simplified. Under the final rule for small PHAs, PHAs that operate fewer than 250 public housing units and are not designated as troubled under the PHAS will submit streamlined PHA plans notwithstanding their Section 8 Management Assessment Program (SEMAP) assessment. Furthermore, PHAs that administer only housing choice vouchers will submit streamlined Annual Plans regardless of the SEMAP assessment.

The only PHAs to submit standard Annual Plans are those of any size designated as troubled or at risk of being designated as troubled under the PHAS, or larger PHAs (those with at least 250 units of public housing) that are designated as standard performers under the PHAS. PHAs that manage both public housing and housing choice vouchers will rely on the PHAS designation to determine whether to submit a streamlined or standard Annual Plan.

Streamlined Annual Plan Submissions	Standard Annual Plan Submissions
High performer under PHAS	Designated as troubled or at risk of being troubled under PHAS.
Administer only housing choice vouchers	Designated as a standard performer under PHAS and operate 250 units of public housing.
Non-troubled small PHA (manage < 250 units of public housing).	
Non-troubled small PHA (manage < 250 units of public housing) and administer any number of housing choice vouchers.	

This notice provides that the Annual Plan submitted by a high-performing PHA need only address policies concerning capital improvements (§ 903.7(g)), the civil rights certification (§ 903.7(o)), any PHA initiative concerning site-based waiting lists (§ 903.7(b)(2)), any homeownership program administered under section 8(y) of the 1937 Act (§ 903.7(k)(1)) and, if applicable, project-based voucher assistance (Section II.D. of HUD's January 16, 2001, **Federal Register** notice regarding revisions to the PHA Project-Based Assistance Program (66 FR 3605 at 3608) and Section III.C. of PIH Notice 2001–4 issued on January 19, 2001). This information concerns discretionary PHA programs and policies that the PHA is required, either by regulation or statute, to address in the Annual Plan and for which no alternative method exists for obtaining prior HUD approval.

For the other policies and programs that § 903.11(c)(1) requires to be addressed in a streamlined Annual Plan (such as deconcentration, demolition and disposition, housing needs, and financial resources), the PHA would only be required to submit a certification listing the policies the PHA has revised since submission of its last Annual Plan. In addition, a high-performing PHA would be required to provide certain other assurances regarding resident participation in the development of the revised policies.

Every fifth fiscal year, in the same year the PHA submits its Five-Year Plan, a high-performing PHA would be required to submit a more detailed

Annual Plan that more fully addresses the elements required under § 903.11(c)(1). However, high-performing PHAs would not be required to provide information concerning crime and safety (§ 903.7(m)), pet ownership policies (§ 903.7(n)) and fiscal year audit findings (§ 903.7(p)), since the PHA is already required to maintain these supporting documents and make them available to the public. Further, the information concerning housing needs (*see* § 903.7(a)) need only be provided to the extent that this information pertains to the housing needs of families on the PHA's public housing and tenant-based assistance waiting lists. The PHA already provides the other housing needs information that is required under § 903.7(a) through the Consolidated Plan process under 24 CFR part 91.

II. Streamlined Annual Plan Requirements for High-Performing PHAs

The revised streamlined Annual Plan submission requirements for high-performing PHAs are as follows:

A. General

PHAs that are designated to be high-performing PHAs as of the most recent annual or interim PHAS assessment of the PHA before the submission of the Five-Year or Annual Plan may submit a streamlined Annual Plan as described in Section II B. of this notice.

B. Streamlined Annual Plan Requirements for Fiscal Years in Which Five-Year Plan is Also Due

For the fiscal year in which its Five-Year Plan is also due, the streamlined Annual Plan of a high-performing PHA shall consist of the information required by § 903.7(a), (b), (c), (d), (g), (h), (k), (o), and (r). If the high-performing PHA wishes to use the project-based voucher program, its streamlined Annual Plan must also include a statement of the projected number of project-based units, their general locations, and how project basing would be consistent with its Annual Plan. The information required by § 903.7(a) must be included only to the extent that it pertains to the housing needs of families that are on the PHA's public housing and Section 8 tenant-based assistance waiting lists. The information required by § 903.7(k) must be included only to the extent that the PHA participates in homeownership programs under section 8(y) of the 1937 Act.

C. Streamlined Annual Plan Requirements for All Other Fiscal Years

For all other fiscal years, the streamlined Annual Plan must include:

1. The information required by § 903.7(g) and (o) and, if applicable, § 903.7 (b)(2) with respect to site-based waiting lists and § 903.7(k)(1)(i) with respect to homeownership programs under section 8(y) of the 1937 Act;

2. If the PHA wishes to use the project-based voucher program, a statement of the projected number of project-based units, their general locations, and how project basing would be consistent with its Annual Plan; and

3. A certification from the PHA that lists the other policies and programs covered by § 903.7(a), (b), (c), (d), (h), (k), and (r) that the PHA has revised since submission of its last Annual Plan and provides assurance by the PHA that:

a. The Resident Advisory Board had an opportunity to review and comment on the changes to the policies and programs before implementation by the PHA;

b. The changes were duly approved by the PHA board of directors (or similar governing body); and

c. The revised policies and programs are available for review and inspection at the principal office of the PHA during normal business hours.

III. Information Collection Requirements

The information collection requirements contained in the PHA plan process have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB Control Numbers 2535–0106 and 2535–0107. The changes contained in this notice merely modify the scope and frequency of these currently approved information collection requirements to streamline and reduce the paperwork burden imposed on high-performing PHAs. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

Dated: November 1, 2004.

Michael M. Liu,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 04–24783 Filed 11–5–04; 8:45 am]

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The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

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National Archives and Records Administration Efficiency Act of 2004 (Oct. 30, 2004; 118 Stat. 2218)

H.R. 3479/P.L. 108–384

Brown Tree Snake Control and Eradication Act of 2004 (Oct. 30, 2004; 118 Stat. 2221)

H.R. 3706/P.L. 108–385

John Muir National Historic Site Boundary Adjustment Act (Oct. 30, 2004; 118 Stat. 2227)

H.R. 3797/P.L. 108–386

2004 District of Columbia Omnibus Authorization Act (Oct. 30, 2004; 118 Stat. 2228)

H.R. 3819/P.L. 108–387

To redesignate Fort Clatsop National Memorial as the Lewis and Clark National Historical Park, to include in the park sites in the State of Washington as well as the State of Oregon, and for other purposes. (Oct. 30, 2004; 118 Stat. 2234)

H.R. 4046/P.L. 108–388

To designate the facility of the United States Postal Service located at 555 West 180th Street in New York, New York, as the "Sergeant Riayan A. Tejeda Post Office". (Oct. 30, 2004; 118 Stat. 2238)

H.R. 4066/P.L. 108–389

Chickasaw National Recreation Area Land Exchange Act of 2004 (Oct. 30, 2004; 118 Stat. 2239)

H.R. 4306/P.L. 108–390

To amend section 274A of the Immigration and Nationality

Act to improve the process for verifying an individual's eligibility for employment. (Oct. 30, 2004; 118 Stat. 2242)

H.J. Res. 57/P.L. 108–391
Expressing the sense of the Congress in recognition of the contributions of the seven Columbia astronauts by supporting establishment of a Columbia Memorial Space Science Learning Center. (Oct. 30, 2004; 118 Stat. 2243)

Last List November 1, 2004

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An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869–052–00001–9)	9.00	[4] Jan. 1, 2004
3 (2003 Compilation and Parts 100 and 101)	(869–052–00002–7)	35.00	[1] Jan. 1, 2004
4	(869–052–00003–5)	10.00	Jan. 1, 2004
5 Parts:			
1–699	(869–052–00004–3)	60.00	Jan. 1, 2004
700–1199	(869–052–00005–1)	50.00	Jan. 1, 2004
1200–End	(869–052–00006–0)	61.00	Jan. 1, 2004
6	(869–052–00007–8)	10.50	Jan. 1, 2004
7 Parts:			
1–26	(869–052–00008–6)	44.00	Jan. 1, 2004
27–52	(869–052–00009–4)	49.00	Jan. 1, 2004
53–209	(869–052–00010–8)	37.00	Jan. 1, 2004
210–299	(869–052–00011–6)	62.00	Jan. 1, 2004
300–399	(869–052–00012–4)	46.00	Jan. 1, 2004
400–699	(869–052–00013–2)	42.00	Jan. 1, 2004
700–899	(869–052–00014–1)	43.00	Jan. 1, 2004
900–999	(869–052–00015–9)	60.00	Jan. 1, 2004
1000–1199	(869–052–00016–7)	22.00	Jan. 1, 2004
1200–1599	(869–052–00017–5)	61.00	Jan. 1, 2004
1600–1899	(869–052–00018–3)	64.00	Jan. 1, 2004
1900–1939	(869–052–00019–1)	31.00	Jan. 1, 2004
1940–1949	(869–052–00020–5)	50.00	Jan. 1, 2004
1950–1999	(869–052–00021–3)	46.00	Jan. 1, 2004
2000–End	(869–052–00022–1)	50.00	Jan. 1, 2004
8	(869–052–00023–0)	63.00	Jan. 1, 2004
9 Parts:			
1–199	(869–052–00024–8)	61.00	Jan. 1, 2004
200–End	(869–052–00025–6)	58.00	Jan. 1, 2004
10 Parts:			
1–50	(869–052–00026–4)	61.00	Jan. 1, 2004
51–199	(869–052–00027–2)	58.00	Jan. 1, 2004
200–499	(869–052–00028–1)	46.00	Jan. 1, 2004
500–End	(869–052–00029–9)	62.00	Jan. 1, 2004
11	(869–052–00030–2)	41.00	Feb. 3, 2004
12 Parts:			
1–199	(869–052–00031–1)	34.00	Jan. 1, 2004
200–219	(869–052–00032–9)	37.00	Jan. 1, 2004
220–299	(869–052–00033–7)	61.00	Jan. 1, 2004
300–499	(869–052–00034–5)	47.00	Jan. 1, 2004
500–599	(869–052–00035–3)	39.00	Jan. 1, 2004
600–899	(869–052–00036–1)	56.00	Jan. 1, 2004
900–End	(869–052–00037–0)	50.00	Jan. 1, 2004
13	(869–052–00038–8)	55.00	Jan. 1, 2004
14 Parts:			
1–59	(869–052–00039–6)	63.00	Jan. 1, 2004
60–139	(869–052–00040–0)	61.00	Jan. 1, 2004
140–199	(869–052–00041–8)	30.00	Jan. 1, 2004
200–1199	(869–052–00042–6)	50.00	Jan. 1, 2004
1200–End	(869–052–00043–4)	45.00	Jan. 1, 2004
15 Parts:			
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800–End	(869–052–00046–9)	42.00	Jan. 1, 2004
16 Parts:			
0–999	(869–052–00047–7)	50.00	Jan. 1, 2004
1000–End	(869–052–00048–5)	60.00	Jan. 1, 2004
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200–239	(869–052–00051–5)	58.00	Apr. 1, 2004
240–End	(869–052–00052–3)	62.00	Apr. 1, 2004
18 Parts:			
1–399	(869–052–00053–1)	62.00	Apr. 1, 2004
400–End	(869–052–00054–0)	26.00	Apr. 1, 2004
19 Parts:			
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141–199	(869–052–00056–6)	58.00	Apr. 1, 2004
200–End	(869–052–00057–4)	31.00	Apr. 1, 2004
20 Parts:			
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400–499	(869–052–00059–1)	64.00	Apr. 1, 2004
500–End	(869–052–00060–9)	63.00	Apr. 1, 2004
21 Parts:			
1–99	(869–052–00061–2)	42.00	Apr. 1, 2004
100–169	(869–052–00062–1)	49.00	Apr. 1, 2004
170–199	(869–052–00063–9)	50.00	Apr. 1, 2004
200–299	(869–052–00064–7)	17.00	Apr. 1, 2004
300–499	(869–052–00065–5)	31.00	Apr. 1, 2004
500–599	(869–052–00066–3)	47.00	Apr. 1, 2004
600–799	(869–052–00067–1)	15.00	Apr. 1, 2004
800–1299	(869–052–00068–0)	58.00	Apr. 1, 2004
1300–End	(869–052–00069–8)	24.00	Apr. 1, 2004
22 Parts:			
1–299	(869–052–00070–1)	63.00	Apr. 1, 2004
300–End	(869–052–00071–0)	45.00	Apr. 1, 2004
23	(869–052–00072–8)	45.00	Apr. 1, 2004
24 Parts:			
0–199	(869–052–00073–6)	60.00	Apr. 1, 2004
200–499	(869–052–00074–4)	50.00	Apr. 1, 2004
500–699	(869–052–00075–2)	30.00	Apr. 1, 2004
700–1699	(869–052–00076–1)	61.00	Apr. 1, 2004
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26 Parts:			
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§§ 1.301–1.400	(869–052–00082–5)	46.00	Apr. 1, 2004
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§§ 1.908–1.1000	(869–052–00088–4)	60.00	Apr. 1, 2004
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§§ 1.1551–End	(869–052–00091–4)	55.00	Apr. 1, 2004
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30–39	(869–052–00093–1)	41.00	Apr. 1, 2004
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300–499	(869–052–00096–5)	61.00	Apr. 1, 2004

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200–End	(869–052–00100–7)	21.00	Apr. 1, 2004
28 Parts:			
0–42	(869–052–00101–5)	61.00	July 1, 2004
43–End	(869–052–00102–3)	60.00	July 1, 2004
29 Parts:			
0–99	(869–052–00103–1)	50.00	July 1, 2004
100–499	(869–052–00104–0)	23.00	July 1, 2004
500–899	(869–052–00105–8)	61.00	July 1, 2004
900–1899	(869–052–00106–6)	36.00	July 1, 2004
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1910 (§§ 1910.1000 to end)	(869–052–00108–2)	46.00	[8]July 1, 2004
1911–1925	(869–052–00109–1)	30.00	July 1, 2004
1926	(869–052–00110–4)	50.00	July 1, 2004
1927–End	(869–052–00111–2)	62.00	July 1, 2004
30 Parts:			
1–199	(869–052–00112–1)	57.00	July 1, 2004
200–699	(869–052–00113–9)	50.00	July 1, 2004
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200–End	(869–052–00116–3)	65.00	July 1, 2004
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1–190	(869–052–00117–1)	61.00	July 1, 2004
191–399	(869–052–00118–0)	63.00	July 1, 2004
400–629	(869–052–00119–8)	50.00	[8]July 1, 2004
630–699	(869–052–00120–1)	37.00	[7]July 1, 2004
700–799	(869–052–00121–0)	46.00	July 1, 2004
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33 Parts:			
1–124	(869–050–00122–5)	55.00	July 1, 2003
*125–199	(869–052–00124–4)	61.00	July 1, 2004
200–End	(869–052–00125–2)	57.00	July 1, 2004
34 Parts:			
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300–399	(869–052–00127–9)	40.00	July 1, 2004
400–End	(869–052–00128–7)	61.00	July 1, 2004
35	(869–052–00129–5)	10.00	[6]July 1, 2004
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37	(869–052–00133–3)	58.00	July 1, 2004
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18–End	(869–052–00135–0)	62.00	July 1, 2004
39	(869–052–00136–8)	42.00	July 1, 2004
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50–51	(869–052–00138–4)	45.00	July 1, 2004
52 (52.01–52.1018)	(869–052–00139–2)	60.00	July 1, 2004
52 (52.1019–End)	(869–050–00139–0)	61.00	July 1, 2003
53–59	(869–052–00141–4)	31.00	July 1, 2004
60 (60.1–End)	(869–052–00142–2)	58.00	July 1, 2004
60 (Apps)	(869–052–00143–1)	57.00	July 1, 2004
61–62	(869–052–00144–9)	45.00	July 1, 2004
63 (63.1–63.599)	(869–052–00145–7)	58.00	July 1, 2004
63 (63.600–63.1199)	(869–052–00146–5)	50.00	July 1, 2004
63 (63.1200–63.1439)	(869–052–00147–3)	50.00	July 1, 2004
*63 (63.1440–63.8830)	(869–052–00148–1)	64.00	July 1, 2004
64–71	(869–052–00150–3)	29.00	July 1, 2004
72–80	(869–052–00151–1)	62.00	July 1, 2004
81–85	(869–052–00152–0)	60.00	July 1, 2004
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86 (86.600–1–End)	(869–052–00154–6)	50.00	July 1, 2004
87–99	(869–052–00155–4)	60.00	July 1, 2004
100–135	(869–052–00156–2)	45.00	July 1, 2004
*136–149	(869–052–00157–1)	61.00	July 1, 2004
150–189	(869–052–00158–9)	50.00	July 1, 2004
190–259	(869–052–00159–7)	39.00	July 1, 2004
260–265	(869–052–00160–1)	50.00	July 1, 2004
266–299	(869–052–00161–9)	50.00	July 1, 2004
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*790–End	(869–052–00166–0)	61.00	July 1, 2004
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1–100	(869–052–00167–8)	24.00	July 1, 2004
101	(869–052–00168–6)	21.00	July 1, 2004
*102–200	(869–052–00169–4)	56.00	July 1, 2004
201–End	(869–052–00170–8)	24.00	July 1, 2004
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44	(869–050–00174–8)	50.00	Oct. 1, 2003
45 Parts:			
1–199	(869–050–00175–6)	60.00	Oct. 1, 2003
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70–89	(869–050–00181–1)	14.00	Oct. 1, 2003
90–139	(869–050–00182–9)	44.00	Oct. 1, 2003
140–155	(869–050–00183–7)	25.00	Oct. 1, 2003
156–165	(869–050–00184–5)	34.00	Oct. 1, 2003
166–199	(869–050–00185–3)	46.00	Oct. 1, 2003
200–499	(869–050–00186–1)	39.00	Oct. 1, 2003
500–End	(869–050–00187–0)	25.00	Oct. 1, 2003
47 Parts:			
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17.99(i)–end	(869–050–00211–6)	50.00	Oct. 1, 2003
18–199	(869–050–00212–4)	42.00	Oct. 1, 2003
200–599	(869–050–00213–2)	44.00	Oct. 1, 2003
600–End	(869–050–00214–1)	61.00	Oct. 1, 2003
CFR Index and Findings Aids	(869–052–00049–3)	62.00	Jan. 1, 2004
Complete 2004 CFR set		1,342.00	2004
Microfiche CFR Edition:			
Subscription (mailed as issued)		325.00	2004
Individual copies		2.00	2004
Complete set (one-time mailing)		298.00	2003
Complete set (one-time mailing)		298.00	2002

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2003, through January 1, 2004. The CFR volume issued as of January 1, 2002 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2004. The CFR volume issued as of April 1, 2000 should be retained.

[6] No amendments to this volume were promulgated during the period July 1, 2000, through July 1, 2004. The CFR volume issued as of July 1, 2000 should be retained.

[7] No amendments to this volume were promulgated during the period July 1, 2002, through July 1, 2004. The CFR volume issued as of July 1, 2002 should be retained.

[8] No amendments to this volume were promulgated during the period July 1, 2003, through July 1, 2004. The CFR volume issued as of July 1, 2003 should be retained.

[9] No amendments to this volume were promulgated during the period October 1, 2001, through October 1, 2003. The CFR volume issued as of October 1, 2001 should be retained.