Federal Register

12–2–04 Thursday
Vol. 69 No. 231 Dec. 2, 2004

Pages 70051–70178

The **FEDERAL REGISTER** (ISSN 0097–6326) is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition. Periodicals postage is paid at Washington, DC.

The **FEDERAL REGISTER** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see *www.archives.gov.*

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge as one of the databases on GPO Access, a service of the U.S. Government Printing Office.

The online edition of the **Federal Register** *www.gpoaccess.gov/nara,* available through GPO Access, is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6 a.m. each day the **Federal Register** is published and includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward.

For more information about GPO Access, contact the GPO Access User Support Team, call toll free 1-888-293-6498; DC area 202-512-1530; fax at 202-512-1262; or via e-mail at *gpoaccess@gpo.gov.* The Support Team is available between 7:00 a.m. and 9:00 p.m. Eastern Time, Monday–Friday, except official holidays.

The annual subscription price for the **Federal Register** paper edition is $749 plus postage, or $808, plus postage, for a combined **Federal Register, Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is $165, plus postage. Six month subscriptions are available for one-half the annual rate. The prevailing postal rates will be applied to orders according to the delivery method requested. The price of a single copy of the daily **Federal Register,** including postage, is based on the number of pages: $11 for an issue containing less than 200 pages; $22 for an issue containing 200 to 400 pages; and $33 for an issue containing more than 400 pages. Single issues of the microfiche edition may be purchased for $3 per copy, including postage. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard, American Express, or Discover. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250-7954; or call toll free 1-866-512-1800, DC area 202-512-1800; or go to the U.S. Government Online Bookstore site, see *bookstore.gpo.gov.*

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 69 FR 12345.

Postmaster: Send address changes to the Superintendent of Documents, Federal Register, U.S. Government Printing Office, Washington DC 20402, along with the entire mailing label from the last issue received.

SUBSCRIPTIONS AND COPIES

PUBLIC	
Subscriptions:	
Paper or fiche	**202–512–1800**
Assistance with public subscriptions	**202–512–1806**
General online information	**202–512–1530; 1–888–293–6498**
Single copies/back copies:	
Paper or fiche	**202–512–1800**
Assistance with public single copies	**1–866–512–1800 (Toll-Free)**
FEDERAL AGENCIES	
Subscriptions:	
Paper or fiche	**202–741–6005**
Assistance with Federal agency subscriptions	**202–741–6005**

What's NEW!

Federal Register Table of Contents via e-mail

Subscribe to FEDREGTOC, to receive the **Federal Register** Table of Contents in your e-mail every day.

If you get the HTML version, you can click directly to any document in the issue.

To subscribe, go to **http://listserv.access.gpo.gov** and select:

Online mailing list archives
FEDREGTOC-L
Join or leave the list

Then follow the instructions.

What's NEW!

Regulations.gov, the award-winning Federal eRulemaking Portal

Regulations.gov is the one-stop U.S. Government web site that makes it easy to participate in the regulatory process.

Try this fast and reliable resource to find all rules published in the *Federal Register* that are currently open for public comment. Submit comments to agencies by filling out a simple web form, or use available e-mail addresses and web sites.

The Regulations.gov e-democracy initiative is brought to you by NARA, GPO, EPA and their eRulemaking partners.

Visit the web site at: **http://www.regulations.gov**

Printed on recycled paper.

Contents

Federal Register

Vol. 69, No. 231

Thursday, December 2, 2004

African Development Foundation
NOTICES
Meetings; Sunshine Act, 70118

Agriculture Department
See Food Safety and Inspection Service
See Forest Service
See Grain Inspection, Packers and Stockyards Administration
See Natural Resources Conservation Service

Children and Families Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 70147

Coast Guard
RULES
Drawbridge operations:
North Carolina, 70059–70061
Virginia, 70057–70059
PROPOSED RULES
Drawbridge operations:
Virginia, 70091–70094

Commerce Department
See Foreign-Trade Zones Board
See International Trade Administration
See National Oceanic and Atmospheric Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 70120

Defense Department
See Navy Department

Employee Benefits Security Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 70156–70162

Energy Department
See Federal Energy Regulatory Commission

Environmental Protection Agency
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 70141–70143

Executive Office of the President
See Presidential Documents

Federal Aviation Administration
RULES
Class E airspace, 70053
NOTICES
Meetings:
RTCA Program Management Committee, 70166
Reports and guidance documents; availability, etc.:
Reciprocating engines; electronic engine control installation; policy statement, 70166–70167

Federal Communications Commission
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 70143–70146
Rulemaking proceedings; petitions filed, granted, denied, etc., 70146

Federal Energy Regulatory Commission
PROPOSED RULES
Natural Gas Policy Act:
Natural gas pipeline companies; selective discounting policy, 70077–70082
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 70126–70128
Electric rate and corporate regulation filings, 70137–70140
Environmental statements; availability, etc.:
Flambeau Hydro LLC, 70141
Hydroelectric applications, 70141
Applications, hearings, determinations, etc.:
Chandeleur Pipe Line Co., 70128
Dauphin Island Gathering Partners, 70128–70129
El Paso Natural Gas Co., 70129
Enogex Inc., 70129
Florida Gas Transmission Co., 70129–70130
Gulf South Pipeline Co., LP, 70130
Iroquois Gas Transmission System, L.P., 70130–70131
MDU Resources Group, Inc., 70132
Midwestern Gas Transmission Co., 70132
Natural Gas Pipeline Co. of America, 70132–70133
Northwest Pipeline Corp., 70133
Pine Needle LNG Co., LLC, 70133–70134
Sabine Pipe Line LLC, 70134
Sea Robin Pipeline Co., LLC, 70134–70135
Southern Natural Gas Co., 70135
Tennessee Gas Pipeline Co., 70135
Texas Gas Transmission, LLC, 70135–70136
Transcontinental Gas Pipe Line Corp., 70136–70137

Federal Railroad Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 70167–70168

Fish and Wildlife Service
RULES
Alaska National Interest Lands Conservation Act; Title VIII implementation (subsistence priority):
Fish and wildlife; 2004-2005 subsistence taking Seasonal adjustments, 70074–70076

Food and Drug Administration
RULES
Animal drugs, feeds, and related products:
Coumaphos, 70056–70057
Progesterone and estradiol benzoate, 70054–70055
Sulfadiazine/pyrimethamine suspension, 70053–70054
Trenbalone acetate, 70055–70056
PROPOSED RULES
Food for human consumption:
Beverages—
Bottled water, 70082–70091

NOTICES
Agency information collection activities; proposals, submissions, and approvals, 70147–70148
Debarment orders:
Bhutani, Baldev Raj, 70148–70153
Reports and guidance documents; availability, etc.:
Genetic toxicology study results integration; recommended approaches, 70153

Food Safety and Inspection Service
RULES
Meat and poultry inspection:
Food labeling—
Ready-to-eat meat and poultry products; listeria monocytogenes workshops for small and very small plants, 70051
Listeria monocytogenes interim final rule; effectiveness assessment; report availability, 70051–70053

Foreign-Trade Zones Board
NOTICES
Applications, hearings, determinations, etc.:
Illinois
Rockwell Automation, Inc.; industrial automation products warehousing, processing, and distribution facility, 70121
Indiana, 70121
Puerto Rico
Ortho Biologics, LLC; pharmaceutical intermediate manufacturing facilities, 70121–70122
Wisconsin; correction, 70122

Forest Service
RULES
Alaska National Interest Lands Conservation Act; Title VIII implementation (subsistence priority):
Fish and wildlife; 2004-2005 subsistence taking Seasonal adjustments, 70074–70076
NOTICES
Meetings:
Santa Rosa and San Jacinto Mountains National Monument Advisory Committee, 70118–70119

Grain Inspection, Packers and Stockyards Administration
NOTICES
Stockyards; posting and deposting:
Mayfield Auction Barn, KY, et al., 70119

Health and Human Services Department
See Children and Families Administration
See Food and Drug Administration
See National Institutes of Health
NOTICES
Meetings:
Vital and Health Statistics National Committee, 70146–70147

Homeland Security Department
See Coast Guard

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See National Park Service

International Trade Administration
NOTICES
Antidumping:
Hand trucks and parts from—
China, 70122–70123
In-shell raw pistachios from—
Iran, 70123–70124
Natural bristle paint brushes and brush heads from—
China, 70124
Stainless steel sheet and strip in coils from—
Italy, 70124–70125
Meetings:
President's Export Council, 70125

Judicial Conference of the United States
NOTICES
Meetings:
Judicial Conference Advisory Committee on—
Appellate, Bankruptcy, and Civil Procedure Rules, 70156

Labor Department
See Employee Benefits Security Administration

Land Management Bureau
NOTICES
Meetings:
Santa Rosa and San Jacinto Mountains National Monument Advisory Committee, 70118–70119

National Highway Traffic Safety Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 70168–70169

National Institutes of Health
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 70153–70155
Meetings:
Scientific Review Center, 70155–70156

National Oceanic and Atmospheric Administration
PROPOSED RULES
Marine mammals:
Commercial fishing authorizations—
Fisheries categorized according to frequency of incidental takes; 2005 list, 70094–70117
NOTICES
Permits:
Endangered and threatened species, 70125–70126

National Park Service
RULES
Alaska National Park System units; amendments, 70061–70074

Natural Resources Conservation Service
NOTICES
Watershed projects; deauthorization of funds:
White Tank Mountains Watershed, AZ, 70119–70120

Navy Department
NOTICES
Environmental statements; notice of intent:
Naval Surface Warfare Center Carderock Division, Fox Island Laboratory, WA; in-water facilities stabilization, 70126

Neighborhood Reinvestment Corporation
NOTICES
Meetings; Sunshine Act, 70162

Presidential Documents
EXECUTIVE ORDERS
Government agencies and employees:
Homeland Security, Department of; designation of additional officers for the order of succession (EO 13362), 70171–70173
Iraq; modifying protection granted to Development Fund for Iraq and certain property and protecting Central Bank of Iraq (EO 13364), 70177–70178
U.S. Armed Forces:
Afghanistan and Iraq Campaign Medals; establishing (EO 13363), 70175–70176

Securities and Exchange Commission
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 70162–70164

Small Business Administration
NOTICES
Disaster loan areas:
Alaska, 70164
Delaware, 70164
Florida, 70164–70165
Pennsylvania, 70165

State Department
NOTICES
Grant and cooperative agreement awards:
Eastern Europe and Independent States of Former Soviet Union; research and training, 70165–70166

Surface Transportation Board
NOTICES
Railroad services abandonment:
Sierra Pacific Industries, 70169

Transportation Department
See Federal Aviation Administration
See Federal Railroad Administration
See National Highway Traffic Safety Administration
See Surface Transportation Board

Treasury Department
NOTICES
Meetings:
Financial Literacy and Education Commission, 70169–70170

Separate Parts in This Issue

Part II
Executive office of the President, Presidential Documents, 70177–70178

Reader Aids

Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR

Executive Orders:

13286 (See EO 13362) 70173
13289 (See EO 13363) 70175
13303 (Amended by EO 13364) 70177
13315 (See EO 13364) 70177
13350 (See EO 13364) 70177
13362 70173
13363 70175
13364 70177

9 CFR

430 (2 documents) 70051

14 CFR

71 70053

18 CFR

Proposed Rules:

Ch. 1 70077

21 CFR

510 70053
520 70053
522 (2 documents) 70054, 70055
558 70056

Proposed Rules:

165 70082

33 CFR

117 (2 documents) 70057, 70059

Proposed Rules:

117 70091

36 CFR

13 70061
242 70074

50 CFR

100 70074

Proposed Rules:

229 70094

Rules and Regulations

Federal Register
Vol. 69, No. 231
Thursday, December 2, 2004

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

Food Safety and Inspection Service

9 CFR Part 430

[Docket No. 97–013FE]

RIN 0583–AC46

Control of *Listeria Monocytogenes* in Ready-to-Eat Meat and Poultry Products

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Interim final rule; extension of comment period.

SUMMARY: The Food Safety and Inspection Service (FSIS) is extending the public comment period on the interim final rule ''Control of *Listeria monocytogenes* in Ready-to-Eat Meat and Poultry Products'' (68 FR 34208; June 6, 2003). The comment period on the rule will end on the same date as the comment period on the Agency report ''Assessing the Effectiveness of the *Listeria monocytogenes* Interim Final Rule'' announced in a document published elsewhere in this issue of the **Federal Register**.

DATES: Comments on the interim final rule must be received on or before January 31, 2005.

ADDRESSES: Comments may be submitted by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send the written comment to FSIS Docket Clerk Docket No. 97–013F, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 102, Cotton Annex, 300 12th Street, SW., Washington DC 20250–3700. Please state that your comment refers to Docket No. 97–013F. Comments may also be sent electronically. If you use e-mail, address your comment to *FSIS.RegulationsComments@usda.gov*. For more information on e-rulemaking, or to view all open regulations, go to Regulations.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 include the Docket No. 97–013F on the subject line. All comments will be available for public inspection in the Docket Clerk's Office between 8:30 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays. The comments may also be viewed on the Agency's Web site at *http://www.fsis.usda.gov/regulations/Federal_Register_Publications_&_Related_Documents/*.

FOR FURTHER INFORMATION CONTACT: Lynn E. Dickey, Ph.D., Director, Regulations and Petitions Policy Staff, Office of Policy, Program, and Employee Development, Food Safety and Inspection Service, U.S. Department of Agriculture, (202) 720–5627.

Done in Washington, DC, on November 15, 2004.

Barbara J. Masters,

Acting Administrator.

[FR Doc. 04–26516 Filed 12–1–04; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Part 430

[Docket No. 04–032N]

Availability of the Food Safety and Inspection Service Report on Assessing the Effectiveness of the *Listeria Monocytogenes* Interim Final Rule

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice of availability and request for comments.

SUMMARY: The Food Safety and Inspection Service (FSIS) is announcing the availability of the report ''Assessing the Effectiveness of the *Listeria monocytogenes* Interim Final Rule.'' The report was written by the Agency's *Listeria monocytogenes* (*L. monocytogenes*) Assessment Team (Team) and presents the findings and recommendations of the Team which was responsible for assessing and measuring the effectiveness of the regulation to control *L. monocytogenes* in certain ready-to-eat (RTE) meat and poultry products. FSIS requests comments on the report. FSIS will consider the report and the comments on it, along with the comments that we receive on the interim final rule itself, in deriving a final rule on *L. monocytogenes*.

DATES: To receive full consideration, comments should be submitted by January 31, 2005.

ADDRESSES: FSIS invites interested persons to submit comments on the report ''Assessing the Effectiveness of the *Listeria monocytogenes* Interim Final Rule''. Comments may be submitted by any of the following methods:

- Mail, including floppy disks or CD-ROM's, and hand-or courier-delivered items: Send to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, 300 12th Street, SW., Room 102 Cotton Annex, Washington, DC 20250.

All submissions received must include the Agency name and docket number 04–032N. All comments submitted in response to the report, as well as research and background information used by FSIS in developing this document, will be available for public inspection in the FSIS Docket Room at the address listed above between 8:30 a.m. and 4:30 p.m., Monday through Friday. The comments also will be posted on the Agency's Web site at *http://www.fsis.usda.gov/regulations/2004_Notices_Index/*

FOR FURTHER INFORMATION CONTACT: Dr. Arshad Hussain, Director, Data Analysis and Statistical Support Staff, Food Safety and Inspection Service, U.S. Department of Agriculture, (202) 720–3219.

SUPPLEMENTARY INFORMATION:

Background

FSIS published an interim final rule, ''Control of *Listeria monocytogenes* in Ready-to-Eat Meat and Poultry Products'', on June 6, 2003 (68 FR 34208) that was effective on October 6, 2003. The comment period on the interim final rule is being extended until January 31, 2005, by another document published elsewhere in this issue of the **Federal Register**. The interim final rule requires that official establishments that produce certain ready-to-eat (RTE) meat and poultry

products prevent product adulteration by the pathogenic environmental contaminant *L. monocytogenes*. In particular, under the interim final rule, establishments that produce RTE meat and poultry products that are exposed to the environment after lethality treatments and that support the growth of *L. monocytogenes* will be required to have, in their hazard analysis and critical control point (HACCP) plans or in their sanitation standard operating procedures or other prerequisite programs, controls that prevent product adulteration by *L. monocytogenes*. The establishments must share with FSIS data and information relevant to their controls for *L. monocytogenes*. The establishments also must furnish FSIS with information on the production volume of products affected by the regulations. The establishments may make claims on the labels of their RTE products regarding the processes that they use to eliminate or reduce *L. monocytogenes* or to suppress or limit its growth in the products.

Purpose of the L. Monocytogenes Interim Final Rule Assessment Team

The *L. monocytogenes* Assessment Team (Team) was assembled to assess and measure the effectiveness of the *L. monocytogenes* interim final rule and to report on what the rule has accomplished, what could be done to improve it, and what criteria should be used for long-term evaluations.

The Team's report, ''Assessing the Effectiveness of the *Listeria monocytogenes* Interim Final Rule'', presents the Team's major findings and recommendations. The Agency will use information from this report in deciding whether to modify the interim final rule. FSIS wants to ensure that the *L. monocytogenes* regulations that are in place at the end of this process are as well-designed as they can possibly be as a tool to protect the public health. The Agency also wants to know what it can do to enhance the impact of initiatives associated with the rule, such as consumer education, retail outreach, and public health surveillance.

The Structure of the L. Monocytogenes Interim Final Rule Assessment Team

Out of the main assessment Team, FSIS formed seven smaller teams called Project Assessment Teams (PAT) to review various aspects of the interim final rule and related issues. Three teams, the Public Health team, the Economic Impact team, and the Labeling and Consumer Education team focused on the impact of the interim final rule. Two teams (Sampling Verification and Training) focused on the Agency's on-going verification of the rule. The teams focused on how the Agency verifies that the requirements of the interim final rule are met, and on how it is preparing its inspection program personnel to verify that the requirements of the interim final rule are met. The Small Plant Guidance Team and the Retail Team focused on activities that support the effective implementation of the interim final rule, *i.e.*, the teams focused on what FSIS can do to facilitate compliance.

Each PAT prepared a report of its findings and recommendations. A summary of the findings of each of the seven PATs follows. Also, the PAT reports were presented to the National Advisory Committee on Meat and Poultry Inspection (NACMPI). NACMPI made recommendations that were considered and addressed by each PAT.

Summary of the Findings of Each of the PAT's Reports on ''Assessing the Effectiveness of the Listeria Monocytogenes Interim Final Rule''

Public Health Team

The Public Health team focused on whether it is possible to assess the effects of the rule on public health. The team recognized that it is early to judge these effects. The team investigated whether the rule has affected the alternatives chosen by establishments to control *L. monocytogenes* in post-lethality exposed RTE products. To assess whether there have been changes, FSIS conducted a survey of 1,490 Inspectors-in-Charge (IIC) who cover over 2,900 establishments that produce RTE meat and poultry products. FSIS found that more than 87% of the establishments have changed their operations to more effectively control *L. monocytogenes*. For example, about 59% have started to test for *Listeria* or *Listeria*-like organisms on direct food contact surfaces; 27% have started using an antimicrobial agent to inhibit the growth of this organism; and over 17% have started using post-lethality treatments in RTE products.

Economic Impact Team

The Economic Impact team assessed the assumptions that the Agency made in preparing the economic assessment that was part of the interim final rule. It also gathered data on the costs and benefits of the rule as implemented. For example, the team considered whether the rule is disproportionately affecting small establishments. It found that 56% of the *L. monocytogenes*-related FSIS noncompliance records (NRs) have gone to very small plants, but that this is not a disproportionate share given that very small plants represent about 51% of the plants that produce RTE product. The team found that most of the establishments that received a NR had chosen the least protective alternative to control *L. monocytogenes* available to establishments.

Labeling and Consumer Education Team

The Labeling and Consumer Education Team focused in part on incentive labeling. The interim final rule stated that establishments can declare any processing methodology that they use to address *L. monocytogenes* on their label. The team found that no establishments are using incentive labeling. The team recommended that FSIS use focus group research to help develop statements that would provide flexibility in conveying the fact that RTE product has undergone post-lethality treatment to destroy *Listeria*.

Sampling Verification Team

The Sampling Verification team assessed the *L. monocytogenes* sampling that the Agency performs and determined whether improvements in that sampling are needed. The team recommended that the Agency complete the development of a risk-based sampling regime, including an intensified sampling program in response to positive findings. The Agency's work on this risk-based sampling will begin shortly using the information that FSIS collects on the volume of RTE products produced by establishments.

Training Team

The Training team was responsible for ensuring that the Agency's inspection program personnel are appropriately trained to enforce the interim final rule. The team recommended that FSIS' Food Safety Regulatory Essentials (FSRE) course be given to all FSIS Consumer Safety Inspectors (CSI), and that it be supplemented with compact disc (CD) training that focuses on the interim final rule. FSIS has trained more than half of its 1,700 CSIs on FSRE, and it continually updates the course. The FSRE course has already been updated to reflect the interim final rule. The team also recommended that the work of the CSIs be supplemented by training of the FSIS Enforcement, Investigations, and Analysis Officers (EIAO) on the performance of specialized sampling.

Small Plant Guidance Team

The Small Plant Guidance team found that the Agency needs to develop better ways of ensuring that FSIS Compliance

Guides reach small and very small establishments. The team also suggested that, to be useful to small and very small plants, the guidelines be simplified.

Retail Team

Finally, the Retail team focused on possible means of controlling *L. monocytogenes* in RTE products at retail establishments. This team found that slicing and packaging deli meats at retail establishments represents a significant source of exposure of *L. monocytogenes.* The team suggested two possible strategies for dealing with this problem: (1) education and outreach, and (2) use of antimicrobial agents in products to be sliced and sold at retail establishments. The team also pointed to efforts already underway in the Agency to compare the risk of listeriosis from product sliced in plants with the risk from those sliced at retail establishments. The results of this assessment will be used by the Agency in developing its strategy for retail establishments.

Availability of the Complete Team Report

The report on ''Assessing the Effectiveness of the *Listeria monocytogenes* Interim Final Rule'', with each of the Project Assessment Team's individual reports, is available on the Agency Web site at *http://www.fsis.usda.gov/Frame/FrameRedirect.asp?main=http://www.fsis.usda.gov/OPPDE/rdad/FRPubs/Docs_97–013F.htm*.

The complete report may also be viewed in the FSIS Docket Room, 300 12th Street, SW., Room 102 Cotton Annex, Washington, DC, 20250 between 8:30 a.m. to 4:30 p.m.

Additional Public Notification

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

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

Done in Washington, DC, on October 29, 2004.

Barbara J. Masters,

Acting Administrator.

[FR Doc. 04–26515 Filed 12–1–04; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–18827; Airspace Docket No. 04–ACE–53]

Modification of Class E Airspace; Hannibal, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of the direct final rule which revises Class E airspace at Hannibal, MO.

DATES: *Effective* 0901 UTC, January 20, 2005.

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

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on October 8, 2004 (69 FR 60286). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on January 20, 2005. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO, on November 16, 2004.

Anthony D. Roetzel,

Acting Area Director, Western Flight Services Operations.

[FR Doc. 04–26524 Filed 12–1–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510 and 520

Oral Dosage Form New Animal Drugs; Sulfadiazine/Pyrimethamine Suspension

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Animal Health Pharmaceuticals, LLC. The NADA provides for veterinary prescription use of an oral suspension of sulfadiazine and pyrimethamine for the treatment of equine protozoal myeloencephalitis (EPM).

DATES: This rule is effective December 2, 2004.

FOR FURTHER INFORMATION CONTACT: Melanie R. Berson, Center for Veterinary Medicine (HFV–110), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7543, e-mail: *melanie.berson@fda.gov*.

SUPPLEMENTARY INFORMATION: Animal Health Pharmaceuticals, LLC, 1805 Oak Ridge Circle, suite 101, St. Joseph, MO 64506, filed NADA 141–240 for veterinary prescription use of REBALANCE (sulfadiazine/pyrimethamine) Antiprotozoal Oral Suspension for the treatment of EPM caused by *Sarcocystis neurona*. The NADA is approved as of November 5, 2004, and 21 CFR part 520 is amended by adding new § 520.2215 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In addition, Animal Health Pharmaceuticals, LLC, is not currently listed in the animal drug regulations as a sponsor of an approved application. At this time, 21 CFR 510.600(c) is being amended to add entries for the firm.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to

support approval of this application may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(ii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(ii)), this approval qualifies for 3 years of marketing exclusivity beginning November 5, 2004.

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

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

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 520

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510 and 520 are amended as follows:

PART 510—NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

■ 2. Section 510.600 is amended in the table in paragraph (c)(1) by alphabetically adding an entry for ''Animal Health Pharmaceuticals, LLC''; and in the table in paragraph (c)(2) by numerically adding an entry for ''068718'' to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
* * * * *	
Animal Health Pharmaceuticals, LLC, 1805 Oak Ridge Circle, suite 101, St. Joseph, MO 64506	068718
* * * * *	

(2) * * *

Drug labeler code	Firm name and address
* * * * *	
068718	Animal Health Pharmaceuticals, LLC, 1805 Oak Ridge Circle, suite 101, St. Joseph, MO 64506
* * * * *	

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

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

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

■ 4. Section 520.2215 is added to read as follows:

§ 520.2215 Sulfadiazine/pyrimethamine suspension.

(a) *Specifications.* Each milliliter (mL) of suspension contains 250 milligrams (mg) sulfadiazine (as the sodium salt) and 12.5 mg pyrimethamine.

(b) *Sponsor.* See No. 068718 in § 510.600(c) of this chapter.

(c) *Conditions of use in horses*—(1) *Amount.* Administer orally 20 mg sulfadiazine per kilogram (kg) body weight and 1 mg/kg pyrimethamine daily.

(2) *Indications for use.* For the treatment of equine protozoal myeloencephalitis (EPM) caused by *Sarcocystis neurona*.

(3) *Limitations.* Not for use in horses intended for food. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Dated: November 23, 2004.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 04–26528 Filed 12–1–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs; Progesterone and Estradiol Benzoate

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of supplemental new animal drug applications (NADAs) filed by Fort Dodge Animal Health, Division of Wyeth, and Ivy Laboratories, Division of Ivy Animal Health, Inc. The supplemental NADAs provide for the addition of statements to labeling of subcutaneous implants containing progesterone and estradiol benzoate warning against the use of these products in calves to be processed for veal.

DATES: This rule is effective December 2, 2004.

FOR FURTHER INFORMATION CONTACT: Eric S. Dubbin, Center for Veterinary Medicine (HFV–126), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0232, e-mail: *edubbin@cvm.fda.gov*.

SUPPLEMENTARY INFORMATION: Fort Dodge Animal Health, Division of Wyeth, 800 Fifth St. NW., Fort Dodge, IA 50501, filed a supplement to NADA 009–576 for SYNOVEX C and SYNOVEX S (progesterone and estradiol benzoate). Ivy Laboratories, Division of Ivy Animal Health, Inc., 8857 Bond St., Overland Park, KS 66214, filed a supplement to NADA 110–315 for COMPONENT E–C and COMPONENT E–S (progesterone and estradiol benzoate), and COMPONENT E–C with TYLAN and COMPONENT E–S with TYLAN (progesterone and estradiol benzoate with tylosin tartrate). The supplemental NADAs provide for the addition of statements to labeling warning against the use of these products in calves to be processed for veal. The supplemental applications are approved as of October 28, 2004, and the regulations are amended in 21 CFR 522.1940 to reflect the approval and a current format. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), summaries of safety and effectiveness

data and information submitted to support approval of these applications may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

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

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

List of Subjects in 21 CFR Part 522

Animal drugs.

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

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

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

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

■ 2. Section 522.1940 is revised to read as follows:

§ 522.1940 Progesterone and estradiol benzoate.

(a) *Sponsors*. See sponsors in § 510.600(c) of this chapter for use as in paragraph (c) of this section:

(1) No. 000856 for use as in paragraphs (c)(1)(i)(A), (c)(1)(ii), (c)(1)(iii), (c)(2)(i)(A), (c)(2)(ii), (c)(2)(iii), and (c)(3) of this section.

(2) No. 021641 for use as in paragraphs (c)(1) and (c)(2) of this section.

(b) *Related tolerances*. See §§ 556.240 and 556.540 of this chapter.

(c) *Conditions of use in cattle*. It is used for implantation as follows:

(1) *Suckling beef calves*—(i) *Amount*—(A) 100 milligrams (mg) progesterone and 10 mg estradiol benzoate (one implant consisting of 4 pellets, each pellet containing 25 mg progesterone and 2.5 mg estradiol benzoate) per implant dose.

(B) 100 mg progesterone and 10 mg estradiol benzoate (one implant consisting of 5 pellets, each of 4 pellets containing 25 mg progesterone and 2.5 mg estradiol benzoate, and 1 pellet containing 29 mg tylosin tartrate) per implant dose.

(ii) *Indications for use*. For increased rate of weight gain.

(iii) *Limitations*. For use in suckling beef calves (at least 45 days of age) up to 400 pounds (lb) of body weight. For subcutaneous ear implantation, one dose per animal. Do not use in bull calves intended for reproduction. Safety and effectiveness have not been established in veal calves. A withdrawal period has not been established for this product in preruminating calves. Do not use in calves to be processed for veal.

(2) *Steers*—(i) *Amount*—(A) 200 mg progesterone and 20 mg estradiol benzoate (one implant consisting of 8 pellets, each pellet containing 25 mg progesterone and 2.5 mg estradiol benzoate) per implant dose.

(B) 200 mg progesterone and 20 mg estradiol benzoate (one implant consisting of 9 pellets, each of 8 pellets containing 25 mg progesterone and 2.5 mg estradiol benzoate, and 1 pellet containing 29 mg tylosin tartrate) per implant dose.

(ii) *Indications for use*. For increased rate of weight gain and improved feed efficiency.

(iii) *Limitations*. For animals weighing 400 lb or more; for subcutaneous ear implantation, one dose per animal. Safety and effectiveness have not been established in veal calves. A withdrawal period has not been established for this product in preruminating calves. Do not use in calves to be processed for veal.

(3) *Steers fed in confinement for slaughter*—(i) *Amount*. Reimplant 200 mg progesterone and 20 mg estradiol benzoate on approximately day 70 following an initial implant of 100 mg progesterone and 10 mg estradiol benzoate or 200 mg progesterone and 20 mg estradiol benzoate.

(ii) *Indications for use*. For additional improvement in rate of weight gain.

(iii) *Limitations*. For subcutaneous ear implantation. Safety and effectiveness have not been established in veal calves. A withdrawal period has not been established for this product in preruminating calves. Do not use in calves to be processed for veal.

Dated: November 23, 2004.

Steven D. Vaughn,

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

[FR Doc. 04–26530 Filed 12–1–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs; Trenbolone Acetate

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) and an abbreviated supplemental new animal drug application (ANADA) filed by Intervet, Inc., and Ivy Laboratories, Division of Ivy Animal Health, Inc., respectively. The supplemental NADA and ANADA provide for the addition of statements to labeling of subcutaneous implants containing trenbolone acetate warning against the use of these products in calves to be processed for veal.

DATES: This rule is effective December 2 2004.

FOR FURTHER INFORMATION CONTACT: Eric S. Dubbin, Center for Veterinary Medicine (HFV–126), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0232, e-mail: *edubbin@cvm.fda.gov*.

SUPPLEMENTARY INFORMATION: Intervet, Inc., 29160 Intervet Lane, P.O. Box 318, Millsboro, DE 19966, filed a supplement to NADA 138–612 for FINAPLIX-H (trenbolone acetate). Ivy Laboratories, Division of Ivy Animal Health, Inc., 8857 Bond St., Overland Park, KS 66214, filed a supplement to ANADA 200–224 for COMPONENT T-H and COMPONENT T-S (trenbolone acetate), COMPONENT T-H with TYLAN and COMPONENT T-S with TYLAN (trenbolone acetate with tylosin tartrate). The supplemental NADA and ANADA provide for the addition of statements to labeling warning against the use of these products in calves to be processed for veal. The supplemental applications are approved as of October 22, 2004, and the regulations are amended in 21 CFR 522.2476 to reflect the approval and a current format. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), summaries of safety and effectiveness data and information submitted to support approval of these applications

may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

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

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

List of Subjects in 21 CFR Part 522

Animal drugs.

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

PART 522–IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

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

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

■ 2. Section 522.2476 is amended by removing paragraph (a); by redesignating paragraphs (b), (c), and (d) as paragraphs (a), (b), and (c); and by revising newly redesignated paragraphs (a)(1), (a)(2), (c)(1)(iii), and (c)(2)(iii) to read as follows:

§ 522.2476 Trenbolone acetate.

(a) * * *

(1) No. 021641 for use as in paragraph (c) of this section.

(2) No. 057926 for use as in paragraphs (c)(1)(i)(A), (c)(1)(ii), (c)(1)(iii), (c)(2)(i)(A), (c)(2)(ii), and (c)(2)(iii) of this section.

* * * * *

(c) * * *

(1) * * *

(iii) *Limitations*. Implant subcutaneously in ear only. Do not use in animals intended for subsequent breeding or in dairy animals. Safety and effectiveness have not been established in veal calves. A withdrawal period has not been established for this product in preruminating calves. Do not use in calves to be processed for veal.

(2) * * *

(iii) *Limitations*. Implant subcutaneously in ear only. Do not use in animals intended for subsequent breeding or in dairy animals. Safety and effectiveness have not been established in veal calves. A withdrawal period has not been established for this product in preruminating calves. Do not use in calves to be processed for veal.

Dated: November 18, 2004.

Steven D. Vaughn,

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

[FR Doc. 04–26552 Filed 12–1–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Coumaphos

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to remove conditions of use in cattle and chickens for a coumaphos Type A medicated article for which approval was withdrawn in July 1996. This action is being taken to improve the accuracy of the agency's regulations.

DATES: This rule is effective December 2, 2004.

FOR FURTHER INFORMATION CONTACT: George K. Haibel, Center for Veterinary Medicine (HFV–6), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 301–827–4567, e-mail: *george.haibel@fda.gov*.

SUPPLEMENTARY INFORMATION: FDA has found that parts 500 to 599 (21 CFR parts 500 to 599) of the Code of Federal Regulations reflect conditions of use in cattle for a coumaphos Type A medicated article for which approval was withdrawn by FDA, at the sponsors request, on July 3, 1996 (61 FR 34727). At this time, FDA is amending the regulations in § 558.185 to reflect the remaining approved uses of coumaphos in medicated cattle feeds.

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

List of Subjects in 21 CFR 558

Animal drugs, Animal feeds.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

■ 1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

■ 2. Section 558.185 is amended by redesignating paragraph (d) as paragraph (e); by revising paragraphs (a), (b), and newly redesignated (e)(1); and by adding paragraph (d) to read as follows:

§ 558.185 Coumaphos.

(a) *Specifications*. Type A medicated articles containing 1.12, 2.0, 11.2, or 50 percent coumaphos.

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

(1) No. 000859 for use of Type A medicated articles containing 1.12, 2.0, 11.2, or 50 percent coumaphos as in paragraphs (e)(2) and (e)(3) of this section.

(2) No. 017800 for use of Type A medicated articles containing 1.12 or 11.2 percent coumaphos as in paragraph (e)(1) of this section.

* * * * *

(d) *Special considerations*. Labeling shall bear the following caution statement: ''The active ingredient coumaphos is a cholinesterase inhibitor. Do not use this product on animals simultaneously or within a few days before or after treatment with or exposure to cholinesterase-inhibiting drugs, pesticides, or chemicals.'' Also, see § 500.25 of this chapter.

(e) *Conditions of use*—(1) *Beef and dairy cattle*—(i) *Amount*. 0.0002 lb. (0.091 gram) per 100 lb. body weight per day for 6 consecutive days. Should conditions warrant, repeat treatment at 30-day intervals.

(ii) *Indications for use*. Control of gastrointestinal roundworms (*Haemonchus* spp., *Ostertagia* spp., *Cooperia* spp., *Nematodirus* spp., *Trichostrongylus* spp.).

(iii) *Limitations*. Feed in the normal grain ration to which the animals are accustomed, but not in rations containing more than 0.1 percent coumaphos. Do not feed to animals less than 3 months old. Do not feed to sick animals or animals under stress, such as those just shipped, dehorned, castrated, or weaned within the last 3 weeks. Do not feed in conjunction with oral

drenches or with feeds containing phenothiazine.

* * * * *

Dated: November 16, 2004.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 04–26529 Filed 12–1–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD05–04–117]

RIN 1625–AA09

Drawbridge Operation Regulation: Atlantic Intracoastal Waterway, Elizabeth River (Southern Branch), VA

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the operating regulations for the Norfolk Southern (NS) #7 Railroad Bridge at Atlantic Intracoastal Waterway (AICW) mile 5.8, in Chesapeake, Virginia. The final rule for the NS Railroad Bridge will eliminate the need for a bridge tender by allowing the bridge to remain in the fully open position, to be operated from a remote location, and to close the bridge for train crossings and periodic repairs. The final rule will provide for the reasonable needs of navigation.

DATES: This rule is effective January 3, 2005.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD05–04–117 and are available for inspection or copying at Commander (obr), Fifth Coast Guard District, Federal Building, 1st Floor, 431 Crawford Street, Portsmouth, Virginia 23704–5004 between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Waverly W. Gregory, Jr., Bridge Administrator, Fifth Coast Guard District, at (757) 398–6222.

SUPPLEMENTARY INFORMATION:

Regulatory History

On August 27, 2004, we published a notice of proposed rulemaking (NPRM) entitled ''Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, Elizabeth River (Southern Branch), VA'' in the **Federal Register** (69 FR 52617). We received four letters commenting on the proposed rule. No public hearing was requested nor held.

Background and Purpose

Norfolk Southern Corporation (NSC) requested a change to the current operating regulation set out in 33 CFR 117.5 that requires the drawbridge to open promptly and fully for the passage of vessels when a request to open is given.

NSC would remotely control the opening and closing of the Norfolk Southern (NS) #7 Railroad Bridge across the Southern Branch of the Elizabeth River at AICW mile 5.8 in Chesapeake, Virginia, by the remote operator at the NS #5 Railroad Bridge across the Eastern Branch of the Elizabeth River, at mile 1.1, in Norfolk, Virginia. NSC installed a Programmable Logic Controller and associated mechanical, electrical and signal apparatus on the drawbridge. NSC has installed motion sensors, laser scanners and high-resolution video cameras on the bridge to enhance the remote operator's ability to monitor and control the equipment. The NS #5 Railroad Bridge office, in Norfolk, is also equipped with an amplified open-mike from the bridge to enable the remote operator to hear boat horns that may signal for an opening. NS has also installed additional safety warning lights to the bridge for the remote operation.

Under this rule, the drawbridge would be left in open position to vessels and would only close for the passage of trains and to perform periodic maintenance authorized in accordance with subpart A of part 117.

Before the NS #7 Railroad Bridge closes for any reason, the remote operator will observe the waterway traffic in the area with closed-circuit cameras and motion sensors mounted on the bridge. The bridge would only be closed if the off-site remote operator's visual inspection shows that the channel is clear and there are no vessels transiting the area.

While the NS #7 Railroad Bridge is moving from the full open position to the full closed position, the off-site remote operator will maintain constant surveillance of the navigation channel to ensure that no conflict with maritime traffic exists. In the event of failure or obstruction, the off-site remote operator will stop and return the bridge to the full open position to vessels. In these situations, a bridge tender must be called and must be on-site within 30 minutes to operate the bridge.

During span movement, the channel traffic lights will flash red, the horn would sound twice, and an audio voice-warning device will announce bridge movement, then two repeat blasts of the horn will continue until the bridge is seated and locked down. When the bridge is seated and locked down to vessels, the channel traffic lights will flash red.

When the rail traffic has cleared, the horn will automatically sound five times to indicate that the draw of the NS #7 Railroad Bridge is about to return to the full open position to vessels. During the open span movement, the channel traffic lights will flash red, the horn will sound twice, followed by a pause, and then five repeat blasts of the horn until the bridge is in the full open position to vessels. In the full open position to vessels, the bridge channel traffic lights will flash green then an audio warning device will announce bridge movement by stating ''Security, security, security, the NS #7 Railroad Bridge at mile 5.8 is open for river traffic''. After the train has cleared the bridge by leaving the track circuit, any delay in opening of the draw to vessels shall not exceed ten minutes except as provided in 33 CFR 117.31(b). Operational information will be provided 24 hours a day on marine channel 13 and via telephone (757) 924–5320.

This rule will make the closure process of the NS #7 Railroad Bridge be more efficient during train crossings and periodic maintenance and will save operational costs by eliminating bridge tenders while providing greater bridge operating capabilities.

Discussion of Comments and Changes

The Coast Guard received four comments on the NPRM. Three comments, from commercial vessel operators, expressed their concerns with the location of the off-site remote operation. Their interests centered around the limited effectiveness of monitoring and communications with approaching vessels, their past experience with current bridge tenders' failure to respond to security calls, the lowering of the bridge while their vessels are transiting, and the loss of on-site bridge tenders controlling the operation of the bridge.

The remaining comment, offered by NSC, addressed the commercial vessel operators' concerns. NSC indicated that the location of the Norfolk area bridge operation center at the NS #5 Railroad Bridge office was selected because of the better-quality operators' house and facilities, economic considerations for relocation and that the communication between marine interests and the NS #5 Railroad Bridge operator will be comparable to the communication with the NS #7 Railroad Bridge operator. The

cameras installed at the NS #7 Railroad Bridge will provide the same level of general visibility of the channel and better visibility to the north and at night; and the infrared detector system will ensure that the NS #7 Railroad Bridge is not lowered on any vessel, because it is equipped with sensors.

NSC has provided a detailed plan which indicates that the effectiveness of the communication systems, cameras, boat detection system and other enhancements made to their systems will address all of the communication and safety needs of the marine community as well as those of rail transportation and their customers. Therefore, no changes are being made to this final rule.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS). We reached this conclusion based on the fact that this final rule for the NS #7 Railroad Bridge will provide for greater flow of vessel traffic than the current regulations for the drawbridge.

Under the current regulations, the NS #7 Railroad Bridge remains closed and opens on signal to vessels. The final rule will require the bridge to remain in the open position permitting vessels to pass freely. The bridge will close only for train crossings and bridge maintenance. This final rule will provide for the reasonable needs of navigation.

Small Entities

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

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

This final rule will not have a significant economic impact on a substantial number of small entities for the following reasons. The final rule will provide for the NS #7 Railroad Bridge to remain in the open position, allowing for the free flow of vessel traffic. The bridge would only close for the passage of trains and maintenance.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. In our notice of proposed rulemaking, we provided a point of contact to small entities who could answer questions concerning proposed provisions or option for compliance.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (32)(e), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation. The final rule only involves the operation of an existing drawbridge and will not have any impact on the environment. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; Department of Homeland Security Delegation No. 0170.1; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

■ 2. In § 117.997, redesignate paragraphs (e) through (i) as paragraphs (f) through (j) respectively, and add a new paragraph (e) to read as follows:

§ 117.997 Atlantic Intracoastal Waterway, Southern Branch of the Elizabeth River to Albemarle and Chesapeake Canal.

* * * * *

(e) The draw of the Norfolk Southern #7 Railroad Bridge, mile 5.8 in Chesapeake, shall operate as follows:

(1) The draw shall be remotely controlled by the operator at the Norfolk Southern #5 Railroad Bridge office over the Eastern Branch of the Elizabeth River, at mile 1.1, in Norfolk.

(2) The draw shall be left in the open position to vessels and will only be closed for the passage of trains and to perform periodic maintenance authorized in accordance with subpart A of this part.

(3) Trains shall be controlled so that any delay in opening of the draw shall not exceed ten minutes except as provided in § 117.31(b).

(4) Before the bridge closes for any reason, the off-site remote operator will monitor waterway traffic in the area with closed circuit cameras and motion sensors mounted on the bridge. The bridge will only be closed if the off-site remote operator's visual inspection shows that the channel is clear and there are no vessels transiting in the area.

(5) While the bridge is moving from the full open position to the full closed position, the off-site remote operator will maintain constant surveillance of the navigation channel to ensure that no conflict with maritime traffic exists. In the event of failure or obstruction, the off-site remote operator will stop and return the bridge to the full open position to vessels. In the event of a failure or obstruction, a bridge tender must be called by the off-site remote operator and must be on-site within 30 minutes of the call to operate the bridge.

(6) During closing of the span, the channel traffic lights will change from flashing green to flashing red, the horn will sound twice, and an audio voice warning device will announce bridge movement, then two repeat blasts of the horn will sound until the bridge is seated and locked down. When the bridge is seated and locked down to vessels, the channel traffic lights will flash red.

(7) During the open span movement, the channel traffic lights will flash red, the horn will sound twice, followed by a pause, and then five repeat blasts of the horn will sound until the bridge is in the full open position to vessels. In the full open position to vessels, the bridge channel traffic lights will turn from flashing red to flashing green then an audio warning device will announce bridge movement by stating ''Security, security, security, the Norfolk Southern #7 Railroad Bridge at mile 5.8 is open for river traffic''.

(8) Operational information will be provided 24 hours a day on marine channel 13 and via telephone (757) 924–5320.

* * * * *

Dated: November 22, 2004.

Ben R. Thomason, III,

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

[FR Doc. 04–26522 Filed 12–1–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD05–04–120]

RIN 1625–AA09

Drawbridge Operation Regulations; Northeast Cape Fear River, Wilmington, NC

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the regulations that govern the operation of the CSX Transportation (CSX) Hilton Railroad Bridge across the Northeast Cape Fear River, at mile 1.5, in Wilmington, NC. The final rule will eliminate the need for a bridge tender by allowing the bridge to be operated from a remote location. This rule change will maintain the bridge's current level of operational capabilities and continue providing for the reasonable needs of rail transportation and vessel navigation.

DATES: This rule is effective January 3, 2005.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD05–04–120 and are available at Commander (obr), Fifth Coast Guard District, Federal Building, 1st Floor, 431 Crawford Street, Portsmouth, Virginia 23704–5004, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Terrance Knowles, Environmental Protection Specialist, Fifth Coast Guard District, at (757) 398–6587.

SUPPLEMENTARY INFORMATION:

Regulatory History

On August 4, 2004, we published a notice of proposed rulemaking (NPRM) entitled ''Drawbridge Operation Regulations: Northeast Cape Fear River, Wilmington, NC'' in the **Federal Register** (69 FR 47045). We received one comment on the proposed rule. No public hearing was requested nor held.

Background and Purpose

CSX, who owns and operates this movable (bascule type) bridge, requested changes to the operating procedures for the drawbridge located at mile 1.5 across the Northeast Cape Fear River, in Wilmington, NC. The vertical clearance under CSX Hilton Railroad Bridge in the closed position to vessels is 9 feet at mean low water and 6 feet at mean high water. The existing regulation listed at 33 CFR 117.5 requires the bridge to open on signal.

Under this rule, CSX will remotely operate the opening and closing of the CSX Hilton Railroad Bridge across Northeast Cape Fear River in Wilmington, NC, from the nearby CSX Navassa Railroad Bridge located on the Cape Fear River. CSX has installed motion sensors, laser scanners and high-resolution video cameras on the bridge to enhance the remote operator's ability

to monitor and control the equipment. The CSX Navassa Railroad Bridge is also equipped with an amplified open-mike from the bridge to enable the remote operator to hear boat horns that may signal for an opening. CSX has also installed additional safety warning lights to the bridge for the remote operation. This rule proposes to allow the bridge to be unmanned and operated from a remote location at the CSX Navassa Railroad Bridge. The CSX Hilton Railroad Bridge will normally be left in the fully open position displaying flashing green channel lights indicating that vessels may pass through.

This change is being requested to make the closure process of the Hilton Railroad Bridge more efficient. It will save operational costs by eliminating bridge tenders, and is expected to decrease maintenance costs. In addition, the draw being left in the open position most of the time will provide for greater flow of vessel traffic than the current regulation.

Discussion of Comments and Changes

The Coast Guard received one comment on the NPRM. The comment from the Wilmington Superintendent of Water Treatment, expressed concerns on the potential for radio frequency interference between the surveillance systems at Sweeney Water Treatment Plant and the Hilton Bridge. CSX explained that the two facilities were operating on different frequencies and that there should be no problem. Therefore, no changes are being made to this final rule.

Regulatory Evaluation

This final rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS). We reached this conclusion based on the fact that this final rule will have minimal impact on maritime traffic transiting the bridge. Although the CSX Hilton Railroad Bridge will be operated from a remote location, mariners can continue their transits because all aspects of the current operating regulations remain essentially the same.

Small Entities

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

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

This rule will not have a significant economic impact on a substantial number of small entities for the following reasons. The final rule will allow the CSX Hilton Railroad Bridge to operate remotely and requires the bridge to remain in open position to vessels the majority of the time, only closing for a train crossing or periodic maintenance.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. In our Notice of Proposed Rulemaking, we provided a point of contact to small entities who could answer questions concerning proposed provisions or options for compliance.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are

technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

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

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (32)(e) of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. The final rule only involves the operation of an existing drawbridge and will not have any impact on the environment. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

■ For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; Department of Homeland Security Delegation No. 0170.1; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

■ 2. In §117.829, redesignate paragraph (b) as paragraph (c), revise newly redesignated paragrph (c), and add a new paragraph (b) to read as follows:

§ 117.829 Northeast Cape Fear River.

(a) * * *

(b) The CSX Hilton Railroad Bridge, mile 1.5 in Wilmington, NC shall operate as follows:

(1) The draw of the bridge to be remotely operated by the controller at the Navassa Railroad Bridge mile 34.0 across the Cape Fear River.

(2) The draw shall be left in the open position to vessels and will only be closed for the passage of trains and to perform periodic maintenance authorized in accordance with Subpart A of this part.

(3) Trains shall be controlled so that any delay in opening of the draw shall not exceed ten minutes except as provided in 117.31(b).

(4) The CSX Hilton Railroad Bridge shall not be operated by the controller at the CSX Navassa Railroad in the event of failure or obstruction of the motion sensors, laser scanners, video cameras or marine-radio communications. In these situations, a bridge tender must be called to operate the bridge on-site.

(5) When rail traffic has cleared, the horn will automatically sound one prolonged blast followed by one short blast to indicate that the CSX Hilton Railroad Bridge is moving to the full open position to vessels. During open span movement, the channel traffic lights will flash red, until the bridge is in the full open position to vessels. In the full open position to vessels, the bridge channel traffic lights will flash green, allowing vessels to pass safely.

(6) During closing span movement, the channel traffic lights will flash red, the horn will sound five short blasts, and an audio voice-warning device will announce bridge movement. Five short blasts of the horn will continue until the bridge is seated and locked down. When the bridge is seated and in the locked down position to vessels, the channel traffic lights will continue to flash red.

(c) The draw of the Seaboard System Railroad Bridge across the Northeast Cape Fear River, mile 27.0, at Castle Hayne, North Carolina shall open on signal if at least four hours notice is given.

Dated: November 22, 2004.

Ben R. Thomason, III,

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

[FR Doc. 04–26521 Filed 12–1–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 13

RIN 1024–AD13

National Park System Units in Alaska

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: This rule revises the special regulations for the NPS-administered areas in Alaska. These regulations were first adopted in 1981 as ''interim guidance'' and the minimum necessary to administer the new park areas established by the Alaska National Interest Lands Conservation Act. While we have made some changes to the rule since 1981, there has been no comprehensive review. This revision is the start of an ongoing review process for the purpose of maintaining up-to-date regulations that are responsive to changing public and resource needs.

DATES: This rule is effective on January 3, 2005.

ADDRESSES: Mail inquiries to the National Park Service, Regional Director, Alaska Regional Office, 240 West 5th Ave., Anchorage, AK 99501 or by e-mail to *akro_regulations@nps.gov.*

FOR FURTHER INFORMATION CONTACT: National Park Service, Victor Knox, Deputy Regional Director, Alaska Regional Office, 240 West 5th Ave., Anchorage, AK 99501. Telephone: (907) 644–3501. E-mail: *akro_regulations@nps.gov.* Fax: (907) 644–3816.

SUPPLEMENTARY INFORMATION:

Background

Each park area in Alaska has a compendium consisting of the compiled designations, closures, openings, permit requirements, and other provisions established by the Superintendent under the discretionary authority granted in 36 CFR 1.5 and elsewhere in regulations. As a result of our review of part 13 and the associated park compendiums the following changes are being made. These changes, discussed below under Summary of Comments, and as noted above, represent the first phase of an ongoing rulemaking process to be conducted in conjunction with an annual review of individual park compendiums. Most of the revised rules replace existing provisions in park compendiums. Also included are four rules that had been under separate consideration apart from the compendium review process and are included with this rulemaking for administrative convenience and efficiency. Each of these rules is identified in the Summary of Comments paragraphs that follow. As used within this document, the terms ''we,'' ''our,'' and ''us'' refer to the National Park Service.

Summary of Comments

The proposed rule was published for public comment on April 2, 2004 (69 FR 17355), with the initial comment period lasting until June 1, 2004. The comment period was extended to June 16, 2004 (69 FR 31778). The National Park Service received 17 timely written responses regarding various sections of the proposed rule. All of the responses were either separate letters or email messages. Of the 17 responses two were from governmental agencies (one state and one local), eight were from non-governmental organizations (including

one consolidated response from six signatory groups), two were from small businesses, and five were submitted by individuals. Many proposed changes either received supporting comments or no comments. These sections are being adopted as proposed unless noted otherwise below. The proposed sections that did receive comments of opposition or revision are discussed below.

General Comments

The newly initiated part 13/park compendia review process: One governmental agency and five non-governmental organizations provided positive feed-back regarding the new review process, mentioning improved clarity and simplicity, consistency among park units, with state rules, and with ANILCA. One individual opposed annual reviews as too costly and unnecessary and recommended no less than a five-year review period. Another individual expressed opposition to the results of the new process for Denali National Park and Preserve, commenting that the change from park compendium rules to part 13 rules would result in reduced resource protection.

NPS Response: The new review process is intended to provide more up-to-date rules with greater public participation in the process. We believe the new rulemaking system can achieve this goal in a flexible manner that can be responsive to changing resource needs and public interest. The review process is expected to be less costly and more efficient because of its tie-in with the annual compendium process.

Extend comment period: Two organizations recommended extending the comment period to the fall to allow more time for commercial fishermen to research the changes, primarily the proposals affecting Glacier Bay National Park.

NPS Response: The issues of concern for commercial fishermen have been covered in detail by the two government agencies, three organizations, one business (a commercial fisherman and crewmember), and two individuals. We do not believe that extending the comment period would be likely to result in significantly different comments to those received and we recognize that these comments represent a broader base of interest. The NPS response to the specific issues of concern is provided below in the affected section for Glacier Bay National Park.

Specific Comments

Section 13.1 Definitions: The State of Alaska (State) requested that the word ''water'' be removed from the definition of *airstrip* asserting the state's jurisdiction to regulate activities in state waterways. One individual opposed the development of new airstrips.

NPS Response: The specific purpose of providing the definition at this time is to prohibit obstruction of airstrips as provided by newly adopted § 13.10. The intent of the definition is to include all landing areas used by aircraft. After review, the NPS believes that the more inclusive term ''park areas,'' defined in § 13.1, is a better choice for this section. The definition as proposed or as adopted did not alter the applicability and scope of the regulations as set forth in § 1.2 and 13.2. This rule will have no affect on the development of new airstrips.

Section 13.4 Information Collection: One organization commented that this change is unclear with specific concern expressed about the collection of additional information for commercial fishing.

NPS Response: The revision to § 13.4 will result in no change in the information collection approvals for the NPS. The revision corrects references to outdated information approval numbers that have been revised by OMB and the NPS since the section was originally adopted. With regard to commercial fishing at Glacier Bay National Park, the NPS is not considering the collection beyond that currently approved for the determinations of life-time access permit applications.

Section 13.18 Camping and Picnicking: The State recommended revising the proposed regulatory language in § 13.18(a)(2) to clarify that the reference to relocating camps that interfere with public access applies to the relocation of specific camps and not to a general closure to camping. Also, the State suggested moving this part of subsection (a)(2) to subsection (a)(1) because it is a type of restriction that better fits under that subsection.

NPS Response: The NPS agrees that the rule should refer to relocating specific camps rather than all camps to improve clarity and this recommendation has been adopted. The NPS believes that the location of the proposed language is adequate.

Section 13.19 Weapons, Traps, Bows and Nets: The State and one organization commented that this section should apply equally to all Alaska park areas. The State also commented that the cross reference to § 2.4 is confusing and should be removed. One other organization questioned whether this section would apply to commercial fishing, especially whether the NPS considers crab pots to be traps for purposes of this section. One individual recommended that all guns and trapping be banned.

NPS Response: The distinctions for the pre-ANILCA areas are based on public comments during previous rulemaking. The NPS intends to continue to examine this section by issue and by park. The reference to § 2.4 is intended as a reader aid to understand which regulations apply to weapons, traps and nets in the Alaska park areas identified in subsection (a). Removing the reference would not change how the general and special regulations apply in Alaska areas. For these reasons we have retained the reference to § 2.4 in the final rule. Regarding the applicability to commercial fishing, subsection (e) clearly provides an exception for the taking of fish and wildlife when these activities are authorized by applicable law or regulation. Because of the complexity of the changes to this section, we have printed the entire revised section in the **Federal Register**, including redesignated subsections that have not been revised. Sport and subsistence hunting and trapping in preserves and subsistence hunting in certain parks and monuments is authorized by statute. Consequently a statewide regulatory ban is not appropriate.

Section 13.20 Preservation of Natural Features: The State requested treating all parks uniformly. One organization inquired whether this rule applies to commercial fishing, especially the authority to limit size and quantity. Another organization commented that the collection of plants and mushrooms should be allowed for personal use and for ceremonial use. One individual opposed gathering of all plants because of the likelihood of profiteering.

NPS Response: The distinctions for the pre-ANILCA areas are based on public comments during previous rulemaking. The NPS intends to continue to examine this section by issue and by park. This section does not apply to commercial fishing which is prohibited by 2.3(d)(4) except where specifically authorized by Federal statutory law. Certain types of commercial fishing activities are authorized by statute in portions of Glacier Bay National Park and Preserve. That statutory authorization is implemented in 13.65. Regarding the organization's comment on collection of plants and mushrooms, it is apparent that the formatting of the proposed rule made it difficult to see that the existing allowances for gathering and collecting for personal use and ceremonial use

have been carried over to the final rule. Because of the complexity of the changes to this section, we have printed the entire revised section in the **Federal Register**. Profiteering in natural resources from park areas is prohibited and has not been a significant problem to date for plant resources in the Alaska park areas.

Section 13.21 Taking of Fish and Wildlife: The State commented that the explanatory reference to § 2.2 in the proposed rule preamble should be removed. The State also requested that reference be made in the final rule regarding a commitment by the NPS to consultation with the State fish and game agency before implementing any restrictions involving the take and transport of fish and wildlife. One organization commented that procedures for transporting lawfully taken wildlife through park areas should only be done after public notice and participation. One individual repeated the request for a ban on hunting and trapping noted above.

NPS Response: The reference to § 2.2 was used to modify the phrase ''lawfully taken wildlife'' in the context of establishing transport procedures through NPS areas where hunting is not authorized. We agree that the reference is somewhat misleading because lawfully taken wildlife would include wildlife taken outside NPS areas in areas not subject to § 2.2. For that reason we acknowledge that the reference should have been simply to ''lawfully taken wildlife'' regardless of whether it was taken in an area subject to NPS regulations or outside an NPS area in accordance with other legal authorization. We note that the reference does not appear in the regulatory language of the final rule. Regarding the NPS commitment to fish and wildlife consultation with the State, while this is beyond the scope of the proposed rule presented for public review in this rulemaking process, we do acknowledge our commitment to the departmental policy on state-federal relationships for fish and wildlife. This policy is published at 43 CFR Part 24, and currently provides for state consultation in conjunction with NPS restrictions on hunting, trapping, and fishing. There are also references to consultation in § 2.2 and § 13.21. Concerning the organization request for public notice and participation before adopting wildlife transport rules, the process represented by this rulemaking has included public notice and an opportunity to participate through the submission of comments. We believe this rulemaking process has provided the requested opportunity for public participation. Public participation in this rulemaking has included a broad cross-section of agencies, groups, businesses, and individuals that would be expected to be interested in the subject matter of the proposed rules. For that reason we believe this rule has benefited from substantial and focused public participation. Finally, we again note that a ban on hunting and trapping is not realistic because of the statutory authorization of hunting and trapping in many NPS areas. Also, in those NPS areas closed to hunting and trapping, it is often necessary for wildlife taken lawfully on State or private land within or effectively surrounded by the park to be transported through the closed NPS area.

Section 13.22 Unattended or Abandoned Property: The State submitted several comments for this section. First of all, the State supports the four-month rule for leaving personal property provided NPS includes a simple procedure, such as by phone, for authorizing longer periods. Second, the State requests a private registration option for labeling personal property. Third, the State opposes the 30 gallon fuel limit as unrealistic for common activities such as long hunts and fish camps. Preferred is the current 55 gallon fuel drum because size is not as important as safe and leak-free. The State recommends increasing the size limit or deleting the restriction. Finally, the State is opposed to the specific distance requirement from water for fuel storage preferring instead a flexible restriction based on specific problem situations and resource concerns. One organization requested a privacy option for registering personal property, an increase in fuel storage to 55 gallons with the addition of a requirement for water-tight containers, a less restrictive distance requirement for fuel storage near water to accommodate boat fueling, and opposition to the 24-hour restriction for leaving property unattended on facilities. One individual requested a ban on fuel storage in park areas.

NPS Response: The NPS intends to use the 4 month time period for paragraph (b), noting that the Superintendent may change this time period in paragraph (c), which has not been revised. The NPS agrees that some parties may not want to leave their name and other personal information on unattended property. The regulation has been revised so that the property can be marked and the pertinent information be left with the Superintendent so that the responsible party can be identified if necessary. The NPS intends to retain the 30 gallon restriction, noting that the Superintendent has the discretion to relax this condition if needed. The rule does not explicitly prohibit the use of 55 gallon drums, but does regulate the amount of fuel contained in the drum. There have been concerted efforts in many parks to remove abandoned 55 gallon drums and there is a general reluctance to continue to allow this quantity when there has been little public input opposing the 30 gallon limit. Some areas, however, like Yukon-Charley Rivers National Preserve, intend to allow more than 30 gallons and also allow fuel to be left closer to water sources. It is hoped that individuals will use smaller containers since they could be more easily transported to and from the backcountry. The NPS has modified the distance provision for storing fuel away from water. The section has been revised so that the fuel may be stored closer to water sources if it is contained in a spill proof overpack container, which is a type of secondary containment system designed to prevent spills. The Superintendent has discretion to relax the distance from water condition if needed. The NPS believes that the prohibition on leaving property on facilities is appropriate given the definition of ''facilities.'' The Superintendent may authorize leaving property longer on facilities for special circumstances. A ban on temporary fuel storage caches in NPS areas is not warranted at this time and would unduly burden park visitors.

Section 13.30 Closure Procedures: One organization commented that the closure provisions in this section must comply with the closure requirements established by ANILCA.

NPS Response: The facility closures and restrictions are based on public health, safety, and protection of public property. It is noted that reference to closures, which are now subject to the provisions of 43 CFR 36.11, have been deleted from this section.

Section 13.46 Use of Snowmobiles, Motorboats, Dog Teams, and Other Means of Surface Transportation Traditionally Employed by Local Rural Residents Engaged in Subsistence Uses: Four organizations, including one consortium of six separate organizations, expressed concern that the unrevised heading of subsection (e) should also be changed to eliminate confusion regarding the difference between ANILCA title VIII and title XI access provisions.

NPS Response: The intent in revising subsection (e) was to correct the obsolete reference to another section without making any other changes to the regulatory text. To date we are not aware of instances in which confusion

on the meaning of this section has caused use of unauthorized methods of transportation. The intent is simply to say that the methods of transportation covered by the section are subject to a different regulation when not being used for subsistence purposes. We acknowledge that the intent could be expressed a little more clearly and will consider presenting the suggested clarification for public comment as part of the next phase of review for part 13.

Section 13.60 Aniakchak National Monument and Preserve: One organization requested that the adoption of regulatory language for wildlife viewing standards be done only after adequate public notice and participation. One individual objected to hunting in the monument and requested that it be banned.

NPS Response: The NPS values public notice and participation in rulemaking. We are also committed to a policy of civic engagement through the public planning process, in interpretive and educational programming and directly in preserving significant resources. This particular section, including the referenced viewing protocol provision, was developed in consultation with the State of Alaska and commercial operators active in the Monument and the public provided input in the annual compendium review. Subsistence hunting in the Monument and subsistence and sport hunting in the preserve are authorized by statute.

Section 13.62 Cape Krusenstern National Monument: Four organizations submitted comments for this section. Three expressed concern for the precedent this rule might set for other subsistence parks. Three also commented that this rule could result in additional impacts from increased all-terrain vehicle use. Two commented that use of ''areas'' rather than ''communities'' is inconsistent with ANILCA. One stated that public notice for the environmental review associated with this rule was inadequate, while another suggested that the proposal appeared to be hidden among unrelated proposals. And finally, one organization stated that a likely increase in the number of eligible subsistence users would create a need for greater public educational efforts by the NPS.

NPS Response: While we acknowledge the change from community based resident zones to a region-wide resident zone is a significant departure from current practice, we note that northwest Alaska subsistence users have pursued this approach for their region from the early days of the subsistence program for reasons specific to their area. The rule reflects subsistence patterns and distinctive social, economic, demographic, and cultural characteristics of northwest Alaska. We are not aware of interest in or justifications for this approach elsewhere and do not consider it to be precedent setting.

We acknowledge that the term ''area'' was not used in either ANILCA or the legislative history for the law. Even so, we believe the existing NPS resident zone regulations, which include the term, are not inconsistent with the law and provide the necessary flexibility to achieve congressional intent in special circumstances such as this. As noted above, the use of a large region-wide area to designate a resident zone is unique to northwest Alaska and does not represent a programmatic trend or a divergence from congressional intent.

Public notice for the environmental assessment (EA) for this rule was published in the Arctic Sounder newspaper and posted on local bulletin boards. Also, copies of the EA were mailed to 85 agencies, organizations, and individuals. Our goal is to provide general public notice as well as direct notice to interested parties resulting in as much public involvement as possible. We regret that some interested parties did not become aware of the EA for this rule when it was first published but we are committed to improving the coverage of our mailing lists. We note that the public notice for this rule also referenced the EA and provided additional opportunity for review as reflected in the various comments received.

This rulemaking project has resulted in a number of unrelated part 13 rule changes being incorporated in a single proposed rule document for the first time since part 13 was adopted in 1981. Since then changes have generally been made for single sections or subparts. However, as noted in the background section above, we have begun with this rulemaking a periodic review process for part 13. While it is recognized that this will often bring together multiple subject areas, they will all be Alaska related. This approach is expected to increase administrative efficiency and reduce instances of needed changes being delayed due to the fixed workload that goes with every rule change regardless of size. Interestingly, the resident zone proposal in this rule that prompted this comment received substantially more public response than a similar stand-alone resident zone rulemaking that was recently completed for another park area. Consequently, our experience initially does not indicate a problem with this approach for public involvement.

The various compliance reviews for this rule indicate that there will not be a significant change in the level of subsistence use. This rule merely removes the need for some eligible users to apply for a permit. Very few local residents who would not otherwise be eligible will become eligible because of this rule. Regardless, we note that one aspect of the subsistence culture of northwest Alaska is the inherent self-regulating nature of the activity because of the homogeneity of the primary user group. Variance from accepted practices and established rules are quickly observed and considered. For these reasons we do not believe there will be a sudden change in subsistence behavior requiring increased public educational efforts for new subsistence users. ATV use will not increase because ATV use is not authorized except for two easements.

Section 13.63 Denali National Park and Preserve: Three organizations and two individuals recommended that the name ''Frontcountry Developed Area'' (FDA) be revised by deleting the word ''Developed'' because it tends to misrepresent and confuse the actual and planned use of the described area. These individuals and organizations also commented that the use of the FDA as a designated area for prohibiting certain uses is overly restrictive for some activities and generally will cause enforcement problems by creating a gap or ''no-mans land'' where the prohibitions do not apply. Also this approach to regulating in the FDA will result in an unnecessarily complex administrative process for making changes as circumstances change such as new trail construction. Finally, one individual recommended that ATV's, snowmobiles, and jet-skis be banned in addition to roller skates, because of the pollution these types of vehicles produce.

NPS Response: The NPS has retained the use of the name ''Frontcountry Developed Area'' for use in these regulations. The NPS does not agree the use of the term ''Developed'' is problematic in this regulation. The NPS agrees with commenters that many parts of this section were overly complicated. Accordingly, sections dealing with pets, bicycles, and skating devices have been revised. The section on fires was revised for clarity. The park website was added as an additional information source. Personal watercraft (jet-skis) are prohibited in the park and ATV's and snowmobiles are the subject of other rules which regulate their use in NPS areas in Alaska.

Section 13.65 Glacier Bay National Park and Preserve: One organization repeated its opposition above to the word ''developed'' when used as part of the name for a heavy use area subject to further restriction. One organization requested that the bicycle restriction be changed to a closed unless open approach, while another suggested prevention of user conflicts through education and speed limits rather than closure. The State and a local municipality, three organizations, a business owner, and two individuals opposed the restrictions on commercial fishing activities at the Bartlett Cove public use dock. One individual recommended a 15 minute time-limit at the fuel dock. The State suggested revising the camping orientation requirement to accommodate repeat campers, while three organizations favor backcountry camping permits in conjunction with an orientation requirement. One organization commented that it is unclear whether the Bartlett Cove passenger transport authorization applies to vessels as well as land transportation. One individual objected to lifetime access permits for commercial fishing in the park, recommended restricting hunting, trapping, ATV's, and snowmobiles in the Bartlett Cove Developed Area, and opposed the collection of naturally shed goat hair.

NPS Response: The NPS has retained the use of the name ''Bartlett Cove Developed Area'' for use in these regulations. The NPS does not agree the use of the term ''Developed'' is problematic in this regulation. The NPS believes that the restriction on the three specified trails is appropriate, given the location and nature of the trails.

Commercial fishing in Glacier Bay proper is limited to those fishermen who qualified for a lifetime access permit by meeting the criteria established by statute. The eligibility criteria for these permits have been judicially interpreted as reflected in this rule. We have reprinted all of subsection (5) on crewmember documentation guidelines in the **Federal Register** final rule for further clarity.

The NPS agrees that the proposed language regarding commercial sale of fish at the Bartlett Cove public use dock is confusing. The paragraph has been revised to reflect the allowance of the current, small scale selling of fish at the dock. Formalizing the rules for these activities in the park special regulations will provide more certainty rather than less. The general NPS regulations at 36 CFR part 5 prohibit business activity in park areas without a permit, contract, or other written agreement unless specifically authorized under special regulations for a particular park area. For this reason, the continued authorization in the current manner of selling fish at the dock without a park special regulation could be questioned. Consequently, adoption of the rule will more clearly bring park practice into conformity with the general NPS regulations, thus providing increased assurance for continuation of existing use. A time-limit for the fuel dock is not considered necessary at this time because of the requirement that boats not be left unattended while at the fuel dock.

The NPS agrees that a camping permit that incorporates an orientation and information on backcountry conditions at the time of issuance, would be useful in accommodating campers need for up-to-date information as well as management of an area of concentrated visitor use. The NPS further concurs that camping permits are widely used, accepted and understood by the public, and that the use of the terminology ''required orientation'' could lead to confusion among the visiting public. To minimize the burden on the public, however, the permit requirement will be limited to the area in Glacier Bay National Park with the majority of the visitor safety and resource protection issues related to visitor camping. Camping permits will only be required in the area within ¼ nautical mile above the mean high tide of Glacier Bay, as this is an area of concentrated visitor camping and is also a bear feeding and migration area. This permit requirement does not authorize limits on the number of campers.

Regarding hunting, trapping, ATV's and snowmobiles in the Bartlett Cove Developed Area, this area is already closed to hunting and trapping, while ATV's and snowmobiles are the subject of other rules which regulate their use in park areas in Alaska. Finally, because the collection of naturally shed goat hair will be a permitted activity only, we believe it can be carefully managed to avoid overuse.

Section 13.66 Katmai National Park and Preserve: The State urged NPS coordination with the state Board of Fishery and state fishery managers before attaching additional conditions to the traditional redfish fishery. As noted above, one organization repeated its concern for use of the word ''developed'' as a naming reference for heavy use areas, in the case of this section, the ''Brooks Camp Developed Area.'' One business opposed the Brooks River closure provision in the area of the falls absent a convenient and safe transit route around the closed area. The business also commented that the wildlife viewing rule is unclear about when a concentrated food source is being used, is not required for resource protection or for human safety and may increase risk through sudden human retreat from surprise encounters. Also requested was a statement of intent not to displace anglers. One organization requested additional public notice and participation prior to the adoption of a wildlife viewing protocol as indicated. Finally, one individual objected to excepting hunters from the wildlife viewing distance conditions and recommended that hunting and trapping be banned.

NPS Response: The NPS agrees with the request for cooperation and is committed to the departmental policy on intergovernmental cooperation in the management of fish and wildlife. However, because the traditional redfish fishery at the park is a federal statutory authorization, it is somewhat independent of the regular State fishery management system. Even so, our intent is to work closely with the State in the management of the fishery. The closure provision for the Brooks River Falls area is intended to route anglers around the falls and the visitor platforms. The paragraph has been revised to more accurately reflect the desire to allow transit through the area. The paragraph provides flexibility, as one option would be a trail around the closure instead of through it. The wildlife viewing condition rule does not require visitors to retreat suddenly from an approaching bear nor is the rule intended to close entire waterways. Approaching a bear or continuing to occupy a position within 50 yards of a bear that is attempting to feed on salmon, for example, is prohibited, while maintaining your position while a bear transits the area, is not. The intent is not to displace bears from an important food source. Anglers and others may be displaced by bears attempting to use this food source. Any viewing protocols would be established by Superintendent's authority in the compendium, which is subject to public review. Additionally, the NPS is correcting two editing errors, increasing the amount of time property can be left at Lake Camp to 72 hours in paragraph (e), and correcting a property rule by adding an ''as posted'' wording so subparagraph (c)(10) reads ''equipment caches as posted at the Brooks Camp Visitor Center.'' Finally, the exception for hunters under the wildlife distance rule has a fairly limited application, applying only in the preserve where hunting is allowed. The park, which

comprises most of the total area of the combined park and preserve, is closed to hunting and trapping.

Section 13.67 Kenai Fjords National Park: One organization requested a change in the proposed rule for public use cabins to allow the cabin permit holder to waive the restriction on others camping near the cabin.

NPS Response: The rule limiting use of public use cabins and nearby areas to the permit holder is intended to include members of the permit holder's party. In effect the restriction allows the permit holder to use the cabin and a nearby designated tent site for camping purposes. The primary use of the area remains the public use cabin, although the designation of a tent site allows the cabin permit holder the option of tent camping. The intent of the rule is to prevent resource damage (such as soil compaction, erosion, vegetative damage and multiple fire rings) but also provides flexibility to the cabin permit holder. The NPS also has the authority to provide otherwise as a permit condition or in emergency situations, as necessary.

Section 13.68 Klondike Gold Rush National Historical Park: One individual objected to the allowance for gathering mushrooms in the park.

NPS Response: The collection of mushrooms has not been prohibited in most of the other Alaska park areas for some time without overuse or other incidental resource abuse. Mushrooms are fairly abundant in the area of the park and have been collected near the park non-commercially by local residents for many years without harm to the resource. Consequently, there does not appear to be a resource protection need for continuing the restriction of this activity at this time.

Section 13.69 Kobuk Valley National Park: Four organizations submitted comments for this section. Three expressed concern for the precedent this rule might set for other subsistence parks. Three also commented that this rule could result in additional impacts from increased all-terrain vehicle use. Two commented that use of ''areas'' rather than ''communities'' is inconsistent with ANILCA. One stated that public notice for the environmental review associated with this rule was inadequate, while another suggested that the proposal appeared to be hidden among unrelated proposals. And finally, one organization stated that a likely increase in the number of eligible subsistence users would create a need for greater public educational efforts by the NPS.

NPS Response: While we acknowledge the change from community based resident zones to a region-wide resident zone is a significant departure from current practice, we note that subsistence users have pursued this approach for their region from the early days of the subsistence program for reasons specific to their area. The rule reflects subsistence patterns and distinctive social, economic, demographic, and cultural characteristics of northwest Alaska. We are not aware of interest or justifications for this approach elsewhere and do not consider it to be precedent setting.

We acknowledge that the term ''area'' was not used in either ANILCA or the legislative history for the law. Even so, we believe the existing NPS resident zone regulations, which include the term, are not inconsistent with the law and provide the necessary flexibility to achieve congressional intent in special circumstances such as this. As noted above, the use of a large region-wide area to designate a resident zone is unique to northwest Alaska and does not represent a programmatic trend or a divergence from congressional intent.

Public notice for the environmental assessment (EA) for this rule was published in the Arctic Sounder newspaper and posted on local bulletin boards. Also, copies of the EA were mailed to 85 agencies, organizations, and individuals. Our goal is to provide general public notice as well as direct notice to interested parties resulting in as much public involvement as possible. We regret that some interested parties did not become aware of the EA for this rule when it was first published but we are committed to improving the coverage of our mailing lists. We note that the public notice for this rule also referenced the EA and provided additional opportunity for review as reflected in the various comments received.

This rulemaking project has resulted in a number of unrelated part 13 rule changes being incorporated in a single proposed rule document for the first time since part 13 was adopted in 1981. Since then changes have generally been made for single sections or subparts. However, as noted in the background section above, we have begun with this rulemaking a periodic review process for part 13. While it is recognized that this will often bring together multiple subject areas, they will all be Alaska related. This approach is expected to increase administrative efficiency and reduce instances of needed changes being delayed due to the fixed workload that goes with every rule change regardless of size. Interestingly, the resident zone proposal in this rule that prompted this comment received substantially more public response than a similar stand-alone resident zone rulemaking that was recently completed for another park area. Consequently, our experience initially does not indicate a problem with this approach for public involvement.

The various compliance reviews for this rule indicate that there will not be a significant change in the level of subsistence use. This rule merely removes the need for some eligible users to apply for a permit. Very few local residents who would not otherwise be eligible will become eligible because of this rule. Regardless, we note that one aspect of the subsistence culture of northwest Alaska is the inherent self-regulating nature of the activity because of the homogeneity of the primary user group. Variance from accepted practices and established rules are quickly observed and considered. For these reasons we do not believe there will be a sudden change in subsistence behavior requiring increased public educational efforts for new subsistence users. ATV use will not increase because ATV use is not authorized.

Section 13.72 Sitka National Historical Park: The state recommended cooperative planning with the City of Sitka for bicycle use. One organization repeated a concern for use restrictions expressed above under section 13.63, specifically for bicycles and skating devices, preferring prevention of user conflicts through speed limits and education rather than prohibition. One individual recommended extending the bicycle prohibition to ATV's, jet-skis, snowmobiles, and other polluting devices.

NPS Response: The NPS agrees that cooperative planning with the City of Sitka is desirable. Given the nature of the park, its size and visitation patterns, the NPS believes that restricting bicycles and skating devices is necessary, but allows for Superintendent discretion to open areas if future conditions warrant. The NPS also dropped the word ''overnight'' as a description of camping. This is consistent with other park areas. The phrase ''other skating devices'' was also changed to ''similar devices'' for consistency. Jet skies (personal watercraft) are currently prohibited in the park, and ATV's and snowmobiles are the subject of other rules which regulate their use in the Alaska park areas.

Section 13.73 Wrangell-St. Elias National Park and Preserve: One organization repeated its concern for use of the term ''developed'' when designating concentrated use areas.

Another organization requested prior notice to interested user groups and descriptive clarity of affected activities when NPS exercises the general closure authority of subsection (e).

NPS Response: As discussed earlier, the NPS believes the word ''Developed'' is appropriate in this rule. The NPS agrees with the comment concerning notice to interested user groups. If this subsection (e) is utilized, items will be addressed in the Superintendent's compendium, which annually seeks public input and provides public notice.

Compliance With Other Laws

Regulatory Planning and Review (Executive Order 12866)

This document is not a significant rule and is not subject to review by the Office of Management and Budget under Executive Order 12866.

(1) This rule will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

A qualitative cost/benefit analysis was conducted to examine specific costs and benefits associated with this proposed regulation. That analysis concludes that positive net benefits would be generated by each component of the proposed regulatory action, and hence by the regulatory action overall. Further, governmental processes in NPS-administered areas in Alaska would be improved, and market failures would be more effectively addressed. Therefore, it is anticipated that economic efficiency would be improved by this proposed regulatory action.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. Actions taken under this rule will not interfere with other agencies or local government plans, policies, or controls. This is an agency specific rule. The proposals included with this rulemaking apply on areas managed by the National Park Service and are not known to be inconsistent with other Federal regulations. Several proposals are specifically intended to improve consistency between State and Federal areas. The review process used to develop the rulemaking proposals included consultation with the State of Alaska Department of Natural Resources to seek views of appropriate officials and to provide maximum conformity with State rules on adjacent lands as well as active participation where the NPS is proposing variation from similar State regulations.

(3) This rule does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. This rule will have no effects on entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. No grants or other forms of monetary supplements are involved. While this proposed rule would implement a statutory use authorization for traditional fishing at Katmai National Park and Preserve and broaden slightly commercial fishing access at Glacier Bay National Park, neither entitlement has budgetary impact.

(4) This rule does not raise novel legal or policy issues. This rule simply implements miscellaneous existing legislative enactments, judicial interpretations, and regulatory provisions. The proposed rule is not a completely new proposal, but rather a continuation of the rulemaking process begun in 1980 to administer the park areas established and expanded by the Alaska National Interest Lands Conservation Act (ANILCA). The NPS has sought to promulgate only those regulations necessary to implement the law and to provide for the health and safety of the public and the environment. While the legal and policy issues associated with the established and expansion of ANILCA park areas may have been considered novel when adopted, they have long since lost their novelty. Management of park areas in Alaska has become routine and the process begun by this rulemaking is intended to increase participation and cooperation in the evolution of NPS regulations for Alaska.

Regulatory Flexibility Act

The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The economic effects of this rule are local in nature and negligible in scope. The proposals in this rulemaking will either implement rules unrelated to business activity or make permanent various temporary and emergency rules under which area businesses have been operating. The rules included in this proposed rulemaking will have either no effect or in some cases a salutary effect by eliminating year to year uncertainty for businesses and park visitors. The regulatory flexibility analysis prepared for the original Glacier Bay commercial fishing regulations (see Record of Compliance, RIN 1024–AB99, dated July 27, 1999) remains applicable and is not changed by this proposed rule.

A qualitative Regulatory Flexibility threshold analysis was conducted to examine potential impacts to small entities. Based on the cost/benefit analysis referred to above, that threshold analysis concludes that, since no significant costs are anticipated for any component of the proposed action, significant economic impacts would not be imposed on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), SBREFA. This rule:

a. Does not have an annual effect on the economy of $100 million or more. Expenses related to compliance with various provisions of this proposed rule are slight. No new user fees or charges are proposed. Any incidental costs of registering, checking-in, or participating in orientation programs would be small and often would not be additional to those already associated with visiting park areas.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. The proposed provisions of this rulemaking will generally continue existing rules and use patterns for the park areas in Alaska. As noted above, new registration and orientation requirements for some activities can be accomplished generally at no additional cost to that currently incurred in visiting park areas. Application costs associated with subsistence permits at Cape Krusenstern National Monument and Kobuk Valley National Park will be substantially reduced by the proposed changes in the subsistence resident zones for those units.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. The various provisions of this proposed rule do not apply differently to U.S.-based enterprises and foreign-based enterprises. The proposed changes to the Glacier Bay commercial fishing regulations will have a beneficial effect on local small businesses by making eligibility criteria for commercial fishing lifetime access permits less restrictive. It is expected that a small number of limited entry permit holders may be able to qualify for commercial fishing in the park.

Unfunded Mandates Reform Act

This rule addresses only actions that will be taken by the NPS. It will not require any State, local or tribal government to take any action that is not funded. In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

a. This rule will not ''significantly or uniquely'' affect small governments. A Small Government Agency Plan is not required. This rule is an agency specific rule and imposes no other requirements on small governments. Several of the proposed regulations are based on State of Alaska statutes. For example, the proposed regulations involving airstrip obstruction, backcountry camping and protection of dead, standing wood are based on current State of Alaska law. This consistency between the State of Alaska and the National Park Service is a benefit to visitors.

b. This rule will not produce a federal mandate of $100 million or greater in any year, *i.e.*, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act.

Takings (Executive Order 12630)

In accordance with Executive Order 12630, the rule does not have significant takings implications. A takings implications assessment is not required because no taking of personal property will occur as a result of this proposed rule. The proposed change in the Glacier Bay commercial fishing regulations will slightly broaden commercial fishing access and the regulatory flexibility analysis previously prepared for those regulations remains applicable (*see* section 2 above).

Federalism (Executive Order 13132)

In accordance with Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The proposed rule is limited in effect to Federal lands and waters managed by the NPS and will not have a substantial direct effect on State and local government in Alaska. This proposed rule was initiated in part at the request of the State and has been drafted in close consultation with the State of Alaska and, as such, promotes the principles of federalism.

Civil Justice Reform (Executive Order 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the order. This rule does not impose a new burden on the judicial system.

Paperwork Reduction Act

This regulation requires an information collection from 10 or more parties, which must be submitted for OMB approval under the Paperwork Reduction Act. However, these are not new collection requirements and, therefore, no additional request to OMB has been prepared. The information collection activities are necessary for the public to obtain benefits in the form of concession contracts and special use permits. Information collection associated with the award of concession contracts is covered under OMB control number 1024–0125; the information collection associated with the issuance of special use permits is covered under OMB control number 1024–0026.

National Environmental Policy Act

We have analyzed this rule in accordance with the criteria of the National Environmental Policy Act and 516 DM. This rule does not constitute a major Federal action significantly affecting the quality of the human environment. An environmental assessment and finding of no significant impact for the Cape Krusenstern National Monument and Kobuk Valley National Park resident zone proposals has been completed. The remainder of the rule has been determined to be categorically excluded from further NEPA analysis in accordance with Departmental Guidelines in 516 DM 6 (49 FR 21438), and NPS procedures in Reference Manual-12.3.4.A(8), and there are no applicable exceptions to categorical exclusions (516 DM 2, Appendix 2; RM–12.3.5). Both are available at the Alaska Regional Office, 240 5th Avenue, Anchorage, Alaska, 99501, 907–644–3533.

Government-to-Government Relationship With Tribes

In accordance with Executive Order 13175 ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249); the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951); the Department of the Interior—Alaska Policy on Government-to-Government Relations with Alaska Native Tribes dated January 18, 2001; Part 512 of the Departmental Manual, Chapter 2 ''Departmental Responsibilities for Indian Trust Resources''; and various park consultation agreements with tribal governments, the potential effects on federally-recognized Indian tribes have been evaluated, and it has been determined at this time that there are no potential effects.

While the consultation agreements noted above have not resulted in findings of potential effects, a number of the proposed rules have been included as a direct consequence of consultation. Among these are the Glacier Bay National Park and Preserve proposals for the gathering of shed goat hair for weaving and the collection of certain renewable plant resources for traditional uses. Also influenced by consultation are the Katmai National Park and Preserve redfish proposal and the Cape Krusenstern National Monument and Kobuk Valley National Park subsistence resident zone proposals. These various proposals are of interest to local residents using these NPS areas and have been facilitated by the relationships established through government-to-government consultation. Finally, the initial determination of effect noted here is dynamic and subject to change throughout this rulemaking process due to the ongoing nature of government-to-government consultation for the NPS areas in Alaska.

Drafting Information: The principal contributors to this final rule are: Vic Knox, Deputy Regional Director; Chuck Young, Chief Ranger, Glacier Bay National Park and Preserve; Hunter Sharp, Chief Ranger, Wrangell-St. Elias National Park and Preserve; Jim Ireland, Chief Ranger, Kenai Fjords National Park; Lou Waller, Jay Liggett, Jane Hendrick, Andee Hansen, Terry Humphrey, Joan Darnell, Heather Rice, Thetus Smith, and Paul Hunter, Alaska Regional Office.

List of Subjects in 36 CFR Part 13

Alaska, National Parks, Reporting and recordkeeping requirements.

■ In consideration of the foregoing, the National Park Service amends 36 CFR part 13 as follows:

PART 13—NATIONAL PARK SYSTEM UNITS IN ALASKA

■ 1. Revise the authority citation for part 13 as follows:

Authority: 16 U.S.C. 1, 3, 462(k), 3101 *et seq.*; Sec. 13.65 also issued under 16 U.S.C. 1a–2(h), 20, 1361, 1531, 3197; Pub. L. 105–277, 112 Stat. 2681–259, October 21, 1998; Pub. L. 106–31, 113 Stat. 72, May 21, 1999; Sec. 13.66(c) also issued under Sec. 1035, Pub. L. 104–333, 110 Stat. 4240, November 12, 1996.

■ 2. Amend § 13.1 by:

■ A. Removing the words ''The term'' from the first sentence of each paragraph;

■ B. Removing all alphabetical paragraph designations; and
■ C. Adding the following terms in alphabetical order.

§ 13.1 Definitions.

* * * * *

Airstrip means visible, marked, or known aircraft landing areas in park areas. Airstrips may be marked with cones, lights, flagging, or windsocks, or be unmarked but recognizable because they have been cleared of vegetation or other obstructions.

* * * * *

Facility means buildings, structures, park roads as defined by § 1.4, parking lots, campgrounds, picnic areas, paved trails, and maintenance support yards.

* * * * *

■ 3. Revise § 13.4 to read as follows:

§ 13.4 Information collection.

The information collection requirements contained in §§ 13.17, 13.31, 13.44, 13.45, 13.49, 13.51, and 13.65 are necessary for park Superintendents to issue concession contracts and special use permits, and have been approved by the Office of Management and Budget under 44 U.S.C. 3507. Information collections associated with the award of concession contracts are covered under OMB control number 1024–0125; the information collections associated with the issuance of special use permits are covered under OMB control number 1024–0026.

■ 4. Add § 13.10 to read as follows:

§ 13.10 Obstruction of airstrips.

(a) A person may not place an object on the surface of an airstrip that, because of its nature or location, might cause injury or damage to an aircraft or person riding in the aircraft.

(b) A person may not dig a hole or make any kind of excavation, or drive a sled, tractor, truck, or any kind of vehicle upon an airstrip that might make ruts, or tracks, or add to an accumulation of tracks so as to endanger aircraft using the airstrip or persons riding in the aircraft.

■ 5. Revise §§ 13.18 through 13.20 to read as follows:

§ 13.18 Camping and picnicking.

(a) *Camping.* (1) Camping is authorized in park areas except where such use is prohibited or otherwise restricted by the Superintendent in accordance with this section, the provisions of § 13.30, or as set forth for specific park areas in subpart C of this part.

(2) *Site time-limits.* Camping is authorized for 14 consecutive days in one location. Camping is prohibited after 14 consecutive days in one location unless the camp is moved at least 2 miles or unless authorized by the Superintendent. A camp and associated equipment must be relocated immediately if determined by the Superintendent to be interfering with public access or other public interests or adversely impacting park resources.

(3) *Designated campgrounds.* Except at designated campgrounds, camping is prohibited on NPS facilities. The Superintendent may establish restrictions, terms, and conditions for camping in designated campgrounds. Violating restrictions, terms, and conditions is prohibited.

(b) *Picnicking.* Picnicking is authorized in park areas except where such activity is prohibited or otherwise restricted by the Superintendent. The public will be notified by one or more of the following methods—

(1) Signs posted at conspicuous locations, such as normal points of entry or reasonable intervals along the boundary of the affected park locale;

(2) Maps available in the office of the Superintendent and other places convenient to the public;

(3) Publication in a newspaper of general circulation in the affected area; or

(4) Other appropriate methods, including park websites, brochures, maps, and handouts.

§ 13.19 Weapons, traps, and nets.

(a) Irritant chemical devices, including bear spray, may be carried, possessed, and used in accordance with applicable Federal and non-conflicting State laws, except when prohibited or restricted under § 13.30.

(b) Paragraphs (d) through (g) of this section apply to all park areas in Alaska except Klondike Gold Rush National Historical Park, Sitka National Historical Park and the former Mt. McKinley National Park, Glacier Bay National Monument and Katmai National Monument.

(c) Except as provided in this section and § 2.4 of this chapter, the following are prohibited—

(1) Possessing a weapon, trap, or net;

(2) Carrying a weapon, trap, or net;

(3) Using a weapon, trap, or net.

(d) Firearms may be carried, possessed, and used within park areas in accordance with applicable State and Federal laws, except where such carrying, possession, or use is prohibited or otherwise restricted under § 13.30.

(e) Traps, bows and other implements (other than firearms) authorized by applicable State and Federal law for the taking of fish and wildlife may be carried, possessed, and used within park areas only during those times when the taking of fish and wildlife is authorized by applicable law or regulation.

(f) In addition to the authorities provided in paragraphs (d) and (e) of this section, weapons (other than firearms), traps, and nets may be possessed within park areas provided such weapons, traps, or nets are within or upon a device or animal used for transportation and are unloaded and cased or otherwise packed in such a manner as to prevent their ready use while in a park area.

(g) Notwithstanding the provisions of this section, local rural residents who are authorized to engage in subsistence uses, including the taking of wildlife under § 13.48, may use, possess, or carry traps, nets and other weapons in accordance with applicable State and Federal laws.

§ 13.20 Preservation of natural features.

(a) This section applies to all park areas in Alaska except Klondike Gold Rush National Historical Park, Sitka National Historical Park, the former Mt. McKinley National Park, and the former Katmai National Monument.

(b) Gathering or collecting natural products is prohibited except as allowed by this section, § 2.1 of this chapter, or part 13, subpart C. For purposes of this paragraph, ''natural products'' includes living or dead fish and wildlife or parts or products thereof, plants or parts or products thereof, live or dead wood, fungi, seashells, rocks, and minerals.

(c) Gathering or collecting, by hand and for personal use only, of the following renewable resources is permitted—

(1) Natural plant food items, including fruits, berries and mushrooms, but not including threatened or endangered species;

(2) Driftwood and uninhabited seashells;

(3) Such plant materials and minerals as are essential to the conduct of traditional ceremonies by Native Americans; and

(4) Dead wood on the ground for use as fuel for campfires within the park area.

(d) The Superintendent may authorize, with or without conditions, the collection of dead standing wood in all or a portion of a park area. Collecting dead or downed wood in violation of terms and conditions is prohibited.

(e) Surface collection, by hand (including hand-held gold pans) and for personal recreational use only, of rocks

and minerals is permitted, with the following exceptions:

(1) Collection of silver, platinum, gemstones and fossils is prohibited; and

(2) Collection methods that may result in disturbance of the ground surface, such as the use of shovels, pickaxes, sluice boxes, and dredges, are prohibited.

(f) The Superintendent may limit the size and quantity of the natural products that may be gathered or possessed.

(1) Under conditions where it is found that significant adverse impact on park resources, wildlife populations, subsistence uses, or visitor enjoyment of resources will result, the Superintendent will prohibit the gathering or otherwise restrict the collecting of natural products.

(2) The Superintendent will notify the public of portions of a park area in which closures or restrictions apply by:

(i) Publishing a notice in at least one newspaper of general circulation in the State and providing a map available for public inspection in the office of the Superintendent; or

(ii) Posting appropriate signs.

(g) *Subsistence.* Nothing in this section shall apply to local rural residents authorized to take renewable resources.

■ 6. In § 13.21, add new paragraph (d)(5) to read as follows:

§ 13.21 Taking of fish and wildlife.

* * * * *

(d) * * *

(5) Persons transporting wildlife through park areas must identify themselves and the location where the wildlife was taken when requested by an NPS employee or other authorized person.

* * * * *

■ 7. In § 13.22, revise paragraph (b) to read as follows:

§ 13.22 Unattended or abandoned property.

* * * * *

(b) *Personal property.* (1) Leaving personal property longer than 4 months is prohibited. The Superintendent may authorize property to be left in place for more than 4 months.

(2) Identification information is required for all personal property left in park areas. Identification information consists of the owner's name, home address, telephone number, date that the property was left, and the type of fuel if the property contains fuel. This information must be—

(i) Labeled on the property; or

(ii) Provided to the Superintendent.

(3) All property must be stored in such a manner that wildlife is unable to access the contents. Storing property in a manner that wildlife can access contents is prohibited.

(4) Leaving fuel in more than one location in a park area or leaving more than 30 gallons of fuel is prohibited unless authorized by the Superintendent.

(5) Storing fuel within 100 feet of a water source, high water mark of a body of water, or mean high tide is prohibited unless stored in a spill proof overpack container or authorized by the Superintendent. Fuel must be contained in an undamaged and closed fuel container designed for fuel storage. Fueling from containers must occur in such a manner that any spillage would be prevented from coming into contact with water, soil, or vegetation. Failure to properly contain or prevent spillage is prohibited.

(6) Leaving property unattended for longer than 24 hours on facilities is prohibited unless authorized by the Superintendent.

(7) Property left in violation of this section is prohibited and subject to impoundment and, if abandoned, disposal or forfeiture.

* * * * *

■ 8. Amend § 13.30 as follows:

■ A. Revise paragraphs (c) and (d);

■ B. Redesignate paragraph (h) as (i); and

■ C. Add a new paragraph (h).

The revisions and additions read as follows:

§ 13.30 Closure procedures.

* * * * *

(c) *Emergency Closures.* (1) Emergency closures or restrictions relating to the taking of fish and wildlife shall be accomplished by notice and hearing.

(2) Other emergency closures shall become effective upon notice as prescribed in paragraph (f) of this section; and

(3) No emergency closure or restriction shall extend for a period exceeding 30 days, nor may it be extended.

(d) *Temporary closures or restrictions.* (1) Temporary closures shall be effective upon notice as prescribed in paragraph (f) of this section.

(2) Temporary closures or restrictions shall not extend for a period exceeding 12 months and may not be extended.

* * * * *

(h) *Facility closures and restrictions.* The Superintendent may close or restrict specific facilities for reasons of public health, safety, and protection of public property for the duration of the circumstance requiring the closure or restriction. Notice of facility closures and restrictions will be available for inspection at the park visitor center. Notice will also be posted near or within the facility, published in a newspaper of general circulation in the affected vicinity, or made available to the public by such other means as deemed appropriate by the Superintendent. Violating facilities closures or restrictions is prohibited.

* * * * *

■ 9. Revise § 13.46(e) to read as follows:

§ 13.46 Use of snowmobiles, motorboats, dog teams, and other means of surface transportation traditionally employed by local rural residents engaged in subsistence uses.

* * * * *

(e) At all times when not engaged in subsistence uses, local rural residents may use snowmobiles, motorboats, dog teams, and other means of surface transportation in accordance with 43 CFR 36.11(c), (d), (e), and (g).

■ 10. In § 13.60, add a new paragraph (b) to read as follows:

§ 13.60 Aniakchak National Monument and Preserve.

* * * * *

(b) *Wildlife distance conditions.* (1) Approaching a bear or any large mammal within 50 yards is prohibited.

(2) Continuing to occupy a position within 50 yards of a bear that is using a concentrated food source, including, but not limited to, animal carcasses, spawning salmon, and other feeding areas is prohibited.

(3) The prohibitions do not apply to persons—

(i) Engaged in a legal hunt;

(ii) On a designated bear viewing structure;

(iii) In compliance with a written protocol approved by the Superintendent; or

(iv) Who are otherwise directed by a park employee.

■ 11. Revise § 13.62(a) to read as follows:

§ 13.62 Cape Krusenstern National Monument.

(a) *Subsistence Resident Zone.* The following area is included within the resident zone for Cape Krusenstern National Monument: The NANA Region.

■ 12. Amend § 13.63 by revising paragraph (b) and adding paragraphs (i), (j), and (k) to read as follows:

§ 13.63 Denali National Park and Preserve.

* * * * *

(b) *Camping.* Camping is allowed in accordance with the backcountry management plan.

* * * * *

(i) *Frontcountry Developed Area.* For purposes of this section, the Frontcountry Developed Area (FDA) means all park areas within the portion of the park formerly known as Mt. McKinley National Park (Old Park) not designated as Wilderness by Congress. A map showing the FDA is available at the park visitor center.

(1) *Camping from April 15 through September 30.* (i) Camping is prohibited exceptin designated campgrounds in accordance with the terms and conditions of a permit. Violation of permit terms and conditions is prohibited.

(ii) Camping in designated campgrounds for more than a total of 14 days, either in a single period or combined periods, is prohibited.

(2) *Camping from October 1 through April 14.* (i) Camping is prohibited except in designated campgrounds and the designated area where the park road is closed to motor vehicle use. A map showing the designated area is available at the park visitor center and on the park website.

(ii) Camping without a permit is prohibited. Violation of permit terms and conditions is prohibited.

(iii) Camping for more than a total of 30 days, either in a single period or combined periods, is prohibited.

(3) *Fires.* Lighting or maintaining a fire is prohibited except—

(i) In established receptacles within designated campgrounds;

(ii) From October 1 through April 14 in that portion of the FDA where the park road is closed to motor vehicle use; and

(iii) Under conditions that may be established by the Superintendent.

(4) *Pets.* Possessing a pet is prohibited—

(i) In the FDA, except in public parking areas, on or immediately adjacent to park roads, or in designated campgrounds;

(ii) Within 150 feet of the park sled dog kennels; and

(iii) Within 150 feet of the park water system intake facilities.

(5) *FDA closures and restrictions.* The Superintendent may prohibit or otherwise restrict activities in the FDA to protect public health, safety, or park resources. Information on FDA closures and restrictions will be available for inspection at the park visitor center and on the park website. Violating FDA closures or restrictions is prohibited.

(j) The use of a bicycle is prohibited—

(1) On the Savage River Loop Trail; the Savage Cabin Trail; the Triple Lakes Trail; the McKinley Bar Trail; and the Eielson Area Trails;

(2) Within the FDA except on park roads, road shoulders, and in public parking areas, or on trails and areas designated for bicycle use by the Superintendent. A map of the designated trails and areas open to bicycle use is available for inspection at the park visitor center and on the park website.

(k) The use of roller skates, skateboards, roller skis, in-line skates, and similar devices is prohibited—

(1) On the Savage River Loop Trail; the Savage Cabin Trail; the Triple Lakes Trail; the McKinley Bar Trail; and the Eielson Area Trails;

(2) Within the FDA except on trails and areas designated by the Superintendent. A map of the designated trails and areas is available for inspection at the park visitor center and on the park website.

■ 13. Amend § 13.65 as follows:

■ A. Revise paragraphs (a)(4)(ii) and (a)(5)(i) through (a)(5)(v);

■ B. Amend paragraph (b)(1) by adding a new definition for ''Bartlett Cove Developed Area'' in alphabetical order immediately before the definition for ''Charter vessel';

■ C. Add new paragraphs (b)(3)(ix)(C)(*1*) and (*2*);

■ D. Remove paragraph (b)(7): and

■ E. Add new paragraphs (b) (5) through (9).

The revisions and additions read as follows:

§ 13.65 Glacier Bay National Park and Preserve.

(a) * * *

(4) * * *

(ii) They have participated as a limited entry permit holder or crewmember in the district or statistical area encompassing Glacier Bay for each fishery for which a lifetime access permit is being sought.

(A) For the Glacier Bay commercial halibut fishery, the applicant must have participated as a permit holder or crewmember for at least 2 years during the period 1992–1998.

(B) For the Glacier Bay salmon or Tanner crab commercial fisheries, the applicant must have participated as a permit holder or crewmember for at least 3 years during the period 1989–1998.

(5) *How can an individual apply for a commercial fishing lifetime access permit?* An applicant for a lifetime access permit must provide information sufficient to establish eligibility as follows:

(i) The applicant's full name, date of birth, mailing address and phone number;

(ii) A notarized affidavit (required), sworn by the applicant, attesting to his or her history of participation as a limited entry permit holder or crewmember in Glacier Bay during the qualifying period for each fishery for which a lifetime access permit is being sought;

(iii) A copy of the applicant's current State of Alaska limited entry permit or, in the case of halibut, an international Pacific Halibut Commission quota share (required), that is valid for the area that includes Glacier Bay, for each fishery for which a lifetime access permit is sought;

(iv) For qualifying years as a limited entry permit holder, available corroborating documentation of the applicant's permit and quota share history for the Glacier Bay fishery during the qualifying period, and/or for qualifying years as a crewmember, other available corroborating documentation of crewmember status. This may include a copy of the applicant's commercial crewmember license for each qualifying year, a notarized affidavit from their employer (generally a limited entry permit holder, or boat owner hired or contracted by a limited entry permit holder) stating the years worked by the applicant in a qualifying fishery in Glacier Bay, copies of tax forms W–2 or 1099, pay stubs, or other documentation; and,

(v) For applicants qualifying as a limited entry permit holder, available corroborating documentation of commercial landings for the Glacier Bay fishery during the qualifying periods—*i.e.*, within the statistical unit or area that includes Glacier Bay. For halibut, this includes regulatory sub-area 184. For Tanner crab, this includes statistical areas 114–70 through 114–77. For salmon, the Superintendent may need additional documentation that supports the applicant's declaration of Glacier Bay salmon landings. For halibut and Tanner crab, the Superintendent may consider documented commercial landings from the unit or area immediately adjacent to Glacier Bay (in Icy Strait) if additional documentation supports the applicant's declaration that landings occurred in Glacier Bay.

* * * * *

(b) * * *

(1) * * *

Bartlett Cove Developed Area means all NPS-administered lands and waters within 1 mile of any Bartlett Cove facility. A map showing the Bartlett Cove Developed Area is available at the park visitor center.

* * * * *

(3) * * *

(ix) * * *

(C) * * *

(*1*) *Bartlett Cove Developed Area.* (*i*) Camping is prohibited in the Bartlett

Cove Developed Area except in the Bartlett Cove Campground. From May 1 through September 30, all overnight campers must register to camp in the Bartlett Cove Campground. Failure to register is prohibited.

(*ii*) Cooking, consuming, or preparing food in the Bartlett Cove Campground is prohibited except in designated areas.

(*iii*) *Food storage*. In the Bartlett Cove Developed Area, storing food in any manner except in a sealed motor vehicle, a vessel (excluding kayaks), a building, an approved bear-resistant food container, a bear-resistant trash receptacle, or a designated food cache is prohibited.

(*iv*) *Bicycles*. Use of a bicycle is prohibited on the Forest Loop, Bartlett River and Bartlett Lake trails.

(*v*) *Bartlett Cove Developed Area closures and restrictions*. The Superintendent may prohibit or otherwise restrict activities in the Bartlett Cove Developed Area to protect public health, safety, or park resources, or to provide for the equitable and orderly use of park facilities. Information on closures and restrictions will be available at the park visitor information center. Violating Bartlett Cove Developed Area closures or restrictions is prohibited.

(*2*) *Bartlett Cove Public Use Dock*. (*i*) Docking, tying down, or securing aircraft is prohibited except at the designated aircraft float at the Bartlett Cove Public Use Dock. Docking, tying down, or securing aircraft to the Bartlett Cove Public Use Dock for longer than 3 hours in a 24-hour period is prohibited. Pilots must remain with aircraft or provide notice of their location to a park ranger. Failure to remain with the aircraft or provide notice to a park ranger is prohibited.

(*ii*) Vehicles exceeding 30,000 pounds gross vehicle weight are prohibited on the dock, unless authorized by the Superintendent.

(*iii*) Leaving personal property (other than vessels) unattended on, or attached to, the floats or pier without prior permission from the Superintendent is prohibited.

(*iv*) Processing commercially caught fish on the Public Use Dock is prohibited.

(*v*) The Superintendent may authorize the buying or selling of fish or fish products on or at the Public Use Dock. Buying or selling of fish or fish products is prohibited on or at the Public Use Dock without written permission from the Superintendent.

(*vi*) Utilizing the fuel dock for activities other than fueling and waste pump-out is prohibited.

(*vii*) Leaving a vessel unattended on the fuel dock for any length of time is prohibited.

(*viii*) Using electrical shore power for vessels is prohibited unless otherwise authorized by the Superintendent.

* * * * *

(5) *Collection of interstadial wood*. Collecting or burning interstadial wood (aged wood preserved in glacial deposits) is prohibited.

(6) *Collection of rocks and minerals*. Collecting rocks and minerals in the former Glacier Bay National Monument is prohibited.

(7) *Collection of goat hair*. The collection of naturally shed goat hair is authorized in accordance with terms and conditions established by the Superintendent. Violating terms and conditions for collecting goat hair is prohibited.

(8) *Camping*. From May 1 through September 30, camping within Glacier Bay as defined by this section up to ¼ nautical mile (1519 feet) above the line of mean high tide without a camping permit is prohibited. The Superintendent may establish permit terms and conditions. Failure to comply with permit terms and conditions is prohibited.

(9) *Commercial transport of passengers by motor vehicles in Bartlett Cove*. Commercial transport of passengers between Bartlett Cove and Gustavus by motor vehicles legally licensed to carry 15 or fewer passengers is allowed without a permit. However, if required to protect public health and safety or park resources, or to provide for the equitable use of park facilities, the Superintendent may establish a permit requirement with appropriate terms and conditions for the transport of passengers. Failure to comply with permit terms and conditions is prohibited.

■ 14. In § 13.66 redesignate paragraph (b) as paragraph (a) and add new paragraphs (b) through (e), to read as follows:

§ 13.66 Katmai National Park and Preserve.

* * * * *

(b) *Traditional red fish fishery*. Local residents who are descendants of Katmai residents who lived in the Naknek Lake and River Drainage will be authorized, in accordance with State fishing regulations or conditions established by the Superintendent, to continue their traditional fishery for red fish (spawned-out sockeye salmon that have no significant commercial value).

(c) *Brooks Camp Developed Area*. For purposes of this section, the Brooks Camp Developed Area (BCDA) means all park areas within a 1.5 mile radius from the Brooks Falls Platform and is depicted on a map available at the park visitor center. Paragraphs (c)(1) through (10) of this section apply from May 1 through October 31 unless stated otherwise.

(1) *Camping*. (i) Camping is prohibited in all areas of the BCDA except within the Brooks Camp Campground and other designated areas.

(ii) Camping in Brooks Camp Campground for more than a total of 7 nights during the month of July is prohibited.

(iii) Exceeding a group size limit of 6 persons per site in the Brooks Camp Campground while in operation as a designated fee area is prohibited.

(2) *Visiting hours*. The Falls and Riffles bear viewing platforms and boardwalks are closed from 10 pm to 7 am from June 15 through August 15. Entering or going upon these platforms and boardwalks during these hours is prohibited.

(3) *Brooks Falls area*. The area within 50 yards of the ordinary high water marks of the Brooks River from the Riffles Bear Viewing Platform to a point 100 yards above Brooks Falls is closed to entry from June 15 through August 15, unless authorized by the Superintendent. The Superintendent may designate a route to transit through the closed area.

(4) *Food storage*. In the BCDA, all fish must be stored in designated facilities and in accordance with conditions established by the Superintendent. Storing fish in any other manner is prohibited. Employees may store fish in employee residences.

(5) *Campfires*. Lighting or maintaining a fire is prohibited except in established receptacles in the BCDA.

(6) *Sanitation*. Within the BCDA, washing dishes or cooking utensils at locations other than the water spigot near the food cache in the Brooks Campground or other designated areas is prohibited.

(7) *Pets*. Possessing a pet in the BCDA is prohibited.

(8) *Bear Orientation*. All persons visiting the BCDA must receive an NPS-approved Bear Orientation. Failure to receive an NPS-approved Bear Orientation is prohibited.

(9) *Picnicking*. Within the BCDA, picnicking in locations other than the Brooks Camp Visitor Center picnic area, Brooks Campground, Brooks Lake Picnic Area, and a site designated in the employee housing area is prohibited. Food consumption or possession while at the Brooks River is prohibited.

(10) *Unattended property*. Leaving property, other than motorboats and

planes, unattended for any length of time within the BCDA is prohibited, except at the Brooks Lodge Porch, Brooks Campground, or designated equipment caches as posted at the Brooks Camp Visitor Center.

(11) *BCDA closures and restrictions.* The Superintendent may prohibit or otherwise restrict activities in the BCDA to protect public health and safety or park resources. Information on BCDA closures and restrictions will be available for inspection at the park visitor center. Violating BCDA closures or restrictions is prohibited.

(d) *Wildlife distance conditions.* (1) Approaching a bear or any large mammal within 50 yards is prohibited.

(2) Continuing to occupy a position within 50 yards of a bear that is using a concentrated food source, including, but not limited to, animal carcasses, spawning salmon, and other feeding areas is prohibited.

(3) The prohibitions in this paragraph (d) do not apply to persons—

(i) Engaged in a legal hunt;

(ii) On a designated bear viewing structure;

(iii) In compliance with a written protocol approved by the Superintendent; or

(iv) Who are otherwise directed by a park employee.

(e) *Lake Camp.* Leaving a boat, trailer, or vehicle unattended for more than 72 hours at the facilities associated with the Lake Camp launching ramp is prohibited without authorization from the Superintendent. Leaving a boat unattended at the Lake Camp dock is prohibited.

■ 15. In § 13.67 add new paragraphs (b) and (c), to read as follows:

§ 13.67 Kenai Fjords National Park.

* * * * *

(b) *Exit Glacier.* (1) Except for areas designated by the Superintendent, climbing or walking on, in, or under Exit Glacier is prohibited within ½ mile of the glacial terminus from May 1 through October 31, and during other periods as determined by the Superintendent. Restrictions and exceptions will be available for inspection at the park visitor center, on bulletin boards or signs, or by other appropriate means.

(2) Entering an ice fall hazard zone is prohibited. These zones will be designated with signs, fences, rope barriers, or similar devices.

(c) *Public Use Cabins.* (1) Camping within 500 feet of the North Arm or Holgate public use cabin is prohibited except by the cabin permit holder on a designated tent site, or as otherwise authorized by the Superintendent.

(2) Camping within the 5-acre NPS-leased parcel surrounding the Aialik public use cabin is prohibited except by the cabin permit holder on a designated tent site, or as otherwise authorized by the Superintendent.

(3) Lighting or maintaining a fire within 500 feet of the North Arm or Holgate public use cabins is prohibited except by the cabin permit holder in NPS established receptacles, or as otherwise authorized by the Superintendent.

(4) Lighting or maintaining a fire within the 5-acre NPS-leased parcel surrounding the Aialik public use cabin is prohibited except by the cabin permit holder in NPS-established receptacles, or as otherwise authorized by the Superintendent.

■ 16. Revise § 13.68 to read as follows:

§ 13.68 Klondike Gold Rush National Historical Park.

(a) *Camping.* (1) Camping is permitted only in designated areas.

(2) Camping without a permit is prohibited. The Superintendent may establish permit terms and conditions. Failure to comply with permit terms and conditions is prohibited.

(3) Camping at Dyea campground more than 14 days in a calendar year is prohibited.

(b) *Preservation of natural, cultural, and archaeological resources.* The Superintendent may allow the gathering of mushrooms in accordance with § 2.1(c) of this chapter.

(c) The National Park Service administers certain state-owned lands and waters within the boundary of Klondike Gold Rush National Historical Park under a memorandum of understanding with the State of Alaska. The prohibition on carrying, possession, and use of weapons, traps, and nets in this chapter does not apply to the lawful taking of wildlife on these State-owned lands and waters.

■ 17. In § 13.69 revise paragraph (a)(1) to read as follows:

§ 13.69 Kobuk Valley National Park.

(a) *Subsistence*—(1) *Resident Zone.* The following area is included within the resident zone for Kobuk Valley National Park: The NANA Region.

* * * * *

■ 18. Revise § 13.72 to read as follows:

§ 13.72 Sitka National Historical Park.

The following activities are prohibited in Sitka National Historical Park—

(a) Camping.

(b) Riding a bicycle, except in the public parking areas and on routes designated by the Superintendent. Routes may only be designated for bicycle use based on a written determination that such use is consistent with the purposes for which the park was established.

(c) The use of roller skates, skateboards, roller skis, in-line skates, and other similar devices.

■ 19. In § 13.73, add paragraphs (b) through (e), to read as follows:

§ 13.73 Wrangell-St. Elias National Park and Preserve.

* * * * *

(b) *Kennecott Mines National Historic Landmark (KNHL).* A map showing the boundaries of the KNHL is available at the park visitor center. The following activities are prohibited within the KNHL—

(1) Entering closed structures or passing beyond barricades;

(2) Entering mine tunnels and other mine openings;

(3) Camping in or on any historic structure;

(4) Camping within the mill site of the KNHL. The mill site consists of the collection of buildings clustered around the mill building on both sides of National Creek. For purposes of this section, the mill site is the area bounded by Bonanza Creek to the north, the Kennecott Glacier to the west, the 2,200 foot contour line to the east, and Sweet Creek to the south. The mill site is depicted on a map available at the park visitor center; and

(5) Lighting or maintaining a fire within the mill site as defined in paragraph (b)(4) of this section.

(c) *Headquarters/Visitor Center Developed Area (HVCDA).* For purposes of this paragraph, the HVCDA consists of all park areas within a ½ mile radius of the Wrangell-St. Elias National Park and Preserve Headquarters building, other than the Valdez Trail. The following activities are prohibited within the HVCDA:

(1) Lighting or maintaining a fire.

(2) Camping.

(3) Entering the area after visiting hours. Visiting hours will be posted at the entrance gate.

(d) *Slana Developed Area (SDA).* For purposes of this section, the Slana Developed Area consists of all park areas within a ¼ mile radius of the Slana Ranger Station.

(e) *KNHL and developed area closures and restrictions.* The Superintendent may prohibit or otherwise restrict activities in the KNHL, Headquarters/Visitor Center Developed Area, and Slana Developed Area to protect public health and safety or park resources. Information on closures and restrictions will be available at the park visitor center. Violating these closures or

restrictions is prohibited. Notwithstanding the provisions of this section, the Superintendent may issue a Special Use Permit to authorize uses in the KNHL and either developed area.

Dated: November 18, 2004.

Paul Hoffman,

Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 04–26372 Filed 12–1–04; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 242

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

Subsistence Management Regulations for Public Lands in Alaska, Subpart D; Seasonal Adjustments—Units 22 and 24

AGENCIES: Forest Service, USDA; Fish and Wildlife Service, Interior.

ACTION: Seasonal adjustments.

SUMMARY: This provides notice of the Federal Subsistence Board's management actions to provide for subsistence harvest opportunity and to protect a declining moose population in Units 22 and 24. These actions provide an exception to the Subsistence Management Regulations for Public Lands in Alaska, published in the **Federal Register** on July 1, 2004. Those regulations established seasons, harvest limits, methods, and means relating to the taking of wildlife for subsistence uses during the 2004 regulatory year.

DATES: The Unit 22B (west of the Darby Mountains) bull moose action is effective January 1, 2005 to January 31, 2005. The Unit 24 (John River, Upper John River, and Alatna River) antlerless moose action is effective September 8, 2004, through October 26, 2004. The Unit 24 (Kanuti Controlled Use Area) moose hunt extension is effective September 26 to October 2, 2004.

FOR FURTHER INFORMATION CONTACT: Thomas H. Boyd, Office of Subsistence Management, U.S. Fish and Wildlife Service, telephone (907) 786–3888. For questions specific to National Forest System lands, contact Steve Kessler, Subsistence Program Leader, USDA—Forest Service, Alaska Region, telephone (907) 786–3592.

SUPPLEMENTARY INFORMATION:

Background

Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3111–3126) requires that the Secretary of the Interior and the Secretary of Agriculture (Secretaries) implement a joint program to grant a preference for subsistence uses of fish and wildlife resources on public lands in Alaska, unless the State of Alaska enacts and implements laws of general applicability that are consistent with ANILCA and that provide for the subsistence definition, preference, and participation specified in Sections 803, 804, and 805 of ANILCA. In December 1989, the Alaska Supreme Court ruled that the rural preference in the State subsistence statute violated the Alaska Constitution and, therefore, negated State compliance with ANILCA.

The Department of the Interior and the Department of Agriculture (Departments) assumed, on July 1, 1990, responsibility for implementation of Title VIII of ANILCA on public lands. The Departments administer Title VIII through regulations at title 50, part 100, and title 36, part 242, of the Code of Federal Regulations (CFR). Consistent with subparts A, B, and C of these regulations, as revised January 8, 1999 (64 FR 1276), the Departments established a Federal Subsistence Board to administer the Federal Subsistence Management Program. The Board's composition includes a Chair appointed by the Secretary of the Interior with concurrence of the Secretary of Agriculture; the Alaska Regional Director, U.S. Fish and Wildlife Service; the Alaska Regional Director, National Park Service; the Alaska State Director, Bureau of Land Management; the Alaska Regional Director, Bureau of Indian Affairs; and the Alaska Regional Forester, USDA Forest Service. Through the Board, these agencies participate in the development of regulations for subparts A, B, and C, which establish the program structure and determine which Alaska residents are eligible to take specific species for subsistence uses, and the annual subpart D regulations, which establish seasons, harvest limits, and methods and means for subsistence take of species in specific areas. Subpart D regulations for the 2004 hunting seasons, harvest limits, and methods and means were published on July 1, 2004 (69 FR 40174). Because this rule relates to public lands managed by an agency or agencies in both the Departments of Agriculture and the Interior, identical closures and adjustments would apply to 36 CFR part 242 and 50 CFR part 100.

The Alaska Department of Fish and Game (ADF&G), under the direction of the Alaska Board of Game (BOG) and the Board of Fisheries (BOF), manages sport, commercial, personal use, and State subsistence harvest on all lands and waters throughout Alaska. However, on Federal lands and waters, the Federal Subsistence Board implements a subsistence priority for rural residents as provided by Title VIII of ANILCA. In providing this priority, the Federal Board may, when necessary, preempt State harvest regulations for fish or wildlife on Federal lands and waters.

These adjustments are necessary because of the need to enhance productivity of a declining moose population in portions of Units 22B and 24. These actions are authorized and in accordance with 50 CFR 100.19(d–e) and 36 CFR 242.19(d–e).

Unit 22B—Moose (West of the Darby Mountains)

Currently the moose population in Unit 22B is substantially depressed and well below management objectives. This represents a conservation concern. A reduction in harvest is necessary and reducing the quota for the combined fall and winter hunts, from 48 to 30, would significantly reduce the overall harvest of moose, for conservation purposes, while preserving the winter hunt for the smaller communities of White Mountain and Golovin, which have a high reliance on the resource.

The Unit 22B moose population of 586 is well below the objective of 1,500 to 2,500. Limiting the number of moose that may be harvested should aid in the recovery of the moose population, allowing the population to recover more quickly, ultimately conserving the resource for future potential harvest opportunities. This action also aligns State and Federal regulations, eliminating differing regulations that could be problematic.

Federal lands in Unit 22B affected by the special action are Bering Land Bridge National Preserve and Bureau of Land Management lands west of the Darby Mountains, and Norton Sound drainages from, but excluding, the Ungalik River drainage to, and including the Topkok Creek drainage.

Unit 24—Moose (John River, Upper John River, and Alatna River)

Moose surveys in Unit 24 from 1998 through 2003 have indicated poor recruitment of calves and yearlings. More specifically, aerial trend count area surveys were most recently conducted in the fall of 2003 and the data indicates that none of the five trend

count areas surveyed had calf:cow ratios above 30 calves:100 cows. Data from adjacent areas indicate that there has been a 25% decline in moose numbers since 1998.

Previous cow harvest levels have provided additional harvest opportunities and have served to help stabilize moose populations in past years. However, continued cow harvest at the current levels will likely contribute to further declines in productivity and recruitment. Current management objectives prescribe more conservative yields than what are allowed by current regulatory provisions. Thus, regulatory changes are needed to decrease the cow harvest and to maintain productivity and recruitment. This special action is consistent with the Management Plan which calls for additional regulatory restrictions on antlerless moose harvest in response to the ongoing population declines.

Federal lands in Unit 24 affected by the special action are: (1) All drainages to the north of the Koyukuk River upstream from and including the Alatna River to and including the North fork of the Koyukuk River, except those portions of the John River and the Alatna River drainages within the Gates of the Arctic National Park. (2) That portion that includes the John River within Gates of the Arctic National Park. (3) The Alatna River drainage within Gates of Arctic National Park.

The Alaska Department of Fish and Game issued an Emergency Order No. 03–04–04 to close the August and September antlerless moose season on State lands in Unit 21 D and Unit 24. The Board has taken a similar action on Federal public lands in Unit 24 in order to protect the continued viability of the moose population and to reduce confusion among hunters with conflicting regulations.

ADF&G has executed an Emergency Order for a closure of the State antlerless moose season on private lands within the John and Alatna River drainages of Unit 24 consistent with the Management Plan, which calls for additional regulatory restrictions on antlerless moose harvest in response to the ongoing population declines. A second Board action prohibits the harvest of antlerless moose within the upper John River drainage in the Gates of the Arctic National Park area from October 27 through December 31, 2004.

Unit 24—Moose (Kanuti Controlled Use Area)

Interior Alaska has experienced unseasonably high summer temperatures, a lower than average amount of rainfall, and a record number of wild fires in 2004. These conditions may have accounted for a change in the fall movement of moose and reduced the opportunity for subsistence users to harvest a moose. In addition, a number of local subsistence hunters have had limited time to hunt moose due to seasonal employment on fire crews. Federal lands in Unit 24 affected by this special action are the Kanuti Controlled Use Area. The Board lengthened the bull moose season in Unit 24 (Kanuti Controlled Use Area) to include September 26, 2004, through October 2, 2004.

The Board finds that additional public notice and comment requirements under the Administrative Procedure Act (APA) for these adjustments are impracticable, unnecessary, and contrary to the public interest. Lack of appropriate and immediate measures could seriously affect the continued viability of wildlife populations, adversely impact subsistence opportunities for rural Alaskans, and would generally fail to serve the overall public interest. Therefore, the Board finds good cause pursuant to 5 U.S.C. 553(b)(3)(B) to waive additional public notice and comment procedures prior to implementation of these actions and pursuant to 5 U.S.C. 553(d)(3) to make this rule effective as indicated in the **DATES** section.

Conformance With Statutory and Regulatory Authorities

National Environmental Policy Act Compliance

A Final Environmental Impact Statement (FEIS) was published on February 28, 1992, and a Record of Decision on Subsistence Management for Federal Public Lands in Alaska (ROD) was signed April 6, 1992. The final rule for Subsistence Management Regulations for Public Lands in Alaska, Subparts A, B, and C (57 FR 22940–22964, published May 29, 1992), implemented the Federal Subsistence Management Program and included a framework for an annual cycle for subsistence hunting and fishing regulations. A final rule that redefined the jurisdiction of the Federal Subsistence Management Program to include waters subject to the subsistence priority was published on January 8, 1999 (64 FR 1276.)

Compliance With Section 810 of ANILCA

The intent of all Federal subsistence regulations is to accord subsistence uses of fish and wildlife on public lands a priority over the taking of fish and wildlife on such lands for other purposes, unless restriction is necessary to conserve healthy fish and wildlife populations. A Section 810 analysis was completed as part of the FEIS process. The final Section 810 analysis determination appeared in the April 6, 1992, ROD which concluded that the Federal Subsistence Management Program, under Alternative IV with an annual process for setting hunting and fishing regulations, may have some local impacts on subsistence uses, but the program is not likely to significantly restrict subsistence uses.

Paperwork Reduction Act

The adjustment and emergency closures do not contain any information collections for which Office of Management and Budget (OMB) approval is required under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Federal agencies 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.

Other Requirements

The adjustments have been exempted from OMB review under Executive Order 12866.

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations, or governmental jurisdictions. The exact number of businesses and the amount of trade that will result from this Federal land-related activity is unknown. The aggregate effect is an insignificant economic effect (both positive and negative) on a small number of small entities supporting subsistence activities, such as firearm, ammunition, and gasoline dealers. The number of small entities affected is unknown; but, the effects will be seasonally and geographically-limited in nature and will likely not be significant. The Departments certify that the adjustments will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act. Under the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801 *et seq.*), this rule is not a major rule. It will not have an effect on the economy of $100 million or more, will not cause a major increase in costs or prices for consumers, and does not have significant adverse effects on competition, employment, investment,

productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Title VIII of ANILCA requires the Secretaries to administer a subsistence preference on public lands. The scope of this program is limited by definition to certain public lands. Likewise, the adjustments have no potential takings of private property implications as defined by Executive Order 12630.

The Service has determined and certifies pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that the adjustments will not impose a cost of $100 million or more in any given year on local or State governments or private entities. The implementation is by Federal agencies, and no cost is involved to any State or local entities or Tribal governments.

The Service has determined that the adjustments meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988, regarding civil justice reform.

In accordance with Executive Order 13132, the adjustments do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Title VIII of ANILCA precludes the State from exercising subsistence management authority over fish and wildlife resources on Federal lands.

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and 512 DM 2, we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no effects. The Bureau of Indian Affairs is a participating agency in this rulemaking.

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, or use. This Executive Order requires agencies to prepare Statements of Energy Effects when undertaking certain actions. As these actions are not expected to significantly affect energy supply, distribution, or use, they are not significant energy actions and no Statement of Energy Effects is required.

Drafting Information

Theodore Matuskowitz drafted this document under the guidance of Thomas H. Boyd, of the Office of Subsistence Management, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska. Taylor Brelsford, Alaska State Office, Bureau of Land Management; Rod Simmons, Alaska Regional Office, U.S. Fish and Wildlife Service; Bob Gerhard, Alaska Regional Office, National Park Service; Dr. Glenn Chen, Alaska Regional Office, Bureau of Indian Affairs; and Steve Kessler, USDA-Forest Service, provided additional guidance.

Authority: 16 U.S.C. 3, 472, 551, 668dd, 3101–3126; 18 U.S.C. 3551–3586; 43 U.S.C. 1733.

Dated: October 29, 2004.

Thomas H. Boyd,

Acting Chair, Federal Subsistence Board.

Dated: October 29, 2004.

Steve Kessler,

Subsistence Program Leader, USDA-Forest Service.

[FR Doc. 04–26541 Filed 12–1–04; 8:45 am]

BILLING CODE 3410–11 4310–55–P

Proposed Rules

Federal Register
Vol. 69, No. 231
Thursday, December 2, 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 ENERGY

Federal Energy Regulatory Commission

18 CFR Chapter I

[Docket Nos. RM05–2–000, RM97–7–000]

Policy for Selective Discounting by Natural Gas Pipelines

November 22, 2004.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of inquiry.

SUMMARY: The Federal Energy Regulatory Commission is seeking comments on its policy for selective discounting by natural gas pipelines. Specifically, the Commission is asking parties to submit comments and respond to specific inquiries regarding whether the Commission's practice of permitting pipelines to adjust their ratemaking throughput downward in rate cases to reflect discounts given by pipelines for competitive reasons is appropriate when the discount is given to meet competition from another natural gas pipeline.

DATES: Comments are due January 31, 2005.

ADDRESSES: Comments may be filed electronically via the eFiling link on the Commission's Web site at *http://www.ferc.gov*. Commenters unable to file comments electronically must send an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street, NE., Washington, DC 20426. Refer to the Comment Procedures section of the preamble for additional information on how to file comments.

FOR FURTHER INFORMATION CONTACT: Ingrid M. Olson, Office of the General Counsel, 888 First Street, NE., Washington, DC 20426, (202) 502–8406.

SUPPLEMENTARY INFORMATION:

1. In this Notice of Inquiry, the Commission is seeking comments on its policy regarding selective discounting by natural gas pipeline companies. Specifically, the Commission is asking parties to submit comments and respond to the specific inquiries set forth below regarding whether the Commission's practice of permitting pipelines to adjust their ratemaking throughput downward in rate cases to reflect discounts given by pipelines for competitive reasons is appropriate when the discount is given to meet competition from another natural gas pipeline.

I. The Development of the Commission's Discount Policy

A. Order No. 436

2. As part of Order No. 436, which commenced the transition to open access transportation, the Commission adopted regulations permitting pipelines to engage in selective discounting based on the varying demand elasticities of the pipeline's customers.[1] Specifically, the Commission adopted regulations requiring pipelines to file maximum and minimum transportation rates for both firm and interruptible service and to charge rates to customers within the maximum and minimum range.[2] Under these regulations, the pipeline is permitted to discount, on a nondiscriminatory basis, in order to meet competition. For example, if a fuel-switchable shipper were able to obtain an alternate fuel at a cost less than the cost of gas including the transportation rate, the Commission's policy permits the pipeline to discount its rate to compete with the alternate fuel, and thus obtain additional throughput that otherwise would be lost to the pipeline. In Order No. 436, the Commission explained that these selective discounts would benefit all customers, including customers that did not receive the discounts, because the discounts would allow the pipeline to maximize throughput and thus spread its fixed costs across more units of service. The Commission further stated that selective discounting would protect captive customers from rate increases that would otherwise ultimately occur if pipelines lost volumes through the inability to respond to competition.

3. In *Associated Gas Distributors* v. *FERC (AGD I)*,[3] the court upheld the regulations permitting selective discounting adopted in Order No. 436. The court found that, as a general matter, the Commission could permit pipelines to offer differing discounts depending upon the differing demand characteristics of their customers. The court agreed that such discounts could benefit captive customers by enabling pipelines to obtain demand elastic customers who would ''mak[e] a contribution to fixed costs that otherwise would not be made at all.''[4] However, the court also stated, ''This is not to say, of course, that the Commission is free to uphold every price distinction based on different demand elasticities. It has long been contended that rate differentials based on competition between transporters with similar cost functions may end up forcing captive customers to bear disproportionate shares of fixed costs without any offsetting gain in efficiency.''[5] The court stated, however, that this contention is not self-evidently true, explaining ''if the demand of buyers with access to competing carriers is at all price elastic, the price reductions they enjoy will raise their demand close to the competitive level.''[6] In any event, the court concluded that the Commission could properly defer its ultimate resolution of these issues to another proceeding.

4. The court also addressed an argument presented by some pipelines that the Commission's policy might lead to the pipelines under-recovering their costs. The court set forth a numerical example showing that the pipeline could under-recover its costs, if, in the next rate case after a pipeline obtained throughput by giving discounts, the Commission nevertheless designed the pipeline's rates based on the full amount of the discounted throughput, without any adjustment. However, the court found no reason to fear that the Commission would employ this ''dubious procedure,''[7] and accordingly rejected the pipelines' contention.

[1] *See* Regulations of Natural Gas Pipelines After Partial Wellhead Decontrol, FERC Stats. & Regs., Regulations Preambles (1982–1985) ¶ 30,665 at 31,543–45 (1985).

[2] 18 CFR 284.10 (2004).

[3] 824 F.2d 981, 1010–12 (D.C. Cir. 1987).

[4] *Id.* at 1011.

[5] *Id.* at 1010–1012.

[6] *Id.* at 1012.

[7] *Id.*

B. The Discount Adjustment

5. In the 1989 Rate Design Policy Statement,[8] the Commission sought to adopt a rate design methodology that would prevent the subsidization of the discounts by nondiscounted customers and, at the same time, achieve the goal of Order No. 436 of maximizing throughput. Thus, the Commission held that if a pipeline grants a discount in order to meet competition, the pipeline is not required in its next rate case to design its rates based on the assumption that the discounted volumes would flow at the maximum rate, but may reduce the discounted volumes so that the pipeline will be able to recover its cost of service. The Commission explained that if a pipeline must assume that the previously discounted service will be priced at the maximum rate when it files a new rate case, there may be a disincentive to pipelines discounting their services in the future to capture marginal firm and interruptible business. The policy of permitting discount adjustments is consistent with the discussion of the court in *AGD I* suggesting that discount adjustments should be permitted.

6. Since the Rate Design Policy Statement, the issue of adjusting rate design volumes to account for discounts has been litigated in a number of general section 4 rate cases.[9] In these cases, the Commission has again explained that discounts benefit all customers, including captive customers who do not receive discounts, because the discounts allow the pipeline to maximize throughput and thus spread its fixed costs across more units of service. Therefore, in order to avoid a disincentive to discounting, the Commission has held that the pipeline need not design its rates in the next rate case on the assumption that the discounted volumes would flow at the maximum rate, and has permitted the pipelines to reduce the discounted volumes used to design its rates so that, assuming market conditions require it to continue giving the same level discounts when the new rates are in effect that it gave during the test period, the pipeline will be able to recover 100 percent of its cost of service.

7. In order to obtain such a discount adjustment in a rate case, the pipeline has the ultimate burden of showing that its discounts were required to meet competition. However, the Commission has distinguished between the burden of proof the pipeline must meet, depending upon whether a discount was given to a non-affiliate or an affiliate. In the case of discounts to non-affiliated shippers, the Commission has stated that it is a reasonable presumption that a pipeline will always seek the highest possible rate from such shippers, since it is in the pipeline's own economic interest to do so. Therefore, once the pipeline has explained generally that it gives discounts to non-affiliates to meet competition, parties opposing the discount adjustment have the burden of producing evidence that discounts to non-affiliates were not justified by competition. To the extent those parties raise reasonable questions concerning whether competition required the discounts given in particular non-affiliate transactions, then the burden shifts back to the pipeline to show that the questioned discounts were in fact required by competition.

8. The Commission has disallowed discount adjustments with respect to some non-affiliated transactions involving discounts for long-term firm service. Thus, in Iroquois Gas Transmission System, L.P.[10] and Trunkline Gas Co.,[11] the Commission disallowed a discount adjustment with respect to discounts given to non-affiliates. In both cases, the discounts were given to long-term, firm customers. The Commission found that the parties opposing the discount adjustment had raised enough questions about the circumstances in which those long-term discounts were given to shift the burden back to the pipeline to justify the discount. The Commission then found that, when a pipeline gives a long-term discount, the Commission would expect that the pipeline would make a thorough analysis whether competition required such a long-term discount, and in both these cases the pipeline had failed to present any evidence of such an analysis.

9. In contrast to its treatment of non-affiliate discounts, the Commission has consistently held that the pipeline has a heavy burden to show that competition required discounts to affiliates. Thus, in Panhandle Eastern Pipe Line Co,[12] the Commission held that the pipeline had not met its burden to show that its discounts to its affiliates were required by competition. While the pipeline did show that it had granted some non-affiliates similar discounts, the Commission held that this was not sufficient. Rather, the Commission stated that the pipeline should have identified the specific competitive alternatives the affiliate had, which required giving the discount. In addition, in Williams Natural Gas Co.[13] and Trunkline Gas Co.,[14] the Commission also disallowed a discount adjustment in connection with a discount to an affiliate on similar grounds.

C. Order No. 636

10. In Order No. 636, the Commission began to move away from the monopolistic selective discounting model to a competitive model, particularly for the secondary market. The institution of capacity release created competition between shippers and the pipeline with respect to unused capacity. Rather than having to rely on the timing and vagaries of the pipeline rate cases and the discount adjustment, shippers would be able to capture the revenue from their own unused capacity by releasing that capacity themselves. But at the same time, the competition engendered by capacity release forced the pipeline to compete with prices set in a more competitive market. The Commission recognized that the imposition of capacity release would significantly reduce both the pipelines' interruptible volume as well as the rates the pipeline could charge for interruptible service.[15] Thus, even with respect to gas-on-gas competition in the secondary market, competition from capacity release will require pipelines to discount their interruptible and short-term firm capacity or suffer the potential loss of such sales to releasing shippers.

[8] 47 FERC ¶ 61,295, *reh'g granted,* 48 FERC, ¶ 61,122 (1989).

[9] *See, e.g.,* Southern Natural Gas Co., 65 FERC ¶ 61,347 at 62,829–62,833 (1993), *reh'g denied,* 67 FERC ¶ 61,155 at 61,456–61,460 (1994); Williston Basin Interstate Pipeline Co., 67 FERC ¶ 61,137 at 61,377–61,282 (1994); Panhandle Eastern Pipe Line Co., 71 FERC ¶ 61,228 at 61,866–61,871 (1995) (Opinion No. 395); Northwest Pipeline Corp., 71 FERC ¶ 61,253 at 62,007–61,009 (1995); Panhandle Eastern Pipe Line Co, 74 FERC ¶ 61,109 at 61,399–61,408 (1996) (Opinion No. 404); Williams Natural Gas Co, 77 FERC ¶ 61,277 at 62,205–61,207 (1996), *reh'g denied,* 80 FERC ¶ 61,158 at 61,189–61,190; Iroquois Gas Transmission System, L.P., 84 FERC ¶ 61,086 at 61,478 (1998), *reh'g denied,* 86 FERC ¶ 61,261 (1999); Williston Basin Interstate Pipeline Co., 84 FERC ¶ 61,266 at 61,401–61,402(1998); Northwest Pipeline Corp, 87 FERC ¶ 61,266 at 62,077 (1999); and Trunkline Gas Co., 90 FERC ¶ 61,017 at 61,084–61,096 (2000).

[10] 84 FERC ¶ 61,086 at 61,476–61,478 (1998), *reh'g denied,* 86 FERC ¶ 61,261 (1999).

[11] 90 FERC ¶ 61,017 at 61,092–95 (2000).

[12] 74 FERC ¶ 61,109 at 61,401–02 (1996).

[13] 77 FERC ¶ 61,277 at 62,206–61,207 (1996), *reh'g denied,* 80 FERC ¶ 61,158 (1997).

[14] 90 FERC ¶ 61,017 at 61,096 (2000).

[15] Order No. 636–A, FERC Stats. & Regs. Regulations Preambles ¶30,950, at 30,562 (1992), reh'g granted, Order No. 636–B, 61 FERC ¶61,272, at 61,999 (1992) (capacity release ''may affect the rates charged for interruptible transportation since the competition from released capacity might require the pipelines to offer greater discounts for interruptible transportation than they had in the past'').

D. Gas-on-Gas Competition

11. Since *AGD I* and the Rate Design Policy Statement, the issue of ''gas-on-gas'' competition, *i.e.*, where the competition for the business is between pipelines as opposed to competition between gas and other fuels, has been raised in several Commission proceedings. In these proceedings, certain parties have questioned the Commission's rationale for permitting selective discounting, *i.e.*, that it benefits captive customers by allowing fixed costs to be spread over more units of service. These parties have contended that, while this may be true where a discount is given to obtain a customer who would otherwise use an alternative fuel and not ship gas at all, it is not true where discounts are given to meet competition from other gas pipelines. In the latter situation, these parties have argued, gas-on-gas competition permits a customer who must use gas, but has access to more than one pipeline, to obtain a discount. But, if the two pipelines were prohibited from giving discounts when competing with one another, the customer would have to pay the maximum rate to one of the pipelines in order to obtain the gas it needs. This would reduce any discount adjustment and thus lower the rates paid by the captive customers.

12. In *Southern Natural Gas Co.*,[16] the Commission rejected the argument made by one of Southern's customers, Mississippi Valley Gas Co., that no discount adjustment should be permitted with respect to gas-on-gas competition. The Commission stated, ''in light of the dynamic nature of the natural gas market, the Commission believes any effort to prohibit interstate gas pipelines from discounting to meet gas-on-gas competition would inevitably result in a loss of throughput to the detriment of all their customers.'' [17] The Commission explained that the pipeline faced competition from intrastate pipelines not subject to the Commission's jurisdiction, so that the Commission could not prohibit gas-on-gas competition altogether. The Commission also stated that discounts given to meet gas-on-gas competition are not readily distinguishable from discounts given to meet competition from alternative fuels. For example, the Commission stated, discounts that on the surface appear to be given to meet gas-on-gas competition may also serve to reduce a customer's transportation costs sufficiently to minimize the incentives for many gas purchasers to make necessary investment to use alternate fuel. As a result, the Commission stated, given the difficulties in distinguishing between the two types of discounts, prohibiting the first type might discourage the pipeline from offering needed discounts to meet alternative fuel competition for fear that such discounts would be challenged as improper. Mississippi Valley sought review of these holdings, but the court found Mississippi Valley's appeal not ripe for review, because the severed proceeding was still ongoing.[18] Subsequently, the case settled.

13. The issue was also raised by the Illinois Municipal Gas Agency (IMGA) in a petition for rulemaking in Docket No. RM97–7–000. In its petition, IMGA alleged that the impact of the Commission's practice of adjusting ratemaking throughput downward to reflect discounts given by pipelines for competitive reasons causes rates to captive customers to be higher than they would be if the Commission did not adjust throughput for gas-on-gas competitive discounts and causes captive customers to subsidize customers receiving the discounts. IMGA asked the Commission to adopt a rule of general applicability that the pipelines' maximum rates will be based on estimates of the pipelines' total throughput without regard to discounts given for gas-on-gas competition with other jurisdictional pipelines.

14. Parties also raised this issue in Order No. 637, and again argued that a discount adjustment is not appropriate in a subsequent rate case for discounts given to meet gas-on-gas competition. When the Commission declined to address the issue in Order No. 637, IMGA raised the issue on appeal. In *INGAA* v. *FERC*, 285 F.3d 18, 43–44 (D.C. Cir. 2002), the court concluded that the Commission did not err in deciding not to address this issue as part of its Order No. 637 rulemaking. However, the court did indicate that the Commission should not delay resolution of the issue indefinitely.

II. Discussion

15. The Commission seeks comments on its policy of permitting selective discounting and how that policy affects the pipeline's captive customers, *i.e.*, those customers that do not receive discounts. In particular, the Commission is interested in exploring the effects of the policy of permitting a discount adjustment in a rate case for all selective discounts, including those given to meet gas-on-gas competition as well as on the specific questions set forth below:

(1) *Effect of the Current Policy on Captive Customers.* As explained above, the purpose of the Commission's policy is to allow pipelines to discount to meet competition so as to obtain greater throughput over which to spread fixed costs. The policy is based on the view that the increased throughput obtained through discounting will benefit captive customers and lower their rates in the next rate case. The Commission requests comments on the following issues related to how its current policy has worked in practice.

(a) Has the Commission's current discount policy helped captive customers by enabling pipelines to obtain increased throughput over which to spread fixed costs, or hurt captive customers by causing tariff rates to increase with no net increase in throughput?

(b) In several cases, the Commission has rejected pipelines' requests for discount adjustments given in connection with long-term firm contracts on the ground that the pipeline had not shown that competition required such discounts.[19] Have the discount adjustments approved in pipeline rate cases been based primarily on discounts given for interruptible and short-term firm transportation? Provide examples of any pipeline rate cases where discounts in long-term firm transportation contributed significantly to any allowed discount adjustment in the overall volumes used to design the pipeline's rates.

(c) The Commission has also rejected pipelines' requests for discount adjustments for discounts given to affiliates where the pipeline failed to show that the discount was given to meet competition. Provide examples of any pipeline rate cases where discounts given to affiliates contributed significantly to any allowed discount adjustment.

(d) Has the heavy burden that the Commission has placed on pipelines to justify discounts to affiliates been sufficient to assure that discounts to affiliates are in fact given to meet competition? The Standards of Conduct for Transmission Providers provide that a pipeline must post on its website any offer of discount and must include the name of the customer involved in the discount and whether that customer is

[16] 67 FERC ¶61,155 (1994).

[17] *Id.* at 61,458.

[18] *Mississippi Valley Gas Co.* v. *FERC*, 68 F.3d 503 (D.C. Cir. 1995).

[19] Iroquois Gas Transmission System, 84 FERC ¶61,086 at 61,476–61,478 (1998); Trunkline Gas Company, 90 FERC ¶61,017 at 61,092–61,095 (2000).

an affiliate of the pipeline; the posting must also include the rate offered, the maximum rate, the time period for which the discount would apply, the quantity of gas scheduled to be moved, the delivery points and any conditions or requirements applicable to the discount. 18 CFR 358.5(d) (2004). Have these requirements been sufficient to assure that discounts are offered in a non-discriminatory manner?

(e) IMGA has asserted that 75 percent of discounts are given to meet competition from other interstate pipelines. We request comment from IMGA and others as to the basis for this determination and whether this is a reliable estimate. Further, has the level of discounts given to meet gas-on-gas competition varied significantly from pipeline to pipeline? Has the practice of giving discounts to meet gas-on-gas competition been widespread through the industry or has it generally been limited to only a small portion of interstate pipelines?

(f) Please provide specific examples of rate cases where a significant portion of the discounts underlying the discount adjustment was given to meet gas-on-gas competition.

(g) Provide examples of rate cases where the Commission's current policy concerning selective discounts has helped captive customers and has resulted in lower rates for those customers.

(h) Pipelines are no longer required to file periodic rate cases and many pipelines have not filed a rate case for a number of years. How has the Commission's policy affected captive customers in the absence of a section 4 rate case filing?

(2) *Elimination of the Discount Adjustment for Discounts to Meet Gas-on-Gas Competition.* As discussed above, the issue of ''gas-on-gas'' competition has been raised in several Commission proceedings and it has been argued that the rationale behind the discount policy does not apply when discounts are given to demand inelastic customers to meet competition from other gas pipelines. The Commission requests comments on the following issues concerning the impact of a change in current Commission policy to eliminate the discount adjustment for gas-on-gas competition and how the Commission would implement and monitor this change in policy.

(a) What problems would there be in implementing a policy of not allowing a discount adjustment for gas-on-gas competition and in determining whether a shipper would buy transportation if a discount were not given? Would it be possible to distinguish between discounts to meet gas-on-gas competition and discounts given for other reasons, and if so how? As the Commission pointed out in the Southern case, discounts given to meet gas-on-gas competition are not readily distinguishable from discounts given to meet competition from alternative fuels. For example, discounts that on the surface appear to be given to meet gas-on-gas competition may also serve to reduce a customer's transportation costs sufficiently to minimize the incentives for many gas purchasers to make the necessary investment to use alternate fuel.

(b) Are customers to whom pipelines have given discounts to meet gas-on-gas competition sufficiently demand inelastic that they would have taken the same level of service without the discount? For example, if an electric generator were negotiating with two pipelines for a discount, it is not necessarily the case that the generator is demand inelastic and would buy transportation if neither pipeline granted it a discount. Given the demand elasticity of the electric market, the electric generator might not build the generator at all if the discount were not given and the potential additional gas and transportation volumes would be lost. If customers currently receiving discounts due to gas-on-gas competition are predominantly demand elastic, would eliminating the throughput adjustments for such discounts actually hurt the captive customers?

(c) How would elimination of a discount adjustment for discounts given to meet gas-on-gas competition affect the ability of pipelines with higher maximum rates to compete with pipelines with lower maximum rates, and would it penalize the captive customers on the higher rate pipelines by making it more difficult for those pipelines to obtain additional customers over which to spread their fixed costs?

(d) Competition between the pipeline's sale of its capacity and its firm shippers' capacity release may be viewed as gas-on-gas competition. How would the effect of competition from capacity release be factored into a determination of whether the discount adjustment should be permitted? Should the Commission permit a discount adjustment for discounts given in competition with capacity release, regardless of the approach it takes generally with respect to discounts given to meet gas-on-gas competition?

(e) As a result of capacity release, the value of transportation between two points is related to the commodity price differential between those two points, for example the difference in the price of gas in the production basin and at the city gate. This basis differential can be a limit on the rate the pipeline can charge. How would elimination of the discount adjustment for gas-on-gas competition affect the pipeline's revenues if they were discouraged from giving the discounts necessary to reduce their rates to the basis differential?

(f) To what extent is gas commodity market competition between different producing regions dependent on pipeline's discounting? One of the Commission's goals in Order No. 636 was to promote competition between different producing regions and to permit customers to access different producing regions. If the Commission prohibited an adjustment for discounts given to meet gas-on-gas competition, would this adversely affect the pipeline's ability to bring its rates down to the basis differential level? Would this have an adverse impact on producers, markets, and customers?

(g) As the Commission explained in the Southern decision discussed above, an inability to discount to meet competition from intrastate pipelines would lead to a loss of throughput by the interstate pipeline. Should interstate pipelines be permitted to have an adjustment for discounts given to meet competition from intrastate pipelines?

(h) Would a prohibition against discount adjustments for discounts given to meet gas-on-gas competition discourage pipeline expansions into areas to compete with existing service in that area?

(3) *Alternative Policy Choices.* The Commission is requesting comments on what alternative changes in the Commission's discount adjustment policy could be considered to minimize any adverse effects on captive customers.

(a) Should the Commission eliminate the presumption that discounts given to non-affiliates are given to meet competition and require the pipelines to justify all discounts and show that the discounts are not given simply to meet gas-on-gas competition? Should it eliminate the presumption only for long-term sales of pipeline capacity?

(b) Should the Commission adopt procedures in addition to those set forth in the Standards of Conduct for Transmission Providers, 18 CFR 358.5(d) (2004), to assure that any discounts given to affiliates are made available to non-affiliates in a non-discriminatory manner?

(c) Are the incentives for giving discounts to affiliates sufficiently different from the incentive to give discounts to non-affiliates that the

Commission should prohibit all affiliate discounts?

III. Procedure for Comments

16. The Commission invites interested persons to submit comments, and other information on the matters, issues and specific questions identified in this notice. Comments are due 60 days from the date of publication in the **Federal Register**. Comments must refer to Docket No. RM05–2–000, and must include the commentor's name, the organization they represent, if applicable, and their address. The Commission will consider all the comments in Docket No. RM05–2–000 and will terminate the proceeding in Docket No. RM97–7–000 because the issues included in Docket No. RM05–2–000 include all the issues raised in the Docket No. RM97–7–000 proceeding.

17. To facilitate the Commission's review of the comments, commentors are requested to provide an executive summary of their position. Commentors are requested to identify each specific question posed by the Notice of Inquiry that their discussion addresses and to use appropriate headings. Additional issues the commentors wish to raise should be identified separately. The commentors should double space their comments.

18. Comments may be filed on paper or electronically via the eFiling link on the Commission's Web site at *http://www.ferc.gov*. The Commission accepts most standard word processing formats and commentors may attach additional files with supporting information in certain other file formats. Commentors filing electronically do not need to make a paper filing. Commentors that are not able to file comments electronically must send an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street, NE., Washington, DC 20426.

19. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commentors are not required to serve copies of their comments on other commentors.

IV. Document Availability

20. 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 the Commission's home page (*http://www.ferc.gov*) and in the Commission'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.

21. From the Commission'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) in the docket number field.

22. User assistance is available for eLibrary and the Commission's Web site during normal business hours. For assistance, please contact the Commission's 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*).

By direction of the Commission. Commissioner Brownell concurring with a separate statement attached.

Linda Mitry,

Deputy Secretary.

Brownell, Commissioner, *concurring:* This NOI seeks comment on all potential issues that could be raised about the Commission's discounting program: (a) Whether discounting should be allowed; (b) Whether a discount adjustment should be allowed for discounts; (c) If discounting adjustments are allowed, what types of discounts warrant a discount adjustment; (d) The adequacy of the posting and reporting requirements; and (e) What is the interplay between discounting and the absence of a section 4 rate case filing requirement. I am concerned that we are again creating market uncertainty with the specter of regulatory intervention, on a generic basis, in a discounting program that works well, promotes competition, provides regulatory safeguards and ultimately benefits gas consumers.

The impetus for this NOI is the Illinois Municipal Gas Agency's (IMGA) petition requesting that the Commission develop a rule of general applicability that a pipeline's maximum rates can not reflect a discount adjustment for discounts given for gas-on-gas competition with other jurisdictional pipelines. IMGA does not challenge discounting for alternative fuel competition; discounts to compete with intrastate pipelines; the posting and reporting requirements; or the relevancy of the lack of a section 4 rate case filing. IMGA deserves an answer, but given the legal precedent, actual experience and our regulatory actions over nearly twenty years, I would have hoped that we could have limited our inquiry to the specific issue raised by IMGA.

In *Associated Gas Distributors* v. *FERC (AGD I),* [20] the court upheld the regulations permitting selective discounting and indicated that a discount adjustment in setting maximum rates would be appropriate to prevent a pipeline from underrecovering its costs. However, in order to obtain a discount adjustment, the pipeline must file a rate case and must show that the discount was necessary to meet competition. The issue of adjusting rate design volumes to account for discounts has been litigated in a number of cases. Based on the particular facts of the case, the Commission has both allowed and disallowed discount adjustments. I see nothing broken in this general process. Moreover, even with regard to the specific issues of discounting adjustments for gas-on-gas competition, while I am open to seeing the comments we receive, I also recognize that the Commission has already opined on this issue. In *Southern Natural Gas Co.,* [21] the Commission addressed the issue of a discount adjustment for gas-on-gas competition. The Commission stated, ''in light of the dynamic nature of the natural gas market, the Commission believes any effort to prohibit interstate gas pipelines from discounting to meet gas-on-gas competition would inevitably result in a loss of throughput to the detriment of all their customers.'' [22] The Commission explained that a pipeline faces competition from intrastate pipelines, so all gas-on-gas competition could not be prohibited. Moreover, the Commission stated that the distinction between gas-on-gas discounts and discounts for alternative fuel competition is not so simplistic. For example, the Commission noted that a gas-on-gas discount could reduce a customer's transportation costs enough that it is uneconomic to invest in alternative fuel capability.

Why are the Commission's findings in *Southern Natural Gas Company* not still applicable? I can also see other situations where the purpose of the discount is not readily apparent. For example, how should one categorize a discount to a generator negotiating to locate a generating plant on one of two pipelines, who is unwilling to take service on either pipeline unless it receives a discount rate? Or discounts to a new gas customer with the choice between two pipelines? I am also concerned that gas-on-gas discounting is a necessary by-product of our capacity release program. How do you have a robust secondary market with competition between the pipeline services and released capacity without gas-to-gas discounts? I hope that when commenters respond to the NOI, they will consider these questions as well.

Finally, the expansive nature of the NOI seems to me to be a search for a problem. I would contrast our action here with our inaction in the Policy Statement on Electric Creditworthiness that we also issue today. As I state in my dissent in that proceeding, we are faced with a very real problem of lack of transparency and potential undue discrimination. Yet, the best we can do is issue a guidance order that requires little if anything to remedy the problem.

[20] 824 F.2d 981, 1010–1012 (D.C. Cir. 1987).

[21] 67 FERC ¶61,155 (1994).

[22] 67 FERC at 61,458.

For these reasons, I respectfully concur.

Nora Mead Brownell,

Commissioner.

[FR Doc. 04–26535 Filed 12–1–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 165

[Docket No. 2004N–0416]

Beverages: Bottled Water

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend its bottled water quality standard regulations by revising the existing allowable level for the contaminant arsenic. As a consequence, bottled water manufacturers would be required to monitor their finished bottled water products for arsenic at least once each year under the current good manufacturing practice (CGMP) regulations for bottled water. Bottled water manufacturers would also be required to monitor their source water for arsenic as often as necessary, but at least once every year unless they meet the criteria for the source water monitoring exemptions under the CGMP regulations. This proposed rule, if finalized, will ensure that the minimum quality of bottled water, as affected by arsenic, remains comparable with the quality of public drinking water that meets the Environmental Protection Agency's (EPA's) standards.

DATES: Submit written or electronic comments by January 31, 2005.

ADDRESSES: You may submit comments, identified by Docket No. 2004N–0416, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Agency Web site: *http://www.fda.gov/dockets/ecomments*. Follow the instructions for submitting comments on the agency Web site.
- E-mail: *fdadockets@oc.fda.gov*. Include Docket No. 2004N–0416 in the subject line of your e-mail message.
- FAX: 301–827–6870.
- Mail/Hand delivery/Courier [For paper, disk, or CD-ROM submissions]: Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

Instructions: All submissions received must include the agency name and Docket No. for this rulemaking. All comments received will be posted without change to *http://www.fda.gov/ohrms/dockets/ohrms/dockets/default.htm*, including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see section VIII in the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.fda.gov/ohrms/default.htm* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Jennifer A. Burnham, Center for Food Safety and Applied Nutrition (HFS–306), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–2030.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of January 22, 2001 (66 FR 6976), EPA published the arsenic rule to address potential public heath effects from the presence of arsenic in drinking water. This rulemaking finalized a proposed rule that EPA published in the **Federal Register** of June 22, 2000 (65 FR 38888).

Arsenic is an element that occurs naturally in rocks, soil, water, air, plants, and animals. In addition to the numerous natural sources of arsenic, human activities may also introduce arsenic into food and drinking water. Major present and past sources of arsenic include wood preservatives, agricultural uses, industrial uses, mining and smelting. The human impact on arsenic levels in water depends on the level of human activity, the distance from the pollution sources, and the dispersion and fate of the arsenic that is released. Because arsenic is naturally occurring, the entire population is exposed to low levels of arsenic through food, water, air, and contact with soil. Studies have shown long-term exposure to inorganic arsenic in drinking water may result in increased risk of cancer (e.g., skin, bladder, lung, kidney, liver, prostate, and nasal passage) and is associated with noncancer effects, such as alterations in gastrointestinal, cardiovascular, hematological (e.g., anemia), pulmonary, neurological, immunological, and reproductive/developmental function (66 FR 6976 at 7001 through 7003).

National primary drinking water regulations (NPDWRs) are issued by EPA to protect the public health from the adverse effects of contaminants in drinking water. NPDWRs specify maximum contaminant levels (MCLs) or treatment techniques for drinking water contaminants. In addition, at the same time that it issues NPDWRs, EPA publishes maximum contaminant level goals (MCLGs), which are not regulatory requirements but rather are nonenforceable health goals that are based solely on considerations of protecting the public from adverse health effects of drinking water contamination.

In the arsenic rule, EPA issued an NPDWR containing an MCL of 0.01 milligram per liter (mg/L)[1] or 10 parts per billion (ppb) and an MCLG of zero for arsenic. EPA based the MCL on total arsenic, because drinking water contains almost entirely inorganic forms, and the analytical methods for total arsenic are readily available and capable of being performed by certified laboratories at an affordable cost. EPA's effective date of March 23, 2001, for this rule was temporarily delayed for 60 days to a new effective date of May 22, 2001, in accordance with the memorandum of January 20, 2001, from the Assistant to the President and Chief of Staff, entitled ''Regulatory Review Plan'' (66 FR 7702, January 24, 2001). On May 22, 2001, EPA announced that it would further delay the effective date for the rule until February 22, 2002, to allow time to complete a reassessment of the information on which the revised arsenic standard is based. On February 22, 2002, the arsenic MCL of 0.01 mg/L in public drinking water rule became effective and water systems must comply with the new standard for arsenic in public drinking water by January 23, 2006.

Under section 410(b)(1) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 349(b)(1)), not later than 180 days before the effective date of an NPDWR issued by EPA for a contaminant under section 1412 of the Safe Drinking Water Act (SDWA) (42 U.S.C. 300g-1), FDA is required to issue a standard of quality regulation for that contaminant in bottled water or make a finding that such a regulation is not necessary to protect the public health because the contaminant is contained in water in public water systems but not in

[1] As discussed in section II of this document, on March 25, 2003 (68 FR 14502 at 14503), EPA revised the rule text to express the MCL as 0.010 mg/L.

water used for bottled water. The effective date for any such standard of quality regulation is to be the same as the effective date of the NPDWR. In addition, section 410(b)(2) of the act provides that a quality standard regulation issued by FDA shall include monitoring requirements that the agency determines to be appropriate for bottled water. Further, section 410(b)(3) of the act requires a quality standard for a contaminant in bottled water to be no less stringent than EPA's MCL and no less protective of the public health than EPA's treatment technique requirements for the same contaminant.

II. EPA Standards

The SDWA, as amended in 1996, requires EPA to publish an NPDWR that specifies either an MCL or a treatment technique requirement for contaminants that may ''have an adverse effect on the health of persons,'' are ''known to occur or [have] a substantial likelihood [of occurring] in public water systems with a frequency and at levels of public health concern,'' and for which ''regulation * * * presents a meaningful opportunity for health risk reduction for persons served by public water systems'' (SDWA section 1412(b)(1)(A)). The SDWA (section 300g-1(a)(3)) also requires that EPA issue MCLGs at the same time it issues NPDWRs. MCLGs are nonenforceable health goals that are based solely on considerations of protecting the public from the adverse health effects of contaminants, and not on other considerations, such as potential costs of regulating contaminants and potential technical difficulties of achieving the health goals (59 FR 38668 at 38671). In general, EPA sets MCLs, the enforceable contaminant levels, as close as feasible to the nonenforceable MCLGs.

In its arsenic rule (65 FR 38888), EPA proposed an MCL of 0.005 mg/L and requested comment on the alternate MCLs of 0.003 mg/L, 0.010 mg/L, and 0.020 mg/L for arsenic in drinking water. However, after conducting reanalysis of costs, benefits, and health risk reduction, and factoring in the uncertainties in these analyses and the degree and nature of risk, EPA established an MCL of 0.01 mg/L in the arsenic rule. EPA believed the final MCL of 0.01 mg/L represents the level that best maximizes health risk reduction benefits at a cost that is justified by the benefits and that other regulatory options considered in the proposal did not satisfy the statutory requirements of section 1412(b)(6), Additional Health Risk Reduction and Cost Considerations, of SDWA (66 FR 6976 at 7023).

On March 25, 2003 (68 FR 14502 at 14503), EPA revised the rule text in its January 2001 final rule that established the 10 ppb arsenic drinking water standard to express the standard as 0.010 mg/L, in order to clarify the implementation of the original rule. EPA made this change in response to a concern raised by a number of States and other stakeholders that State laws adopting the Federal arsenic standard as 0.01 mg/L might allow rounding of monitoring results above 0.01 mg/L so that the effective standard (in consideration of rounding of results) would be 0.014 mg/L (or 14 ppb), not 0.010 mg/L (10 ppb).

III. FDA Standards

A. The Agency's Approach to the Bottled Water Quality Standards Established Under Section 410 of the Act

Under section 401 of the act (21 U.S.C. 341), the agency may issue a regulation establishing a standard of quality for a food under its common or usual name, when in the judgment of the Secretary of Health and Human Services such action will promote honesty and fair dealing in the interest of consumers. On November 26, 1973 (38 FR 32558), FDA established a quality standard for bottled water that is set forth in § 165.110 (21 CFR 165.110).

Producers of bottled water are responsible for assuring, through appropriate manufacturing techniques and sufficient quality control procedures, that all bottled water products introduced or delivered for introduction into interstate commerce comply with the quality standard (§ 165.110(b)). Bottled water that is of a quality below the prescribed standard is required by § 165.110(c) to be labeled with a statement of substandard quality. Moreover, any bottled water containing a substance at a level that causes the food to be adulterated under section 402(a)(1) of the act (21 U.S.C. 342(a)(1)) is subject to regulatory action, even if the bottled water bears a label statement of substandard quality.

FDA has traditionally fulfilled its obligation under section 410 of the act to respond to EPA's issuance of NPDWRs by amending the quality standard regulations for bottled water introduced or delivered for introduction into interstate commerce to maintain compatibility with EPA's drinking water regulations. In general, FDA believes that, with few exceptions, EPA standards for contaminants in drinking water are appropriate as allowable levels for contaminants in the quality standard for bottled water when bottled water may be expected to contain the same contaminants.

FDA generally has not duplicated the efforts of EPA in judging the adequacy of MCLs or treatment techniques in NPDWRs for contaminants when determining their applicability to bottled water in order to protect the public health. FDA believes that, in general, it would be redundant for FDA to reevaluate the drinking water standards prescribed by EPA. Further, because bottled water is increasingly used in some households as a replacement for tap water, consumption patterns considered by EPA for tap water can be used as an estimate for the maximum expected consumption of bottled water by some individuals. Therefore, FDA's view is that generally in cases where bottled water is subject to the same contaminants as tap water, FDA should establish standard of quality levels in bottled water at the same levels that EPA establishes as MCLs for such contaminants in tap water.

B. Quality Standard for Arsenic

The quality standard for bottled water, as set forth in § 165.110(b)(4)(i)(A), prescribes that bottled water shall not contain arsenic in excess of 0.05 mg/L.

FDA has evaluated the MCL for arsenic established by EPA for drinking water. FDA has tentatively concluded that EPA's MCL for arsenic, as a standard of quality level for bottled water, is adequate for the protection of public health. Certain waters used for bottled water may be expected to contain arsenic; thus, FDA believes that adopting EPA's MCL for arsenic will ensure that the quality of bottled water is equivalent to the quality of public drinking water that meets EPA standards.

Therefore, FDA is proposing to establish in § 165.110(b)(4)(iii)(A), which includes allowable levels for inorganic substances, an allowable level for arsenic at 0.010 mg/L and remove the existing entry for arsenic in § 165.110(b)(4)(i)(A).

C. Analytical Methods for Arsenic

In the arsenic rule, EPA listed the analytical methods that it had approved for use by public water systems to determine compliance with the arsenic MCLs (66 FR 6976 at 6988 to 6989). Therefore, FDA is proposing in new § 165.110(b)(4)(iii)(E)(*14*) to incorporate by reference EPA approved analytical methods (66 FR 6976 at 6988) for determining compliance with the quality standard for arsenic in bottled water. FDA believes that these methods

are sufficient to use for determining the level of arsenic in bottled water.

D. Monitoring and Recordkeeping Provisions of CGMP Regulations for Bottled Water

FDA has established CGMP regulations for bottled water in part 129 (21 CFR part 129). Under § 129.35(a)(3)(i), source water must be analyzed by the plant as often as necessary, but at a minimum frequency of once each year for chemical contaminants. Bottlers would be required to test their source water as often as necessary, but at least once each year for arsenic, unless the bottlers meet the provisions in § 129.35(a)(4) for source water monitoring exemptions. Further, to ensure that a plant's production complies with applicable standards, § 129.80(g)(2) requires chemical analysis by the plant, at least annually, of a representative sample from a batch or segment of a continuous production run for each type of bottled water produced during a day's production. Under § 129.80(h), records of analytical test results for contaminants shall be maintained at the plant for not less than two years and shall be available for official review at reasonable times. Therefore, once this rule becomes effective, bottlers would be required to test their finished bottled water products at least once a year for arsenic and maintain a record of the arsenic test results for at least two years. In addition, bottled water must comply with the allowable levels for arsenic in the quality standard for bottled water (§ 165.110(b)(4)(iii)(A)) unless the label bears a statement of substandard quality under § 165.110(c). As stated in § 165.110(d), bottled water is deemed adulterated if it contains a substance at a level considered injurious to health under section 402(a)(1) of the act.

IV. Environmental Impact

The agency has determined under 21 CFR 25.32(a) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

V. Economic Impact

A. Regulatory Impact Analysis

FDA has examined the economic implications of this proposed rule as required by Executive Order 12866. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health, public safety, and other advantages; distributive impacts; and equity). Executive Order 12866 classifies a rule as significant if it meets any one of a number of specified conditions, including: Having an annual effect on the economy of $100 million, adversely affecting a sector of the economy in a material way, adversely affecting competition, or adversely affecting jobs. A regulation is also considered a significant regulatory action if it raises novel legal or policy issues. Office of Management and Budget (OMB) has determined that this proposed rule is a significant regulatory action as defined by Executive Order 12866.

1. Need for Regulation

In the **Federal Register** of January 22, 2001 (66 FR 6976), EPA published a final rule on arsenic in drinking water. This rulemaking finalized a proposed rule that EPA published in the **Federal Register** of June 22, 2000 (65 FR 38888). Under section 410 of the act, when EPA issues a regulation establishing an MCL for a particular contaminant in drinking water, we are required to issue a standard of quality regulation governing that contaminant in bottled water or make a finding that such a regulation is unnecessary to protect the public health. Our quality standard must also include appropriate monitoring requirements. If we do not issue a quality standard for arsenic in bottled water by 180 days before the effective date of EPA's NPDWR or make a finding that such a regulation is not necessary to protect the public health, then EPA's regulation becomes applicable to bottled water as well as drinking water.

We are proposing to amend the quality standard for arsenic in bottled water rather than taking no action to allow EPA's NPDWR for arsenic to become applicable to bottled water because the costs and benefits of requiring any given maximum arsenic level may be different for bottled water than for drinking water. For detailed information on FDA's objectives, legal basis, and compliance requirements for this rule, see section III in the **SUPPLEMENTARY INFORMATION** of this document.

2. Regulatory Options

We considered five regulatory options in this analysis:

- Reestablish a quality standard for arsenic in bottled water that maintains the current allowable level of 0.05 mg/L.
- Take no action. Under this option, EPA's regulation on arsenic in drinking water would become applicable to bottled water.
- Establish a quality standard for arsenic in bottled water that adopts EPA's MCL for arsenic in drinking water of 0.010 mg/L. Under this option, bottled water producers would be subject to CGMP monitoring requirements in §§ 129.35 and 129.80.
- Establish a quality standard for arsenic in bottled water that sets the allowable level of arsenic at 0.02 mg/L.
- Establish a quality standard for arsenic in bottled water that sets the allowable level of arsenic at 0.005 mg/L.

We request comments on any other reasonable regulatory option that we may have overlooked.

Data and Assumptions Applicable to all Options

(1) The Dun's Market Identifiers database lists 378 establishments under North American Industry Classification System (NAICS) code 312112 Bottled Water Manufacturing. This corresponds to 318 firms after restricting establishments to headquarters, ultimate locations, or single establishments (Ref. 1).

(2) We assume that the regulatory options we consider will not affect the organoleptic qualities of bottled water and thus will not reduce the value that consumers place on bottled water. The cost of the regulation will be limited to the direct cost of abatement, monitoring, and other compliance activity.

(3) We request comments on our estimate of the benefits and costs generated by the various regulatory options and on the assumptions and data on which we have based our estimates.

Option One—Reestablish a quality standard for arsenic in bottled water that maintains the current allowable level of 0.05 mg/L. We consider this option to be the baseline for this analysis. Therefore, by convention, we define the costs and benefits of this option to be zero. Usually, we define the baseline to be the option of taking no action because it implies the continuation of the current regulatory environment. However, in this case, taking no action implies a change in the regulatory environment because it would mean that EPA's drinking water regulations would be applied to bottled water.

Option Two—Take no action.

Benefits of Option Two

If we take no action, then EPA's regulations governing arsenic in drinking water would become applicable to bottled water. EPA

characterized the benefit of their regulation revising the MCL for arsenic in drinking water in terms of a reduction in adverse health effects and a reduction in the need for consumers to take relatively costly steps, such as purchasing bottled water, to reduce their exposure to arsenic. According to EPA's analysis, epidemiological studies have found that arsenic ingestion is associated with an increased risk of cancer and a variety of other adverse health effects. The relevant forms of cancer include skin, liver, bladder, kidney, and lung. The other adverse health effects include cardiovascular, pulmonary, immunological, neurological, endocrine, reproductive, and developmental effects (Ref. 2). However, EPA was only able to find sufficient information to quantify the benefits associated with reductions in the incidence of bladder and lung cancer. We have also limited our quantified estimate of benefits to these two types of cancer because we have also not found any information that would allow us to quantify the benefits from reducing other types of adverse health effects.

Cases of Cancer Avoided

Exposure. EPA estimated the mean daily average per capita consumption of community drinking water in the United States to be 1 L/person/day and the mean daily average per capita consumption of total water, which includes bottled water, to be 1.2 L/person/day. Therefore, EPA found that bottled water represents approximately 17 percent of the mean daily average per capita consumption of water from all sources (Ref. 3).

Risk and valuation of risk. EPA estimated the number of bladder and lung cancer cases that they will eliminate by reducing the MCL for arsenic in drinking water from 0.05 mg/L to 0.010 mg/L. The lower bound of their estimated range of cases did not include exposure to arsenic in bottled water, but the upper bound did include exposure to arsenic in bottled water. We extrapolated the number of cancer cases that would be eliminated if EPA's regulations were applied to bottled water using EPA's estimates for total water and bottled water consumption. We multiplied EPA's upper bound estimate by 17 percent ([0.2 L/person/day bottled water consumption]/[1.2 L/person/day total water consumption]), and we multiplied their lower bound estimate by 20 percent ([0.2 L/person/day bottled water consumption])/[(1.2 L/person/day total water consumption - 0.2 L/person/day bottled water]). Under this approach, we estimate that applying EPA's arsenic regulations to bottled water would eliminate between 4.3 and 5.1 fatal cases of cancer per year and between 3.2 and 4.4 nonfatal cases of cancer per year. We used a range of $5 to $6.5 million for the value of a statistical life (VSL) to value this reduction in health risks. This range includes the VSL of $6.1 million that EPA used in their analysis. We used EPA's estimate of $607,162 for the value of avoiding a nonfatal case of bladder or lung cancer. Applying these values to our estimated range of eliminated adverse events, we estimate that the benefit of applying EPA regulations to bottled water would be $23 to $36 million per year.

Sensitivity analysis. EPA considered a number of other factors in a sensitivity analysis. These factors included various potential latency periods for the relevant types of cancer (5, 10, or 20 years), the growth of income over the latency period using a range of income elasticity of demand for the willingness to pay to reduce the risk of death of between 0.22 and 1.0, discounting over the latency period (3 and 7 percent), and corrections for differences in voluntariness and controllability of the risks from arsenic in water and the risks that formed the basis of their VSL. The income elasticity of demand for willingness to pay to reduce risk of death is the percent increase in willingness to pay to reduce risk of death for every 1 percent change in income. Accounting for these issues results in an adjusted VSL of $1.72 to $6.25 million (Ref. 4). The low end of the range is based on a latency period of 20 years, adjusting for the growth of income over the latency period at an income elasticity of 0.22, discounting at 7 percent over the latency period, and adjusting for differences in voluntariness and controllability. The high end of the range is based on a latency period of 5 to 20 years (no effect on estimate) with only an adjustment for income growth over the latency period at an income elasticity of 1.0. The low end of the adjusted range of VSL falls outside the range of $5 to $6.5 million that we used for the VSL in the previous section. Expanding the range of estimated benefits to incorporate this adjusted lower bound results in a range of estimated benefits of $9 to $36 million per year.

Costs of Option Two

Abatement. In order to estimate abatement costs, we must first estimate the number of bottled water establishments producing water having arsenic levels over EPA's revised MCL of 0.010 mg/L. EPA estimated that 5.3 percent of community water systems using ground water sources produce water with arsenic levels higher than 0.010 mg/L (Ref. 5). Most bottled water establishments obtain their water from either a community water system or a ground water system (66 FR 16858 at 16863; March 28, 2001). Bottled water establishments using community water systems would be using water that falls under EPA's drinking water regulations irrespective of our findings on bottled water. If the water systems were not in compliance with EPA's regulations, then the bottled water establishments might need to take steps to bring the water into compliance with EPA regulations. However, in the long run, abatement costs should devolve onto the community water system. We do not know how many bottled water establishments using community water systems would need to take short-term abatement action on their own behalf. About 75 percent of bottled water establishments use water that does not come from a community water system (66 FR at 16863, March 28, 2001). The cost for bottled water firms using community water systems will probably be lower than the costs for bottled water firms using ground water sources because community water systems generally already will be in compliance with EPA's drinking water regulations. However, to simplify the analysis, we have based our estimated costs on the assumption that all bottled water establishments use ground water sources. Based on EPA's estimate of arsenic levels in ground water sources used by community water systems, we assume that 5.3 percent of bottled water establishments currently use source water with arsenic levels higher than 0.010 mg/L. Based on these assumptions and estimates, we estimate that 20 bottled water establishments would face additional arsenic abatement costs if EPA's regulations revising the MCL for arsenic to 0.010 mg/L were applied to bottled water.

EPA's analysis estimated the annual costs associated with thirteen different methods of reducing arsenic to a level of 0.010 mg/L based on the initial arsenic concentration and the size of the water system involved, defined in terms of the number of people served by that system (Ref. 6). We have insufficient information to determine how many of the affected bottled water establishments would adopt each of the potential treatment methods. If any establishments could choose any treatment method, then we would base our cost estimate on the least costly treatment method. However, there may be technical reasons why a given establishment cannot adopt certain

treatment methods or cannot adopt them at the costs estimated by EPA. Therefore, we have used the average cost across all treatment methods. EPA reported cost results for two different initial arsenic concentrations: 0.011 mg/L and 0.050 mg/L. We do not know the distribution of initial concentrations of arsenic in bottled water establishments. We have used these two initial concentrations to estimate a range of treatment costs. We present our cost estimates in table 1 of this document. The annual costs are based on annualizing one time costs using an interest rate of 7 percent over 20 years and adding the annual costs. The costs are reported in 1999 dollars. Rounding to the nearest million, we estimate abatement costs to be approximately $7 to $11 million per year.

TABLE 1.—ABATEMENT COSTS

Number of Establishments	Annual Cost Per Establishment	Total Annual Cost
20	$565,925	$11,337,739
20	$366,758	$7,347,620

Testing. In order to consider the incremental change resulting from EPA's testing requirements, we must consider current testing requirements. Our current regulations require bottled water establishments to analyze source water for arsenic as often as necessary to ensure compliance with the maximum allowable level of arsenic but at least once per year, unless the establishments meet the provisions in § 129.35(a)(4) for source water monitoring exemptions. The exemptions most relevant to arsenic testing allow establishments using community water systems to use the test results or compliance certifications from those systems in lieu of testing the source water themselves and allow firms that do not use public water systems as the source of their water to reduce the frequency of testing if they can document that such a reduction is consistent with a State-issued waiver under EPA regulations. As we discussed previously in this document, our cost estimates are based on the simplifying assumption that all bottled water establishments use ground water sources rather than community water systems. Therefore, we have not adjusted the estimated number of tests because of the exemption for establishments that use community water systems. We do not know how many bottled water establishments currently face reduced testing requirements because they are able to document that such a reduction is consistent with a State-issued waiver under EPA regulations. However, it is unlikely that all establishments qualify for such a waiver. Therefore, we assume that between 0 and 90 percent of bottled water establishments obtain waivers in any given year and will therefore not need to test source water for arsenic in that year. Finally, we assume that establishments that do not meet the exemption test for arsenic once per year. In addition to source water testing, we also require bottled water establishments to analyze at least once a year a batch or segment of a continuous production run for each type of bottled water produced during a day's production. We assume that each bottled water establishment produces only one type of bottled water. Based on these assumptions, we estimate that bottled water establishments collectively run 416 to 756 tests for arsenic per year.

EPA's drinking water regulations require ground water systems to test for arsenic once every 3 years. If a test shows a violation, then that system must test for arsenic once every 3 months until the State determines that the system is reliably and consistently below the MCL for arsenic or until the system installs treatment technology. However, States can only determine that a ground water system is reliably and consistently below the MCL if that system has taken at least two samples at 3-month intervals. We do not know how many bottled water establishments might fail a test and need to take additional tests, nor do we know how many additional tests beyond the mandatory two such tests States would require before allowing such establishments to resume testing once every 3 years. We estimated above that 5.3 percent of firms would need to take abatement action to reduce arsenic levels to 0.010 mg/L. However, we expect that most bottled water establishments in any given year would pass the required tests. Therefore, we assume that between 0 and 10 percent of establishments that do not have waivers will be testing on a 3-month basis during a given year. In addition, under EPA's regulations, bottled water establishments would be able to apply for a 9-year waiver from the testing requirements, which the States may grant if the establishment demonstrates adequate source water protection by completing a vulnerability assessment and also demonstrates that three previous samples were below the maximum contaminant level. We do not know how many bottled water establishments will request waivers and how many of those waivers States will grant. However, it is unlikely that all establishments would qualify for such a waiver. Therefore, we assume that between 0 and 90 percent of facilities will obtain a waiver and will therefore not need to test for arsenic in a given year. The remaining facilities that do not have waivers will be testing on a 3-year basis. Based on these assumptions, we estimate that bottled water establishments would collectively run approximately 5 to 101 tests for arsenic per year under EPA's regulation. Therefore, we estimate that adopting EPA's regulations would result in the elimination of between 163 and 745 tests per year.

Finally, EPA regulations require that ground water systems must begin testing by the end of 2007. Therefore, if EPA regulations were to become effective for bottled water at the end of 2004, then bottled water establishment would have a 3-year period during which they would not be required to test for arsenic by either us or EPA.

For community water systems, EPA assumed that collecting a sample and reporting a sample would each require 1 hour of the system operator's time. EPA estimated the hourly rate of the system operator to be approximately $15 for systems serving less than 3,000 customers. EPA also assumed that all systems are already equipped to collect samples, so that no system would need to install taps, repipe wells, or take other actions to make sampling possible. Finally, EPA assumed that systems would utilize one of two laboratory methods: (1) Stabilized temperature platform graphite furnace atomic absorption (STP–GFAA) or (2) graphite furnace atomic absorption (GFAA) (Ref. 7). They estimated that both techniques cost $40 per sample. Therefore, they found the cost per sample to be approximately $70. We assume that

bottled water establishments would face similar monitoring costs.

Based on the difference in the current testing requirements under our regulations and EPA's drinking water regulations, we estimate that if EPA's regulations on arsenic in drinking water became applicable to bottled water it would reduce arsenic testing costs by $30,000 to $53,000 per year for the first 3 years and by $11,000 to $52,000 for every year thereafter. These costs reductions round to $0 when rounded to the nearest million.

State monitoring costs. EPA also discussed monitoring costs accruing to States for recording test sample results, issuing violation letters, and reviewing waiver applications. EPA estimated that for community water systems serving less than 10,000 customers, States would require 1 hour to record a testing result, 4 hours to issue a violation letter, and 8 hours to review a waiver application. In all cases, EPA estimated the relevant wage rate to be $41.47 per hour. We estimated the enforcement costs if States were to enforce EPA's arsenic regulations for bottled water establishments based on EPA's costs estimates for community water systems and our estimate of the number of tests, violative tests, and waiver applications that would be generated by these establishments, which we discussed in the preceding section. However, for the number of waiver applications, we assumed that only one-ninth of the establishments that we assumed would be operating under an approved 9-year waiver in any given year actually applied for that waiver in that year. Under these assumptions, we assume State enforcement costs would be approximately $500 to $29,000 per year. This cost rounds to $0 when rounded to the nearest million.

Administrative costs. EPA also estimated administrative costs relating to establishing and maintaining the programs necessary to comply with the revised arsenic standard and the new monitoring requirements. For community water systems having fewer than 10,000 customers, EPA estimated that water system employees would spend 8 hours on reading and understanding the rule and 16 hours on training employees to comply with the rule. Again, EPA estimated an average hourly wage of $15.03 for the employees of such systems. Applying these cost estimates to 378 bottled water establishments results in an estimated one-time administrative cost of approximately $137,000. This cost rounds to $0 million.

EPA also estimated one-time administrative costs for State activity such as developing and adopting State regulations that meet the new Federal arsenic requirements and training community water systems in the new regulations. EPA estimated these costs on the basis of full-time equivalents (FTEs), which they assumed to cost $64,480, including overhead and fringe benefits. EPA estimated that States would require 0.2 FTEs for regulation adoption and program development, 0.5 FTEs for system training and technical assistance for both community water systems and ''non-transient non-community water systems,'' and 0.12 FTEs for system staff training. We have assumed that States would face comparable costs in developing a system to apply EPA's regulations to bottled water establishments. However, we have adjusted the total FTEs to include systems training and technical assistance for just one category of entities, which in this case is bottled water establishments. Under these assumptions, one-time State administrative costs would be approximately $4 million.

Public notification costs. EPA regulations require community water systems to prepare and distribute public notifications of water analyses. EPA did not analyze the costs of these requirements in their analysis of their final rule on arsenic in drinking water because they already require community water systems to provide these analyses. However, if EPA's regulations were to be applied to bottled water establishments, then bottled water establishments would also need to prepare and send out public notifications of water analyses. It is not clear how EPA would adapt these regulations to bottled water establishments because such establishments do not have a simple way to identify their customers for purposes of sending out public notifications. Therefore, we have not attempted to quantify this cost.

Total Costs and Benefits of Option Two

Based on the preceding analysis, we estimate that taking no action and allowing EPA's arsenic regulations to become applicable to bottled water would generate quantified benefits of $9 to $36 million per year, quantified costs of $11 to $15 million in the first year and $7 to $11 million in every year after the first year, plus any costs associated with public notification requirements.

Option Three—Establish a quality standard for arsenic in bottled water that adopts EPA's MCL for arsenic in drinking water of 0.010 mg/L.

If we establish a quality standard regulation for arsenic in bottled water that adopts EPA's revised MCL for arsenic in drinking water but maintains our testing requirements and enforcement mechanisms, then we would maintain the quantified benefits of $9 to $36 million per year and the abatement costs of $7 million to $11 million that we estimated for Option Two. In addition, this option would generate some additional testing costs for firms that fail to meet the level of 0.010 mg/L but that would have met the level of 0.05 mg/L. These additional testing costs would probably only take place during the initial transition period from 0.05 mg/L to 0.010 mg/L. Once firms adopt abatement procedures and establish the effectiveness of those procedures, then annual testing costs would probably be similar to current testing costs. We do not have sufficient information to estimate how many additional tests this option might generate. However, based on an estimated cost of $70 per sample that we discussed under Option Two, any additional testing costs would probably be small.

Option Four—Establish a quality standard for arsenic in bottled water that sets the allowable level of arsenic at 0.02 mg/L.

Benefits. Using the same approach that we used in Option Two, but applying EPA's benefits estimates for a revised MCL of 0.02 mg/L, we estimate that this option would eliminate between 1.9 and 2.0 fatal cases of cancer per year and between 1.5 and 1.7 nonfatal cases of cancer per year. This corresponds to a quantified benefit between $4 to $14 million per year under the expanded range of adjusted VSL estimates that we discussed in the sensitivity analysis section of Option Two.

Costs. EPA did not provide detailed cost estimates for an MCL of 0.02 mg/L; therefore, we cannot estimate costs using the same approach that we used in Option Two. However, EPA's estimate of the total abatement costs under this option was 36 percent of the estimated total abatement costs under an MCL of 0.010 mg/L (Ref. 8). If this relationship held for bottled water, then the abatement costs of this option would be $3 to $4 million per year. In addition, this option would generate some additional testing costs for firms that fail to meet the level of 0.02 mg/L but that would have met the level of 0.05 mg/L. These additional testing costs would probably only accrue during the initial transition period from 0.05 mg/L to 0.02 mg/L. Once firms adopt abatement procedures and establish the effectiveness of those procedures, then annual testing costs would probably be

similar to current testing costs. We do not have sufficient information to estimate how many additional tests this option might generate. However, any additional testing costs would probably be small.

Option Five—Establish a quality standard for arsenic in bottled water but that sets the allowable level of arsenic at 0.005 mg/L.

Benefits. Using the same approach that we used in Option Two, but applying EPA's benefits estimates for a revised MCL of 0.005 mg/L, we estimate that this option would eliminate between 5.8 and 9.1 fatal cases of cancer per year and between 4.4 and 7.9 nonfatal cases of cancer per year. This corresponds to a quantified benefit of $13 to $64 million per year under the expanded range of adjusted VSL estimates that we discussed in the sensitivity analysis section of Option Two.

Costs. EPA did not provide detailed cost estimates for an MCL of 0.005 mg/L; therefore, we cannot estimate costs using the same approach that we used in Option Two. However, EPA's estimate of the total abatement costs under this option was 233 percent of the estimated total abatement costs under an MCL of 0.010 mg/L (Ref. 8). If this relationship held for bottled water costs, then the abatement costs of this option would be $17 to $26 million. In addition, this option would generate additional testing costs for firms that fail to meet the level of 0.005 mg/L but that would have met the level of 0.05 mg/L. These additional testing costs would probably only accrue during the initial transition period from 0.05 mg/L to 0.005 mg/L. Once firms adopt abatement procedures and establish the effectiveness of those procedures, then annual testing costs would probably be similar to current testing costs. We do not have sufficient information to estimate how many additional tests this option might generate. However, any additional testing costs would probably be small.

Summary of Benefits and Costs for Regulatory Options

We present a summary of the estimated costs and benefits in table 2 of this document. Option 3 (adopting EPA's MCL) appears to generate higher net benefits than either maintaining the current allowable level of arsenic in bottled water of 0.05 mg/L or taking no action and allowing EPA's regulations to become applicable to bottled water. The estimated net benefits of adopting an allowable level of 0.010 mg/L overlaps with the estimated benefits of adopting an allowable level of 0.05 mg/L. The lower end of the range of potential net benefits is higher for 0.010 mg/L, but the higher end of the range is higher for 0.05 mg/L.

TABLE 2.—SUMMARY OF COSTS AND BENEFITS ($ MILLIONS)

Option	Cost	Benefit	Net Benefit
Option 1—Maintain 0.05 mg/L	Baseline	Baseline	Baseline
Option 2—Take no action	$11 to $15 in first year, $7 to $11 every year after first year, plus public notification costs	$9 to $36 plus unquantified benefits	-$6 to $25 minus notification costs plus unquantified benefits in first year, $4 to $33 minus notification costs plus unquantified benefits in subsequent years
Option 3—Adopt 0.010 mg/L	$7 to $11	$9 to $36 plus unquantified benefits	-$2 to $29 plus unquantified benefits
Option 4—Adopt 0.02 mg/L	$3 to $4	$4 to $14 plus unquantified benefits	$0 to $11 plus unquantified benefits
Option 5—Adopt 0.005 mg/L	$17 to $26	$13 to $64 plus unquantified benefits	-$13 to $47 plus unquantified benefits

B. Small Entity Analysis

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

We discussed the compliance costs that bottled water establishments would face as a result of proposing to amend the quality standard regulation for arsenic in bottled water in the Regulatory Impact Analysis section of this document. In this Small Entity Analysis section, we discuss in greater detail the impact of the proposed regulatory action on small entities.

The Small Business Administration's definition of a small business for NAICS code 312112 Bottled Water Manufacturing is an entity with 500 or fewer employees. Under this definition, 82 percent of the bottled water firms (260 of 318) identified in the Dun's Market Identifiers database are small firms (Ref. 1). Therefore, this rule would affect small bottled water manufacturers.

A trade magazine listed a preliminary estimate of total producer revenues for all U.S. bottled water manufacturers in 2003 of $8,277 million (Ref. 9). According to this magazine, the top five bottled water firms accounted for 69 percent of total wholesale dollar sales in 2003. This suggests that 31 percent of total revenue, or $2,566 million, accrues to firms other than the five largest firms. We do not know the portion of this revenue that accrues specifically to small firms. If the revenue of the 53 large firms other than the five largest firms were similar to the revenue of the 260 small firms, then each small firm would have annual revenue of $8.2 million. However, the revenue per firm of the large firms other than the five largest firms is probably greater than the revenue per firm of the small firms; so many small firms probably have annual revenue of less than $8.2 million. The 1997 economic census also has some information relevant to estimating the revenue of small firms. A Census report based on this data suggests that the value of shipments per establishment for all establishments with less than 500 employees ranged from approximately $0.6 million to $20.5 million in 1997

(Ref. 10). To calculate this range, we subtracted the total value of shipments of all the establishments in the size categories for which the Census report provided value of shipment information from the total value of shipments for firms of all sizes to obtain the value of shipments of the establishments in the size categories for which the Census report did not provide value of shipments information. We then divided the resulting value by the number of establishments in the size categories for which the Census report did not produce value of shipments information. The Census report provided information on value of shipments based only per establishment. We do not know the average number of establishments per small firm; however, most small firms probably consist of only one establishment. The Census report did not provide information on revenue by establishment size. However, value of shipments is a reasonable proxy for revenue. Therefore, the estimate of the value of shipments per small establishment is probably a reasonable estimate of the revenue per small firms.

We do not know the profit rates of small firms. According to one account, the median profit rate across all Fortune 500 firms in 2000 was approximately 5 percent (Ref. 11). If we assume a profit margin of between 1 percent and 10 percent, then each small firm would have annual profit of between approximately $0.01 million and $2.1 million.

We do not have sufficient information to estimate the proportion of industry compliance costs that would be borne by small firms. In the preceding regulatory impact analysis, we estimated that 20 establishments would need to undertake arsenic abatement action if we chose Option 3, and we estimated that each establishment would face compliance costs of approximately $0.4 million to $0.6 million, based on EPA's cost estimates for community water systems. These 20 establishments might belong to either large or small firms. Again, we assume that most small firms probably consist of only one establishment. Therefore, we estimate that 0 to 20 small firms would face compliance costs of approximately $0.4 million to $0.6 million per year. Thus, some small firms may face annual compliance costs that exceed estimated annual profits or that represent a considerable portion of estimated annual profits.

To investigate the potential significance of these impacts, we entered these costs into a model prepared for us under contract by ERG. [Model for Estimating the Impacts of Regulatory Costs on the Survival of Small Businesses and its Application to Four FDA-Regulated Industries. Final. July 12, 2002.] The model is designed to estimate the percentage of small firms that would go out of business (i.e., go from a positive cash flow to a negative cash flow) because of given compliance costs if those costs accrued to all small firms in a given industry. However, these results can also be interpreted as the probability that any given small firm that faces those compliance costs will go out of business. According to this model, an annual cost of $0.4 million would generate a 56 percent probability that a small firm with less than 20 employees that faced those costs would go out of business and a 10 percent probability that any firm with 20 to 499 employees that faced those costs would go out of business, if the distribution of cash flow across firms fits the normal distribution. Similarly, an annual cost of $0.6 million would generate a 67 percent probability that a small firm with less than 20 employees that faced those costs would go out of business and a 14 percent probability that any firm with 20 to 499 employees that faced those costs would go out of business, if cash flow across firms fits the normal distribution. Thus, the model suggests that these costs could have a significant impact on some firms under certain conditions. Therefore, in the absence of more detailed information on the distribution of revenues and costs and the profit margins of small firms, we find that this rule might have a significant economic impact on a substantial number of small entities. We request comments and information on the annual revenue and profit margins of small bottled water manufacturers and on the impact of this rule on those firms. We also request comments on our approach to estimating costs, which we discussed in the regulatory impact analysis under Option 2.

The primary regulatory option that would reduce the burden on small firms would be to allow them to produce bottled water with a higher allowable level of arsenic than we allow larger firms to produce. This would reduce yearly abatement costs, which represent most of the compliance costs of this rule. We could also reduce the number or frequency of tests that we require such firms to perform. However, that would have only a minor impact on estimated costs. In the preceding regulatory flexibility analysis, we considered the option of setting the allowable level of arsenic in bottled water to 0.02 mg/L rather than the proposed 0.01 mg/L. We estimated that this option would reduce total compliance costs to a range of $3 million to $4 million per year. However, we did not discuss the number of establishments that would face these costs. EPA estimated that 2.0 percent of community water systems using ground water sources produce water with arsenic levels higher than 0.02 mg/L. (Ref. 5) We assumed in the regulatory impact analysis that all bottled water firms used ground water systems. Under this assumption, 2.0 percent of bottled water establishments, or 8 establishments, currently use source water with arsenic levels higher than 0.02 mg/L. Therefore, we estimate that 0 to 8 small firms would face compliance costs of approximately $0.4 million to $0.5 million per year. These per firm costs remain significant in relation to estimated per firm profits. The reduction in the impact on small firms under this option occurs because fewer small firms would face these costs.

However, allowing small firms to produce bottled water with a higher level of arsenic than we allow larger firms to produce might also reduce benefits. If all 20 of the establishments that we estimated would need to take abatement action to meet an allowable arsenic level of 0.01 mg/L were small firms, then setting the allowable arsenic levels for small firms to 0.02 mg/L would reduce benefits by the full amount that we discussed in the regulatory impact analysis in the context of setting the allowable arsenic levels for all firms to 0.02 mg/L rather than 0.01 mg/L. Specifically, it would reduce estimated benefits from a range of $9 million to $36 million plus unquantified benefits to a range of $4 million to $14 million plus unquantified benefits. On the other hand, if none of the 20 establishments that we estimated would need to take abatement action to meet an allowable arsenic level of 0.01 mg/L were small firms, then setting the allowable arsenic levels for small firms to 0.02 mg/L would have no impact on benefits. In that case, small firms would also face no compliance costs. We request comments on any other reasonable alternative that would reduce the burden of this rule on small entities.

We have not been able to identify any Federal rules that duplicate, overlap or conflict with the proposed rule. We currently regulate arsenic levels in bottled water. If we were to take no action, EPA's NPDWR for arsenic would apply to bottled water.

C. Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 (Public Law 104–4), requiring cost-benefit and other analyses, in section 1531(a) defines a significant rule as ''a Federal mandate that may result in the expenditure by State, local, and tribal governments in the aggregate, or by the private sector, of $100 million (adjusted annually for inflation) in any 1 year.'' We have determined that this proposed rule does not constitute a significant rule under the Unfunded Mandates Reform Act.

VI. Paperwork Reduction Act

FDA tentatively concludes that this proposed rule contains no collections of information. Therefore, clearance by OMB under the Paperwork Reduction Act of 1995 is not required.

VII. Federalism

FDA has analyzed this proposed rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the proposed rule, if finalized as proposed, would have a preemptive effect on State law. Section 4(a) of the Executive order requires agencies to ''construe * * * a Federal Statute to preempt State law only where the statute contains an express preemption provision, or there is some other clear evidence that the Congress intended preemption of State law, or where the exercise of State authority conflicts with the exercise of Federal authority under the Federal statute.'' Section 403A(a)(1) of the act provides that ''no State or political subdivision of a State may directly or indirectly establish under any authority or continue in effect as to any food in interstate commerce—(1) any requirement for a food which is the subject of a standard of identity established under section 401 that is not identical to such standard of identity or that is not identical to the requirement of section 403(g) * * *.'' FDA has interpreted this provision to apply to standards of quality (21 CFR 100.1(c)(4)). Although this proposed rule, if finalized as proposed, will have preemptive effect in that it would preclude States from issuing requirements for arsenic levels in bottled water that are not identical to the allowable level for arsenic as set forth in this proposed rule, this preemptive effect is consistent with what Congress set forth in section 403A of the act.

Section 4(c) of the Executive order further requires that ''any regulatory preemption of State law shall be restricted to the minimum level necessary'' to achieve the regulatory objective. Under section 410 of the act, not later than 180 days before the effective date of an NPDWR issued by EPA for a contaminant under section 1412 of the SDWA (42 U.S.C. 300g-1), FDA is required to issue a standard of quality regulation for that contaminant in bottled water or make a finding that such a regulation is not necessary to protect the public health because the contaminant is contained in water in public water systems but not in water used for bottled water. Further, section 410(b)(3) of the act requires a quality standard for a contaminant in bottled water to be no less stringent than EPA's MCL and no less protective of the public health than EPA's treatment techniques required for the same contaminant. On January 22, 2001, EPA issued an NPDWR containing an MCL for arsenic (66 FR 6976). FDA has determined that the MCL for arsenic that EPA established for public drinking water is appropriate as a standard of quality for bottled water, and is issuing this proposed regulation consistent with section 410 of the act.

Further, section 4(e) of the Executive order provides that ''when an agency proposes to act through adjudication or rulemaking to preempt State law, the agency shall provide all affected State and local officials notice and an opportunity for appropriate participation in the proceedings.'' Given the statutory framework of section 410 of the act for bottled water, EPA's issuance of an MCL for arsenic in public drinking water provided notice of possible FDA action for a standard of quality for arsenic in bottled water. FDA did not receive any correspondence from State and local officials regarding an arsenic standard for bottled water subsequent to EPA's NPDWR on the MCL for arsenic. Moreover, FDA is not aware of any States that have requirements for arsenic in bottled water that would be affected by FDA's decision to establish a bottled water quality standard for arsenic that is consistent with EPA's standard for public drinking water. In addition, we are providing an opportunity for State and local officials to comment on FDA's standard of quality for arsenic in bottled water in the context of this rulemaking. For the reasons set forth previously in this document, the agency believes that it has complied with all of the applicable requirements under the Executive order.

In conclusion, FDA has determined that the preemptive effects of the final rule are consistent with Executive Order 13132.

VIII. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comment, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

IX. Effective Date of the Related Final Rule

The agency intends to make any final rule based on this proposal effective January 23, 2006. The agency will publish a confirmation document for a final rule in the **Federal Register** no later than 180 days before the effective date. The agency is providing 180 days before the effective date to permit affected firms adequate time to take appropriate steps to bring their product into compliance with the standard imposed by the new rule.

X. References

The following references are on display in the Division of Dockets Management (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Puro, E., Memo to the Record, June 22, 2004.

2. Arsenic in Drinking Water Rule Economic Analysis, Abt Associates Inc. for U.S. Environmental Protection Agency, EPA 815–R–00–026, pp. 5–7, December 2000. Available on the internet on November 15, 2004, at *http://www.epa.gov/safewater/ars/econ_analysis.pdf*.

3. Ibid. pp. 5–9.

4. Ibid. Exhibit 5–12, pp. 5–30.

5. Ibid. Exhibit 4–10, pp. 4–12.

6. Ibid, pp. 6–1 to 6–38.

7. Ibid. pp. 6–14.

8. Ibid. Exhibit 6–10, pp. 6–28.

9. Rodwan, J. G., ''Solid Gains Put Bottled Water in No. 2 Spot,'' *Bottled Water Reporter*, p. 17, April/May 2004.

10. Bottled Water Manufacturing, 1997 Economic Census Manufacturing Industry Series, EC97M–3121B, 1997, U.S. Census Bureau, U.S. Department of Commerce, table 4, p. 9.

11. Drug industry most profitable, survey. CNBC and the Wall Street Journal-Businesses, November 30, 2001.

List of Subjects in 21 CFR Part 165

Beverages, Bottled water, Food grades and standards, Incorporation by reference.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under

authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 165 be amended as follows:

PART 165—BEVERAGES

1. The authority citation for 21 CFR part 165 continues to read as follows:

Authority: 21 U.S.C. 321, 341, 343, 343–1, 348, 349, 371, 379e.

2. Section 165.110 is amended by removing the entry for ''Arsenic'' in the table in paragraph (b)(4)(i)(A), by revising paragraph (b)(4)(iii)(A) and the introductory text of paragraph (b)(4)(iii)(E), and by adding paragraph (b)(4)(iii)(E)(*14*) to read as follows:

§ 165.110 Bottled water.

* * * * *

(b) * * *

(4) * * *

(iii) * * *

(A) The allowable levels for inorganic substances are as follows:

Contaminant	Concentration in milligrams per liter (or as specified)
Arsenic	0.010.
Antimony	006.
Barium	2.
Beryllium	0.004.
Cadmium	0.005.
Chromium	0.1.
Copper	1.0.
Cyanide	0.2.
Lead	0.005.
Mercury	0.002.
Nickel	0.1.
Nitrate	10 (as nitrogen).
Nitrite	1 (as nitrogen).
Total Nitrate and Nitrite	10 (as nitrogen).
Selenium	0.05.
Thallium	0.002.

* * * * *

(E) Analyses to determine compliance with the requirements of paragraph (b)(4)(iii)(A) of this section shall be conducted in accordance with an applicable method and applicable revisions to the methods listed in paragraphs (b)(4)(iii)(E)(*1*) through (b)(4)(iii)(E)(*14*) of this section and described, unless otherwise noted, in ''Methods for Chemical Analysis of Water and Wastes,'' U.S. EPA Environmental Monitoring and Support Laboratory (EMSL), Cincinnati, OH 45258 (EPA–600/4–79–020), March 1983, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of this publication are available from the National Technical Information Service (NTIS), U.S. Department of Commerce, 5825 Port Royal Rd., Springfield, VA 22161, or may be examined at the Center for Food Safety and Applied Nutrition's Library, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, or at the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC.

* * * * *

(*14*) Arsenic shall be measured using the following methods:

(*i*) Method 200.8—''Determination of Trace Elements in Water and Wastes by Inductively Coupled Plasma-Mass Spectroscopy,'' contained in the manual entitled ''Methods for the Determination of Metals in Environmental Samples—Supplement 1,'' EPA/600/R–94/111, May 1994, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of this publication are available from NTIS, PB95–125472, U.S. Department of Commerce, 5825 Port Royal Rd., Springfield, VA 22161, or may be examined at the Center for Food Safety and Applied Nutrition's Library, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, or at the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC.

(*ii*) Method 200.9—''Determination of Trace Elements by Stabilized Temperature Platform Graphite Furnace Atomic Absorption Spectrometry,'' contained in the manual entitled ''Methods for the Determination of Metals in Environmental Samples—Supplement 1,'' EPA/600/R–94/111, May 1994, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The availability of this incorporation by reference is given in paragraph (b)(4)(iii)(E)(*14*)(*i*) of this section.

* * * * *

Dated: October 6, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–26531 Filed 11–26–04; 4:44 pm]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD05–04–209]

RIN 1625–AA09

Drawbridge Operation Regulations; Elizabeth River-Eastern Branch, Norfolk, VA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the regulations that govern the operation of the Norfolk Southern (NS) Railroad Bridge (NS #V2.8) across Eastern Branch of the Elizabeth River, at mile 2.7, in Norfolk, VA. The proposed change would allow the NS #V2.8 bridge to be operated from a remote location, and to be operated from a remote location, and to remain open for vessel traffic and only close for train crossings and periodic maintenance. This proposed rule would make the operation of the bridge more efficient, because currently the bridge only opens on signal, or on signal after notice.

DATES: Comments and related material must reach the Coast Guard on or before January 18, 2005.

ADDRESSES: You may mail comments and related material to Commander (obr), Fifth Coast Guard District, Federal Building, 1st Floor, 431 Crawford Street, Portsmouth, VA 23704–5004. The Fifth

Coast Guard District maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at Commander (obr), Fifth Coast Guard District between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Anton Allen, Bridge Management Specialist, Fifth Coast Guard District, at (757) 398–6227.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking CGD05–04–209, indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like a return receipt, please enclose a stamped, self-addressed postcard or envelope. We will consider all submittals received during the comment period. We may change this proposed rule in view of them.

Public Meeting

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

Background and Purpose

Norfolk Southern Corporation (NSC), who owns and operates this swing-type bridge at mile 2.7 across the Eastern Branch of the Elizabeth River, in Norfolk, VA, requested a change to the current operating procedures set out in 33 CFR 117.1007(a), which requires the draw to open on signal, from 6 a.m. to 10 p.m., and open on signal with at least two hours notice, from 10 p.m. to 6 a.m. This proposed rule would allow the NS Railroad Bridge (NS #V2.8) to remain open to vessel traffic and to close only for train crossings and periodic maintenance. This proposed rule would also allow the NS Railroad Bridge (NS #V2.8) to be operated from a remote location at the NS Railroad Bridge (NS #5), at mile 1.1, over the Eastern Branch of the Elizabeth River.

NSC has installed closed circuit cameras in the area of the bridge and directly beneath the bridge, mounted on the center pier fender systems on both sides. Infrared sensors have also been installed to cover the swing radius of the bridge. This equipment enhances the controller's ability to monitor vessel traffic from the remote location. The controller will also monitor marine channel 13.

This change is being requested to make the operation of the NS Railroad Bridge (NS #V2.8) more efficient. It will save operational costs by eliminating the continuous presence of bridge tenders, and is expected to decrease maintenance costs. In addition, the draw being left in the open position and only closing for train crossings or periodic maintenance will provide for greater flow of vessel traffic than the current regulation.

Discussion of Proposed Rule

The Coast Guard proposes to amend the regulations governing the NS Railroad Bridge (NS #V2.8), at mile 2.7, in Norfolk, VA, which currently operates on signal. The Coast Guard proposes to insert this new specific regulation at 33 CFR § 117.1007(a). The amended regulation would allow the draw of the bridge to be operated remotely by the off-site controller at the NS Railroad Bridge (NS #5), at mile 1.1, over the Eastern Branch of the Elizabeth River in Norfolk, VA.

The draw would remain in the open position for navigation and shall only be closed for the passage of trains or periodic maintenance authorized in accordance with subpart A of this part.

Before the NS Railroad Bridge (NS #V2.8) closes for any reason, the remote operator will monitor waterway traffic in the area with closed circuit cameras and infrared sensors mounted on the bridge. The bridge would only be closed if the off-site remote operator's visual inspection shows that the channel is clear and there are no vessels transiting in the area.

While the NS Railroad Bridge (NS #V2.8) is moving from the full open to the full closed position, the controller will maintain constant surveillance of the navigation channel to ensure that no conflict with maritime traffic exists. In the event of failure or obstruction of monitoring equipment, the controller will stop and return the bridge to the full open position to vessels. In these situations, a bridge tender must be called and on-site within 30 minutes to operate the bridge.

Before closing the draw, the channel traffic lights would change from flashing green to flashing red, the horn would sound five short blasts, and an audio voice warning stating, ''Norfolk Southern's Railroad Bridge over the Eastern Branch of the Elizabeth River at milepost 2.7 will be closing to river traffic.'' Five short blasts of the horn would continue until the bridge is seated and locked down to vessels, the channel traffic lights would continue to flash red.

When the rail traffic has cleared, the horn would automatically sound one prolonged blast followed by one short blast to indicate that the draw of the NS Railroad Bridge (NS #V2.8) is about to return to its full open position to vessels. During the open swing movement, the channel traffic lights would flash red until the bridge is in the full open position. In the full open position to vessels, the bridge channel lights would flash green followed by an announcement stating, ''Security, security, security, the Norfolk Southern Railroad Bridge at mile 2.7 is open for river traffic.'' Operational information will be provided 24 hours a day on marine channel 13 and via telephone (757) 446–5320.

The Coast Guard proposes to amend 33 CFR 117.1007 by revising paragraph (a).

The proposal would also change the name of the bridge in paragraph (a) from ''Norfolk and Western Railroad Bridge'' to ''Norfolk Southern Railroad Bridge''. The name changes would accurately reflect the names of this bridge. Text modifications to be consistent with other proposed changes would be made in these paragraphs, as appropriate.

Regulatory Evaluation

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

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. We reached this conclusion based on the fact that the proposed changes have only a minimal impact on maritime traffic transiting the bridge. Although the NS Railroad Bridge (NS #V2.8) will be untended and

operated from a remote location, mariners can continue their transits because the bridge will remain open to mariners, only to be closed for train crossings or periodic maintenance.

Small Entities

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

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

This proposed rule would not have a significant economic impact on a substantial number of small entities for the following reason. The rule allows the NS Railroad Bridge to operate remotely and requires the bridge to remain in the open position to vessels the majority of the time, only closing for train crossings or periodic maintenance.

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

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Waverly W. Gregory, Jr., Bridge Administrator, Fifth Coast Guard District, (757) 398–6222. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this proposed rule is categorically excluded, under figure 2–1, paragraph (32)(e) of the Instruction, from further environmental documentation because it has been determined that the promulgation of operating regulations for drawbridges are categorically excluded.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; Department of Homeland Security Delegation No. 0170.1; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. In § 117.1007 revise paragraph (a) to read as follows:

§ 117.1007 Elizabeth River—Eastern Branch.

(a) The draw of the Norfolk Southern Railroad Bridge (NS #V2.8), mile 2.7 at Norfolk, shall operate as follows:

(1) The draw shall remain in the open position for navigation. The draw shall only be closed for train crossings or periodic maintenance authorized in accordance with Subpart A of this part.

(2) The bridge shall be operated by the controller at the Norfolk Southern Railroad Bridge (NS #5), mile 1.1, over the Eastern Branch of the Elizabeth River in Norfolk, VA. The controller shall monitor vessel traffic with closed circuit cameras and infrared sensors covering the swing radius. Operational information will be provided 24 hours a day on marine channel 13 and via telephone (757) 446–5320.

(3) The bridge shall not be operated from the remote location in the following events: Failure or obstruction of the infrared sensors, closed-circuit cameras or marine-radio communications, or when controller visibility is less than ¾ of a mile. In these situations, a bridge tender must be called to operate the bridge on-site.

(4) Before the bridge closes for any reason, the remote operator will monitor waterway traffic in the area. The bridge shall only be closed if the off-site remote operator's visual inspection shows that the channel is clear and there are no vessels transiting in the area. While the bridge is moving, the operator shall maintain constant surveillance of the navigation channel.

(5) Before closing the draw, the channel traffic lights will change from flashing green to flashing red, the horn will sound five short blasts, and an audio voice warning stating, ''Norfolk Southern's Railroad Bridge over the Eastern Branch of the Elizabeth River at milepost 2.7 will be closing to river traffic.'' Five short blasts of the horn will continue until the bridge is seated and locked down to vessels, the channel traffic lights will continue to flash red.

(6) When the rail traffic has cleared, the horn will automatically sound one prolonged blast followed by one short blast to indicate the draw is opening to vessel traffic. During the opening swing movement, the channel traffic lights will flash red until the bridge returns to the fully open position. In the full open position to vessels, the bridge channel lights will flash green followed by an announcement stating, ''Security, security, security, the Norfolk Southern Railroad Bridge at mile 2.7 is open for river traffic.''

* * * * *

Dated: November 22 2004.

Ben R. Thomason, III,

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

[FR Doc. 04–26520 Filed 12–1–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 041108310–4310–01; I.D. 100104H]

RIN 0648–AS78

List of Fisheries for 2005

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

ACTION: Proposed rule.

SUMMARY: The National Marine Fisheries Service (NMFS) is publishing the proposed List of Fisheries (LOF) for 2005, as required by the Marine Mammal Protection Act (MMPA). The proposed LOF for 2005 reflects new information on interactions between commercial fisheries and marine mammals. NMFS must categorize each commercial fishery on the LOF into one of three categories under the MMPA based upon the level of serious injury and mortality of marine mammals that occurs incidental to each fishery. The categorization of a fishery in the LOF determines whether participants in that fishery are subject to certain provisions of the MMPA, such as registration, observer coverage, and take reduction plan requirements.

DATES: Comments must be received by January 3, 2005.

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

- Mail: Chief, Marine Mammal Conservation Division, Attn: List of Fisheries, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.
- E-mail: *2005LOF.comments@noaa.gov*.
- Federal eRulemaking portal: *http://www.regulations.gov* (follow instructions for submitting comments).

Comments regarding the burden-hour estimates, or any other aspect of the collection of information requirements contained in this proposed rule, should be submitted in writing to the Chief, Marine Mammal Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910 and to David Rostker, OMB, by e-mail at *David_Rostker@omb.eop.gov* or by fax to 202–395–7285.

Registration information, materials, and marine mammal reporting forms may be obtained from the following regional offices:

NMFS, Northeast Region, One Blackburn Drive, Gloucester, MA 01930–2298, Attn: Marcia Hobbs;

NMFS, Southeast Region, 9721 Executive Center Drive North, St. Petersburg, FL 33702, Attn: Teletha Griffin;

NMFS, Southwest Region, Protected Species Management Division, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213, Attn: Don Peterson;

NMFS, Northwest Region, 7600 Sand Point Way NE, Seattle, WA 98115, Attn: Permits Office;

NMFS, Alaska Region, Protected Resources, P.O. Box 22668, 709 West 9th Street, Juneau, AK 99802; or

NMFS, Pacific Islands Region, Protected Resources Division, 1601 Kapiolani Boulevard, Suite 1110, Honolulu, HI 96814–4700.

FOR FURTHER INFORMATION CONTACT: Kristy Long, Office of Protected Resources, 301–713–1401; David Gouveia, Northeast Region, 978–281–9328; Juan Levesque, Southeast Region, 727–570–5312; Cathy Campbell, Southwest Region, 562–980–4060; Brent Norberg, Northwest Region, 206–526–6733; Bridget Mansfield, Alaska Region, 907–586–7642; Tamra Faris, Pacific Islands Region, 808–973–2937. Individuals who use a telecommunications device for the hearing impaired may call the Federal Information Relay Service at 1–800–877–8339 between 8 a.m. and 4 p.m. Eastern time, Monday through Friday, excluding Federal holidays.

SUPPLEMENTARY INFORMATION:

What is the List of Fisheries?

Section 118 of the MMPA requires that NMFS place all U.S. commercial fisheries into one of three categories based on the level of incidental serious injury and mortality of marine mammals that occurs in each fishery (16 U.S.C. 1387 (c)(1)). The categorization of a fishery in the LOF determines whether participants in that fishery may be required to comply with certain provisions of the MMPA, such as registration, observer coverage, and take reduction plan requirements. NMFS must reexamine the LOF annually, considering new information in the Stock Assessment Reports, other relevant sources, and the LOF, and publish in the **Federal Register** any necessary changes to the LOF after notice and opportunity for public comment (16 U.S.C. 1387 (c)(3)).

How Does NMFS Determine in which Category a Fishery is Placed?

The definitions for the fishery classification criteria can be found in the implementing regulations for section 118 of the MMPA (50 CFR 229.2). The criteria are also summarized here.

Fishery Classification Criteria

The fishery classification criteria consist of a two-tiered, stock-specific approach that first addresses the total impact of all fisheries on each marine mammal stock, and then addresses the impact of individual fisheries on each stock. This approach is based on consideration of the rate, in numbers of animals per year, of incidental mortalities and serious injuries of marine mammals due to commercial fishing operations relative to the Potential Biological Removal (PBR) level for each marine mammal stock. The MMPA (16 U.S.C. 1362 (20)) defines the PBR level as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population. This definition can also be found in the implementing regulations for section 118 at 50 CFR 229.2.

Tier 1: If the total annual mortality and serious injury across all fisheries that interact with a stock is less than or equal to 10 percent of the PBR level of the stock, all fisheries interacting with the stock would be placed in Category III. Otherwise, these fisheries are subject to the next tier (Tier 2) of analysis to determine their classification.

Tier 2, Category I: Annual mortality and serious injury of a stock in a given fishery is greater than or equal to 50 percent of the PBR level.

Tier 2, Category II: Annual mortality and serious injury of a stock in a given fishery is greater than 1 percent and less than 50 percent of the PBR level.

Tier 2, Category III: Annual mortality and serious injury of a stock in a given fishery is less than or equal to 1 percent of the PBR level.

While Tier 1 considers the cumulative fishery mortality and serious injury for a particular stock, Tier 2 considers fishery-specific mortality and serious injury for a particular stock. Additional details regarding how the categories were determined are provided in the preamble to the final rule implementing section 118 of the MMPA (60 FR 45086, August 30, 1995).

Since fisheries are categorized on a per-stock basis, a fishery may qualify as one Category for one marine mammal stock and another Category for a different marine mammal stock. A fishery is typically categorized on the LOF at its highest level of classification (e.g., a fishery that qualifies for Category III for one marine mammal stock and for Category II for another marine mammal stock will be listed under Category II).

Other Criteria That May Be Considered

In the absence of reliable information indicating the frequency of incidental mortality and serious injury of marine mammals by a commercial fishery, NMFS will determine whether the incidental serious injury or mortality qualifies for Category II by evaluating other factors such as fishing techniques, gear used, methods used to deter marine mammals, target species, seasons and areas fished, qualitative data from logbooks or fisher reports, stranding data, and the species and distribution of marine mammals in the area, or at the discretion of the Assistant Administrator for Fisheries (50 CFR 229.2).

How Do I Find Out if a Specific Fishery is in Category I, II, or III?

This proposed rule includes two tables that list all U.S. commercial fisheries by LOF Category. Table 1 lists all of the fisheries in the Pacific Ocean (including Alaska). Table 2 lists all of the fisheries in the Atlantic Ocean, Gulf of Mexico, and Caribbean.

Am I Required to Register Under the MMPA?

Owners of vessels or gear engaging in a Category I or II fishery are required under the MMPA (16 U.S.C. 1387(c)(2)), as described in 50 CFR 229.4, to register with NMFS and obtain a marine mammal authorization from NMFS in order to lawfully incidentally take a marine mammal in a commercial fishery. Owners of vessels or gear engaged in a Category III fishery are not required to register with NMFS or obtain a marine mammal authorization.

How Do I Register?

Fishers must register with the Marine Mammal Authorization Program (MMAP) by contacting the relevant NMFS Regional Office (see **ADDRESSES**) unless they participate in a fishery that has an integrated registration program (described below). Upon receipt of a completed registration, NMFS will issue vessel or gear owners physical evidence of a current and valid registration that must be displayed or in the possession of the master of each vessel while fishing in accordance with section 118 of the MMPA (16 U.S.C. 1387(c)(3)(A)).

What is the Process for Registering in an Integrated Fishery?

For some fisheries, NMFS has integrated the MMPA registration process with existing state and Federal fishery license, registration, or permit systems and related programs. Participants in these fisheries are automatically registered under the MMPA and are not required to submit registration or renewal materials or pay the $25 registration fee. Following is a list of integrated fisheries and a summary of the integration process for each Region. Fishers who operate in an integrated fishery and have not received registration materials should contact their NMFS Regional Office (see **ADDRESSES**).

Which Fisheries Have Integrated Registration Programs?

The following fisheries have integrated registration programs under the MMPA:

1. All Alaska Category II fisheries;
2. All Washington and Oregon Category II fisheries;
3. Northeast Regional fisheries for which a state or Federal permit is required. Individuals fishing in fisheries for which no state or Federal permit is required must register with NMFS by contacting the Northeast Regional Office (see **ADDRESSES**); and
4. All North Carolina, South Carolina, Georgia, and Florida Category I and II fisheries for which a state permit is required.
5. The Hawaii Swordfish, Tuna, Billfish, Mahi Mahi, Wahoo, Oceanic Sharks Longline/Set line Fishery (Hawaii longline fishery) was elevated to Category I in the 2004 LOF. The Pacific Islands Regional Office is integrating the MMPA registration process with the existing Hawaii longline fishery limited entry permit

process. Participants in this fishery will be automatically registered under the MMPA and will not be required to submit registration or pay the $25 registration fee.

How Do I Renew My Registration Under the MMPA?

Regional Offices, except for the Northeast Region, annually send renewal packets to participants in Category I or II fisheries that have previously registered; however, it is the responsibility of the fisher to ensure that registration or renewal forms are completed and submitted to NMFS at least 30 days in advance of fishing. Individuals who have not received a renewal packet by January 1 or are registering for the first time should request a registration form from the appropriate Regional Office (see ADDRESSES).

Am I Required to Submit Reports When I Injure or Kill a Marine Mammal During the Course of Commercial Fishing Operations?

In accordance with the MMPA (16 U.S.C. 1387(e)) and 50 CFR 229.6, any vessel owner or operator, or fisher (in the case of non-vessel fisheries), participating in a Category I, II, or III fishery must report all incidental injuries or mortalities of marine mammals that occur during commercial fishing operations to NMFS. ''Injury'' is defined in 50 CFR 229.2 as a wound or other physical harm. In addition, any animal that ingests fishing gear or any animal that is released with fishing gear entangling, trailing, or perforating any part of the body is considered injured, regardless of the absence of any wound or other evidence of an injury, and must be reported. Instructions on how to submit reports can be found in 50 CFR 229.6.

Am I Required to Take an Observer Aboard My Vessel?

Fishers participating in a Category I or II fishery are required to accommodate an observer aboard vessel(s) upon request. Observer requirements can be found in 50 CFR 229.7.

Am I Required to Comply With Any Take Reduction Plan Regulations?

Fishers participating in a Category I or II fishery are required to comply with any applicable take reduction plans.

Sources of Information Reviewed for the Proposed 2005 LOF

NMFS reviewed the marine mammal incidental serious injury and mortality information presented in the Stock Assessment Reports (SARs) for all observed fisheries to determine whether changes in fishery classification were warranted. NMFS' SARs are based on the best scientific information available at the time of preparation for the information presented in the SARs, including the level of serious injury and mortality of marine mammals that occurs incidental to commercial fisheries and the PBR levels of marine mammal stocks. NMFS also reviewed other sources of new information, including marine mammal stranding data, observer program data, fisher self-reports, and other information that is not included in the SARs.

The information contained in the SARs is reviewed by regional scientific review groups (SRGs) representing Alaska, the Pacific (including Hawaii), and the U.S. Atlantic, Gulf of Mexico, and Caribbean. The SRGs were created by the MMPA to review the science that goes into SARs, and to advise NMFS on population status and trends, stock structure, uncertainties in the science, research needs, and other issues.

The proposed LOF for 2005 was based, among other things, on information provided in the final SARs for 1996 (63 FR 60, January 2, 1998), the final SARs for 2001 (67 FR 10671, March 8, 2002), the final SARs for 2002 (68 FR 17920, April 14, 2003), and the final SARs for 2003 (69 FR 54262, September 8, 2004).

Summary of Changes to the Proposed LOF for 2005

The following summarizes changes in fishery classification including fisheries listed on the LOF, the number of participants in a particular fishery, and the species and/or stocks that are incidentally killed or seriously injured in a particular fishery that are proposed for the 2005 LOF. The placement and definitions of U.S. commercial fisheries proposed for 2005 are identical to those provided in the LOF for 2004 with the following exceptions.

Commercial Fisheries in the Pacific Ocean: Fishery Classification

Alaska Fisheries

The List of Fisheries from 1990 through 2003 included the Alaska groundfish fisheries as large combinations of fisheries. In the 2003 final LOF (68 FR 41725, July 15, 2003), NMFS indicated we would review the existing fishery delineations in the LOF for Federal and state fisheries in Alaska. The decision to review Alaska fisheries was based, in part, on NMFS' recognition that the large fishery groups previously included in the LOF are not a homogenous fishery, but rather a diverse group of fisheries that operate during different seasons and target different groundfish species over distinct geographic areas within the Bering Sea and Gulf of Alaska. Marine mammal interactions are known to vary among Alaska groundfish fisheries based on time and area of operations, method of gear deployment, and target groundfish species. Therefore, the identification of these fisheries on a finer scale will allow for improved resolution of factors affecting incidental mortality and serious injury of marine mammals in these fisheries.

NMFS reviewed the Bering Sea/Aleutian Islands (BSAI) groundfish trawl, Gulf of Alaska (GOA) Groundfish Trawl, Bering Sea and GOA Finfish Pot, AK Crustacean Pot, BSAI Groundfish Longline/Set Line (federally regulated waters, including miscellaneous finfish and sablefish), and GOA Groundfish Longline/Set Line (federally regulated waters, including miscellaneous finfish and sablefish) fisheries. Based on this review, the 2004 final LOF (69 FR 48407, August 10, 2004) delineated these fisheries by target species and gear type. An analysis to assign each of these newly delineated fisheries to the appropriate LOF category was deferred until the 2005 LOF and all newly designated fisheries were placed in Category III pending the results of the analysis.

NMFS has completed an analysis of past incidental mortality and serious injury for each of the Federal fisheries specified in the 2004 LOF in accordance with the fishery classification criteria set forth in the implementing regulations of section 118 of the MMPA (50 CFR part 229). Based on these analyses, NMFS proposes that five of the Federal fisheries newly delineated in the 2004 LOF be reclassified as Category II fisheries and the remainder of the fisheries newly delineated in the 2004 LOF remain as Category III fisheries.

AK Bering Sea Aleutian Islands Flatfish Trawl Fishery

NMFS proposes elevating the BSAI flatfish trawl fishery from Category III to Category II based on documented interactions between the fishery and the western U.S. stock of Steller sea lions and the eastern North Pacific resident and transient stocks of killer whales.

Tier 1 Evaluation: The total estimated annual mortality and serious injury across all fisheries is greater than 10% of the PBR levels for the following stocks: western U.S. stock of Steller sea lions, eastern North Pacific resident stock of killer whales, and eastern North Pacific transient stock of killer whales.

Therefore, the BSAI flatfish trawl fishery is subject to Tier 2 analysis for these stocks.

Tier 2 Evaluation: The average annual estimated mortality and serious injury of the western U.S. stock of the Steller sea lions in this fishery is 3.1 animals per year or 1.48% of the stock's PBR (209 animals per year). Because this level of mortality and serious injury exceeds 1% but is less than 50% of the stock's PBR level, this fishery qualifies for classification as a Category II fishery.

The average annual estimated mortality and serious injury of eastern North Pacific resident stock of killer whales in this fishery is 0.5 animals per year or 6.94% of the stock's PBR (7.2 animals per year). Because this level of mortality and serious injury exceeds 1% but is less than 50% of the stock's PBR level, this fishery qualifies for classification as a Category II fishery.

The average annual estimated mortality and serious injury of eastern North Pacific transient stock of killer whales by the BSAI flatfish trawl fishery is 0.5 animals per year or 17.86% of the stock's PBR (2.8 animals per year). Because this level of mortality and serious injury exceeds 1% but is less than 50% of the stock's PBR level, this fishery qualifies for classification as a Category II fishery.

Since the annual estimated level of marine mammal mortality and serious injury incidental to this fishery is less than 50 percent and greater than 1 percent of the PBR level for all marine mammal stocks described in the Tier 2 analysis, NMFS proposes to reclassify this fishery as a Category II fishery.

AK Bering Sea Aleutian Islands Pollock Trawl Fishery

NMFS proposes elevating the BSAI pollock trawl fishery from Category III to Category II based on the following analysis of the takes of five stocks of marine mammals: western U.S. stock of Steller sea lions, eastern North Pacific resident and transient stocks of killer whales, and the central and western North Pacific stocks of humpback whales.

Tier 1 Evaluation: The total estimated annual mortality and serious injury across all fisheries is greater than 10% of the PBR levels for the following stocks: western U.S. stock of Steller sea lions, eastern North Pacific resident stock of killer whales, eastern North Pacific transient stock of killer whales, central North Pacific stock of humpback whales, and western North Pacific stock of humpback whales. Therefore, the BSAI pollock trawl fishery is subject to Tier 2 analysis for these stocks.

Tier 2 Evaluation: The average annual estimated mortality and serious injury of the western U.S. stock of the Steller sea lions in this fishery is 2.5 animals per year or 1.2% of the stock's PBR (209 animals). Because this level of mortality and serious injury exceeds 1% but is less than 50% of the stock's PBR level, this fishery qualifies for classification as a Category II fishery.

The average annual estimated mortality and serious injury of eastern North Pacific resident stock of killer whales in this fishery is 0.6 animals per year or 8.33% of the stock's PBR level (7.2 animals per year). Because this level of mortality and serious injury exceeds 1% but is less than 50% of the stock's PBR level, this fishery qualifies for classification as a Category II fishery.

The average annual estimated mortality and serious injury of eastern North Pacific transient stock of killer whales in this fishery is 0.6 animals per year or 21.43% of the stock's PBR level (2.8 animals per year). Because this level of mortality and serious injury exceeds 1% but is less than 50% of the stock's PBR level, this fishery qualifies for classification as a Category II fishery.

The average annual estimated mortality and serious injury of central North Pacific stock of humpback whales in this fishery is 0.3 animals per year or 4.05% of the stock's PBR level (7.4 animals per year). Because this level of mortality and serious injury exceeds 1% but is less than 50% of the stock's PBR level, this fishery qualifies for classification as a Category II fishery.

The average annual estimated mortality and serious injury of western North Pacific stock of humpback whales in this fishery is 0.3 animals per year or 42.86% of the stock's PBR level (0.7 animals per year). Because this level of mortality and serious injury exceeds 1% but is less than 50% of this stock's PBR level, this fishery qualifies for classification as a Category II fishery.

Since the annual estimated level of marine mammal mortality and serious injury incidental to this fishery is less than 50 percent and greater than 1 percent of the PBR level for all marine mammal stocks described in the Tier 2 analysis, NMFS proposes to reclassify this fishery as a Category II fishery.

AK Bering Sea Aleutian Islands Greenland Turbot Longline Fishery

NMFS proposes elevating the AK BSAI Greenland turbot longline fishery from Category III to Category II fishery based on the following analysis of takes of the eastern North Pacific resident and transient stocks of killer whales.

Tier 1 Evaluation: The total estimated annual mortality and serious injury across all fisheries is greater than 10% of the PBR levels for the eastern North Pacific resident and transient stocks of killer whales. Therefore, the AK BSAI Greenland turbot longline fishery is subject to Tier 2 analysis for these stocks.

Tier 2 Evaluation: The average annual estimated mortality and serious injury of eastern North Pacific resident stock of killer whales in this fishery is 0.6 animals per year or 8.33% of the stock's PBR level (7.2 animals per year). Because this level of mortality and serious injury exceeds 1% but is less than 50% of the stock's PBR level, this fishery qualifies for classification as a Category II fishery.

The average annual estimated mortality and serious injury of eastern North Pacific transient stock of killer whales in this fishery is 0.6 animals per year or 21.43% of the stock's PBR (2.8 animals per year). Because this level of mortality and serious injury exceeds 1% but is less than 50% of the stock's PBR level, this fishery qualifies for classification as a Category II fishery.

Since the annual estimated level of marine mammal mortality and serious injury incidental to this fishery is less than 50 percent and greater than 1 percent of the PBR level for the marine mammal stocks described in the Tier 2 analysis, NMFS proposes to reclassify this fishery as a Category II fishery.

AK Bering Sea Aleutian Islands Pacific Cod Longline Fishery

NMFS proposes elevating the AK BSAI Pacific cod longline fishery from Category III to Category II based on the following analysis of interactions between the fishery and the eastern North Pacific resident and transient stocks of killer whales.

Tier 1 Evaluation: The total estimated annual mortality and serious injury across all fisheries is greater than 10% of the PBR levels for the eastern North Pacific resident and transient stocks of killer whales. Therefore, the AK BSAI Pacific cod longline fishery is subject to Tier 2 analysis for these stocks.

Tier 2 Evaluation: The average annual estimated mortality and serious injury of eastern North Pacific resident stock of killer whales in this fishery is 0.8 animals per year or 11.11% of the stock's PBR (7.2 animals per year). Because this level of mortality and serious injury exceeds 1% but is less than 50% of the stock's PBR level, this fishery qualifies for classification as a Category II fishery.

The average annual estimated mortality and serious injury of eastern North Pacific transient stock of killer whales in this fishery is 0.8 animals per

year or 28.57% of the stock's PBR (2.8 animals per year). Because this level of mortality and serious injury exceeds 1% but is less than 50% of the stock's PBR level, this fishery qualifies for classification as a Category II fishery.

Since the annual estimated level of marine mammal mortality and serious injury incidental to this fishery is less than 50 percent and greater than 1 percent of the PBR level for two of the marine mammal stocks described in the Tier 2 analysis, NMFS proposes to reclassify this fishery as a Category II fishery.

AK Bering Sea Sablefish Pot Fishery

NMFS proposes elevating the AK Bering Sea sablefish pot fishery from Category III to Category II based on the following analysis of interactions between this fishery and the central and western North Pacific stocks of humpback whales.

Tier 1 Evaluation: The total estimated annual mortality and serious injury across all fisheries is greater than 10% of the PBR levels for the central and western North Pacific stocks of humpback whales. Therefore, the AK Bering Sea sablefish pot fishery is subject to Tier 2 analysis for these stocks.

Tier 2 Evaluation: The average annual estimated mortality and serious injury of central North Pacific stock of humpback whales in this fishery is 0.2 animals per year or 2.7% of the stock's PBR (7.4 animals per year). Because this level of mortality and serious injury exceeds 1% but is less than 50% of the stock's PBR level, this fishery qualifies for classification as a Category II fishery.

The average annual estimated mortality and serious injury of western North Pacific stock of humpback whales in this fishery is 0.2 animals per year or 28.57% of the stock's PBR (0.7 animals per year). Because this level of mortality and serious injury exceeds 1% but is less than 50% of the stock's PBR level, this fishery qualifies for classification as a Category II fishery.

Since the annual estimated level of marine mammal mortality and serious injury incidental to this fishery is less than 50 percent and greater than 1 percent of the PBR level for both marine mammal stocks described in the Tier 2 analysis, NMFS proposes to reclassify this fishery as a Category II fishery.

CA/OR Thresher Shark/Swordfish Drift Gillnet Fishery (≥14 in. mesh)

NMFS proposes to elevate the CA/OR thresher shark/swordfish drift gillnet fishery from Category II to Category I. The CA/OR thresher shark/swordfish drift gillnet fishery includes all vessels using drift gillnets of greater than or equal to 14 inch stretched mesh to target thresher shark and swordfish off of California and Oregon. This fishery primarily operates outside of state waters to about 150 miles offshore, ranging from the U.S.-Mexico border to northward of the Columbia River in Oregon. This fishery is the subject of the Pacific Offshore Cetacean Take Reduction Team (POCTRT), which was convened by NMFS in 1996 to reduce the take of marine mammals incidental to this fishery. The Pacific Offshore Cetacean Take Reduction Plan took effect in 1997 and has resulted in a significant reduction in the number of marine mammals taken in this fishery. As a result of this reduction in marine mammal mortality and serious injury, NMFS changed the classification of this fishery from Category I to Category II in the 2003 LOF (68 FR 41725, July 15, 2003).

Based on data collected during a fall 2002 research cruise, NMFS developed revised abundance estimates and PBR levels for several marine mammal stocks in the Pacific Ocean and incorporated these into the 2003 SARs. As a result of these changes, the PBR level for the CA/OR/WA stock of short-finned pilot whales was revised from 5.1 animals per year to 1.19 animals per year.

NMFS' analysis of the incidental marine mammal mortality and serious injury for this fishery is based on NMFS observer data from 1999 through 2003. Based on these observer data, the NMFS Southwest Fisheries Science Center produced annual reports providing estimates of marine mammal mortality and serious injury for this fishery. These reports were presented to the Pacific SRG and the POCTRT and are incorporated into the SARs as they are updated. The annual mortality reports for 1997–2003 are available on the internet at: *http://swfsc.nmfs.noaa.gov/PRD/PROGRAMS/CMMP/default.htm*.

Overall, the incidental take of marine mammal stocks in the CA/OR thresher shark/swordfish drift gillnet fishery has continued to decrease. However, based on the recent revised PBR level for short-finned pilot whales and the incidental take of one short-finned pilot whale by the fishery in 2003, NMFS is proposing to elevate this fishery to Category I. NMFS intends to continue placing observers on vessels participating in this fishery and to continue working with the POCTRT to address the entanglement of marine mammals in this fishery. In addition, NMFS will be conducting a research cruise in fall 2005 that will result in revised abundance estimates and PBR levels for several marine mammal stocks in the Pacific Ocean, including the CA/OR/WA stock of short-finned pilot whales.

Tier 1 Evaluation: NMFS observer data indicate that animals from the following marine mammal stocks were killed or seriously injured incidental to the CA/OR thresher shark/swordfish drift gillnet fishery from 1999–2003: California sea lion (U.S. stock), northern elephant seal (CA breeding stock), Dall's porpoise (CA/OR/WA stock), Pacific white-sided dolphin (CA/OR/WA Northern and Southern stocks), Risso's dolphin (CA/OR/WA stock), short-beaked common dolphin (CA/OR/WA stock), long-beaked common dolphin (CA/OR/WA stock), northern right whale dolphin (CA/OR/WA stock), short-finned pilot whale (CA/OR/WA stock), and gray whale (eastern North Pacific stock). According to the best available information, the estimated annual mortality and serious injury across all fisheries is greater than 10 percent of the PBR levels for the following stocks: California sea lion (U.S. stock), northern right whale dolphin (CA/OR/WA stock), short-finned pilot whale (CA/OR/WA stock), and fin whale (CA/OR/WA stock); therefore, this fishery is subject to Tier 2 analysis for these stocks.

Tier 2 Evaluation: NMFS analysis of the incidental marine mammal mortality and serious injury for this fishery is based on NMFS observer data from 1999 through 2003. The average annual estimated mortality and serious injury of California sea lions incidental to this fishery during this period was 36.6 animals per year, which represents 0.4 percent of the PBR level for California sea lions (8,333 animals). The average annual estimated mortality and serious injury of northern right whale dolphins incidental to this fishery is 21.2 animals per year, which represents 12.9 percent of the PBR level for this stock (164 animals). The average annual estimated mortality and serious injury of short-finned pilot whales incidental to this fishery during this period is 1 animal per year, which represents 84 percent of the PBR level for this stock (1.19 animals). The average annual estimated mortality and serious injury of fin whales incidental to this fishery is 0.9 animals per year, which represents 17.6 percent of the PBR level for this stock (5.1 animals).

Because the level of mortality and serious injury is greater than 50 percent of the PBR level for short-finned pilot whales, this fishery qualifies for reclassification as a Category I fishery.

Fishery Name and Organizational Changes and Clarifications

Bering Sea and Aleutian Islands Cod Longline Fishery

NMFS proposes to modify the name of the ''Bering Sea and Aleutian Islands cod longline fishery'' to the ''Bering Sea and Aleutian Islands Pacific cod longline fishery'' to correct an error in the final 2004 LOF (69 FR 48407, August 10, 2004) in which ''Pacific'' was mistakenly omitted.

Number of Vessels/Persons

The estimated number of participants in the ''OR Swordfish Floating Longline Fishery'' is updated to 0 based on 2004 permit data.

The estimated number of participants in the CA/OR thresher shark/swordfish drift gillnet fishery is updated to 85 based on recent permit data.

The estimated number of participants in the CA anchovy, mackerel, tuna purse seine fishery is updated to 110 based on recent permit data.

The estimated number of participants in the California pelagic longline fishery is updated to 6 based on recent permit data.

The estimated number of participants in the California sardine purse seine fishery is updated to 110 based on recent permit data.

The estimated number of participants in the California swordfish harpoon fishery is updated to 30 based on recent permit data.

List of Species that are Incidentally Injured or Killed

NMFS proposes to add the Eastern North Pacific stock of gray whales to the list of marine mammal species and stocks incidentally injured or killed by the WA, OR, CA crab pot fishery. An interaction between this stock and the WA, OR, CA crab pot fishery was documented by the marine mammal health and stranding network and NOAA's Office of Law Enforcement.

NMFS proposes to add the CA/OR/WA stocks of long-beaked and short-beaked common dolphins, and California sea lions to the list of marine mammal species and stocks that interact with the CA yellowtail, barracuda, white seabass, and tuna drift gillnet fishery. An interaction between this stock and this fishery was documented by the NMFS observer program.

NMFS proposes to add the CA/OR/WA stock of Risso's dolphin to the list of marine mammal species and stocks that interact with the California pelagic longline fishery. An interaction between this stock and this fishery was documented by the NMFS observer program.

NMFS proposes to add the U.S. stock of California sea lions to the list of marine mammal species and stocks that interact with the California sardine purse seine fishery. An interaction between this stock and this fishery was documented by the NMFS observer program.

NMFS proposes to add the eastern North Pacific resident and transient stocks of killer whales to the list of marine mammal species and stocks that interact with the AK BSAI Pacific cod longline fishery. Interactions between these stocks and this fishery have been documented in recent SARs.

Commercial Fisheries in the Atlantic Ocean, Gulf of Mexico, and Caribbean: Fishery Classification

Mid-Atlantic Bottom Trawl Fishery

NMFS proposes elevating the ''Mid-Atlantic bottom trawl fishery'' (proposed name change from ''Mid-Atlantic mixed species trawl fishery,'' see Fishery Name and Organizational Changes and Clarifications section) from Category III to Category II based on documented interactions between the fishery and the Western North Atlantic stocks of common dolphins and pilot whales.

Tier 1 Evaluation: Total annual incidental mortality and serious injury across all fisheries is greater than or equal to 10 percent of PBR levels for the following stocks: Western North Atlantic stocks of common dolphins, long-finned and short-finned pilot whales. Therefore, this fishery is subject to Tier 2 analysis for these stocks.

Tier 2 Evaluation: Total fishery-related mortality and serious injury of pilot whales cannot be estimated separately for long-finned and short-finned pilot whales because fishery observers cannot reliably identify pilot whales to species as they are very similar in appearance. Therefore, the average annual estimated mortality and serious injury of these two species of pilot whales in the Western North Atlantic (*Globicephala spp.*) incidental to the Mid-Atlantic bottom trawl fishery during 1997–2001 was 46 animals per year, or 42.59 percent of the PBR level for pilot whales (108 animals per year). Because this level of mortality and serious injury exceeds 1 percent of the PBR level but is less than 50 percent of the PBR level, this fishery qualifies for reclassification as a Category II fishery.

The average annual estimated mortality and serious injury of the Western North Atlantic stock of common dolphins incidental to the Mid-Atlantic bottom trawl fishery during 1997–2001 was19 animals per year, or 8.37 percent of the PBR level for common dolphins (227 animals per year). Because this level of mortality and serious injury exceeds 1 percent of the PBR level but is less than 50 percent of the PBR level, this fishery qualifies for reclassification as a Category II fishery.

Since the annual estimated level of marine mammal mortality and serious injury incidental to this fishery is less than 50 percent and greater than 1 percent of the PBR levels of both marine mammal stocks described in the Tier 2 analysis, NMFS proposes to reclassify this fishery as Category II.

Northeast Bottom Trawl Fishery

NMFS proposes elevating the ''Northeast bottom trawl fishery,'' (proposed name change from ''North Atlantic bottom trawl fishery,'' see Fishery Name and Organizational Changes and Clarifications section) from Category III to Category II based on documented interactions between the fishery and the Western North Atlantic stock of Atlantic white-sided dolphins.

Tier 1 Evaluation: Total annual incidental mortality and serious injury across all fisheries is greater than or equal to 10 percent of PBR levels for the Western North Atlantic stock of Atlantic white-sided dolphins. Therefore, this fishery is subject to Tier 2 analysis for this stock.

Tier 2 Evaluation: The annual observed mortality and serious injury of the Western North Atlantic stock of Atlantic white-sided dolphins incidental to the Northeast bottom trawl fishery during 2003 was 12 animals, or 3.3 percent of the PBR level for white-sided dolphins (364 animals per year). Because this level of mortality and serious injury exceeds 1 percent of the PBR level but is less than 50 percent of the PBR level, this fishery qualifies for reclassification as a Category II fishery. Therefore, NMFS proposes to reclassify this fishery as Category II.

Addition of Fisheries to the LOF

Atlantic Shellfish Bottom Trawl Fishery

NMFS proposes to add the ''Atlantic shellfish bottom trawl fishery'' to the LOF to encompass the calico scallops trawl fishery, crab trawl fishery, Georgia/South Carolina/Maryland whelk trawl fishery, Gulf of Maine/Mid-Atlantic sea scallops trawl fishery, and Gulf of Maine northern shrimp trawl fishery. Additionally, NMFS proposes to list the Atlantic shellfish bottom trawl fishery as a Category III fishery because all fisheries proposed to be combined

are currently Category III fisheries and have no documented interactions with marine mammals.

Removal of Fisheries from the LOF

NMFS proposes to remove the ''U.S. Atlantic monkfish trawl fishery'' from the LOF. This fishery is currently a Category III fishery that operates throughout the Mid-Atlantic and Northeast regions. Both the North Atlantic bottom trawl fishery (proposed name change to Northeast bottom trawl fishery, see Fishery Name and Organizational Changes and Clarifications section) and Mid-Atlantic mixed species trawl fishery (proposed name change to Mid-Atlantic bottom trawl fishery, see Fishery Name and Organizational Changes and Clarifications section) descriptions include fishing gear managed under the monkfish fishery management plans as well as other groundfish fishery management plans. Therefore, NMFS proposes deleting this fishery and incorporating any trawl fisheries that target monkfish in the Atlantic under existing trawl fisheries on the LOF, e.g., the Northeast bottom trawl fishery or the Mid-Atlantic bottom trawl fishery.

NMFS proposes to delete the following trawl fisheries from the 2005 LOF: ''Calico Scallops Trawl Fishery,'' ''Crab Trawl Fishery,'' ''Georgia/South Carolina/Maryland Whelk Trawl Fishery,'' ''Gulf of Maine/Mid-Atlantic Sea Scallops Trawl Fishery,'' and ''Gulf of Maine Northern Shrimp Trawl Fishery.'' NMFS proposes to combine these fisheries under one listing in the LOF as the ''Atlantic shellfish bottom trawl fishery'' (see Addition of Fisheries section).

Fishery Name and Organizational Changes and Clarifications

Atlantic Herring Mid-Water Trawl Fishery (Including Pair Trawl)

NMFS proposes to modify the name of the ''Atlantic herring mid-water trawl fishery (including pair trawl)'' to the ''Northeast mid-water trawl fishery.'' This fishery primarily operates in the Gulf of Maine and George's Bank regions. There have been occasional interactions documented between this fishery and marine mammals and, thus, the fishery is currently classified as a Category II fishery. NMFS proposes to modify the name of this fishery in order to appropriately classify all similar mid-water trawl fisheries operating in the Northeast region, with home ports between Connecticut and Maine, that may be interacting with marine mammals.

Atlantic Squid, Mackerel, and Butterfish Trawl Fishery

NMFS proposes to modify the name of the ''Atlantic squid, mackerel, and butterfish trawl fishery'' to the ''Mid-Atlantic mid-water trawl fishery.'' Trawl fisheries targeting squid occur mainly in southern New England and Mid-Atlantic waters and typically use small-mesh otter trawls throughout the water column. Trawl fisheries targeting mackerel occur mainly in southern New England and Mid-Atlantic waters and generally operate in mid-water. Butterfish are predominately caught incidental to directed squid and mackerel trawls fisheries. There have been frequent interactions documented between this fishery and several species/stocks of marine mammals and, thus, the fishery is currently classified as a Category I fishery. NMFS proposes to modify the name of this fishery in order to appropriately classify all similar mid-water trawl fisheries operating in the Mid-Atlantic region, with home ports between New York and North Carolina, that may be interacting with marine mammals.

Delaware Bay Inshore Gillnet Fishery

NMFS proposes to modify the name of the ''Delaware Bay inshore gillnet fishery'' to the ''Delaware River inshore gillnet fishery.'' The Delaware Bay inshore gillnet fishery is currently a Category III fishery. The Atlantic Large Whale Take Reduction Plan (ALWTRP) regulations apply to all waters inside Delaware Bay between the COLREGS and a line from the southern point of Nantuxent Cove, NJ to the southern end of Kelley Island, Port Mahon, DE. This proposed change would therefore place all gillnet fisheries operating in Delaware Bay outside of the line between the southern point of Nantuxent Cove, NJ to the southern end of Kelley Island, Port Mahon, DE in the Category I ''Mid-Atlantic gillnet fishery'' (proposed name change from Mid-Atlantic coastal gillnet fishery; see below) and, as such, would be regulated under the ALWTRP. Moreover, gillnet fisheries operating inland of the COLREGS would be placed in the ''Delaware River inshore gillnet fishery'' and would not be subject to ALWTRP regulations.

Gulf of Maine Tub Trawl Groundfish Bottom Longline/Hook-and-Line Fishery

NMFS proposes to modify the name of the ''Gulf of Maine tub trawl groundfish bottom longline/hook-and-line fishery'' to the ''Northeast/Mid-Atlantic bottom longline/hook-and-line fishery.'' The fishery is currently in Category III and predominately operates between Cape Cod, MA and George's Bank, in an area extending beyond the Gulf of Maine. Therefore, NMFS proposes to delete the reference to the ''Gulf of Maine'' in the fishery name. Additionally, NMFS solicits public comment regarding interactions between this fishery and marine mammals.

Mid-Atlantic Coastal Gillnet Fishery

NMFS proposes to modify the name of the ''Mid-Atlantic coastal gillnet fishery'' to the ''Mid-Atlantic gillnet fishery.'' Currently, the Mid-Atlantic coastal gillnet fishery is a Category I fishery that includes all fisheries using any type of gillnet gear, west of 72°30′ W and north of a line extending due east from the North Carolina/South Carolina border, except for inshore gillnet fisheries currently placed in Category III. This area includes both nearshore waters (under State jurisdiction) and offshore waters (under Federal jurisdiction). Therefore, NMFS proposes to remove the reference to ''coastal'' waters in the name of this fishery.

Mid-Atlantic Mixed Species Trawl Fishery

NMFS proposes to modify the name of the ''Mid-Atlantic mixed species trawl fishery'' to the ''Mid-Atlantic bottom trawl fishery'' to encompass similar bottom trawl fisheries operating in the region that potentially interact with marine mammals.

North Atlantic Bottom Trawl Fishery

NMFS proposes to modify the name of the ''North Atlantic bottom trawl fishery'' to the ''Northeast bottom trawl fishery'' to encompass similar bottom trawl fisheries operating in the region that potentially interact with marine mammals.

Number of Vessels/Persons

The estimated number of participants in the ''Atlantic shellfish bottom trawl fishery'' is 972.

List of Species that are Incidentally Injured or Killed

Atlantic Mixed Species Trap/Pot Fishery

NMFS proposes to remove the Canadian east coast stock of minke whales and the Gulf of Maine/Bay of Fundy stock of harbor porpoise from the list of marine mammal species and stocks incidentally injured or killed by the Atlantic mixed species trap/pot fishery. Interactions between each of these marine mammal stocks and this fishery have not been documented in recent years.

Atlantic Ocean, Caribbean, and Gulf of Mexico Large Pelagics Longline Fishery

NMFS proposes to remove the Western North Atlantic stock of striped dolphins, the Gulf of Maine/Bay of Fundy stock of harbor porpoise, the Western North Atlantic stock of humpback whales, and the Canadian East coast stock of minke whales from the list of marine mammal species and stocks incidentally injured or killed by the Atlantic Ocean, Caribbean, and Gulf of Mexico large pelagics longline fishery. Interactions between each of these marine mammal stocks and this fishery have not been documented in recent years.

NMFS proposes to add the Western North Atlantic stocks of mesoplodon beaked whales and Cuvier's beaked whales, and the Northern Gulf of Mexico stock of short-finned pilot whales to the list of marine mammal species and stocks incidentally injured or killed by the Atlantic Ocean, Caribbean, and Gulf of Mexico large pelagics longline fishery. Interactions between pilot whales and this fishery have been documented in recent SARs while interactions between beaked whales and a Balaenopterid whale and this fishery have been documented by the observer program.

Chesapeake Bay Inshore Gillnet Fishery

NMFS proposes to remove the Gulf of Maine/Bay of Fundy stock of harbor porpoise from the list of marine mammal species and stocks incidentally injured or killed by the Chesapeake Bay inshore gillnet fishery. Interactions between this marine mammal stock and this fishery have not been documented in recent years.

Delaware River Inshore Gillnet Fishery

NMFS proposes to remove the Gulf of Maine/Bay of Fundy stock of harbor porpoise, the Gulf of Maine stock of humpback whales, and the Western North Atlantic coastal stock of bottlenose dolphins from the list of marine mammal species and stocks incidentally injured or killed by the Delaware River inshore gillnet fishery (proposed name change from Delaware Bay inshore gillnet fishery, see Fishery Name and Organizational Changes and Clarifications section). Interactions between each of these marine mammal stocks and this fishery have not been documented in recent years.

Gulf of Maine Herring and Atlantic Mackerel Stop Seine/Weir Fishery

NMFS proposes to remove the Western North Atlantic stocks of humpback whales and North Atlantic right whales from the list of marine mammal species and stocks incidentally injured or killed by the Gulf of Maine herring and Atlantic mackerel stop seine/weir fishery. Interactions between each of these marine mammal stocks and this fishery have not been documented in recent years.

NMFS proposes to add the Western North Atlantic stock of Atlantic white-sided dolphins to the list of marine mammal species and stocks incidentally injured or killed by the Gulf of Maine herring and Atlantic mackerel stop seine/weir fishery. Interactions between this marine mammal stock and this fishery have been documented in recent years.

Gulf of Mexico Butterfish Trawl Fishery

NMFS proposes to remove the Eastern Gulf of Mexico stocks of Atlantic spotted dolphins and pantropical spotted dolphins from the list of marine mammal species and stocks incidentally injured or killed by the Gulf of Mexico butterfish trawl fishery. Interactions between these marine mammal stocks and this fishery have not been documented in recent years.

NMFS proposes to add the Northern Gulf of Mexico outer continental shelf stock and Northern Gulf of Mexico continental shelf edge and slope stock of bottlenose dolphins to the list of marine mammal species and stocks incidentally injured or killed by the Gulf of Mexico butterfish trawl fishery. Interactions between each of these marine mammal stocks/species and this fishery have been documented in recent SARs.

Gulf of Mexico Menhaden Purse Seine Fishery

NMFS proposes to add the Eastern Gulf of Mexico coastal stock of bottlenose dolphins and the Gulf of Mexico bay, sound and estuarine stock of bottlenose dolphins to the list of marine mammal species and stocks incidentally injured or killed by the Gulf of Mexico menhaden purse seine fishery. Interactions between these marine mammal stocks and this fishery have been documented in recent SARs.

Long Island Sound Inshore Gillnet Fishery

NMFS proposes to remove the Gulf of Maine/Bay of Fundy stock of harbor porpoise, the Gulf of Maine stock of humpback whales, and the Western North Atlantic coastal stock of bottlenose dolphins from the list of marine mammal species and stocks incidentally injured or killed by the Long Island Sound inshore gillnet fishery. Interactions between each of these marine mammal stocks and this fishery have not been documented in recent years.

Mid-Atlantic Bottom Trawl Fishery

NMFS proposes to add the Western North Atlantic stocks of long-finned pilot whales, short-finned pilot whales, and common dolphins to the list of marine mammal species and stocks incidentally injured or killed by the Mid-Atlantic bottom trawl fishery. Interactions between each of these marine mammal stocks and this fishery have been documented in recent SARs.

Mid-Atlantic Gillnet Fishery

NMFS proposes to add the Western North Atlantic stock of gray seals and the Western North Atlantic stock of fin whales to the list of marine mammal species and stocks incidentally injured or killed by the Mid-Atlantic gillnet fishery. Interactions between the Western North Atlantic stock of gray seals and this fishery have been documented in recent SARs and interactions between the Western North Atlantic stock of fin whales and this fishery have been documented by the NMFS Observer Program.

Mid-Atlantic Menhaden Purse Seine Fishery

NMFS proposes to remove the Western North Atlantic stock of humpback whales from the list of marine mammal species and stocks incidentally injured or killed by the Mid-Atlantic purse seine fishery. Interactions between each of these marine mammal stocks and this fishery have not been documented in recent years.

Mid-Atlantic Mid-water Trawl Fishery

NMFS proposes to add the Western North Atlantic offshore stock of bottlenose dolphins to the list of marine mammal species and stocks incidentally injured or killed by the Mid-Atlantic mid-water trawl fishery. Interactions between this marine mammal stock and this fishery have been documented in recent SARs.

Northeast Bottom Trawl Fishery

NMFS proposes to add the Western North Atlantic stock of harp seals and the Gulf of Maine/Bay of Fundy stock of harbor porpoise to the list of marine mammal species and stocks incidentally injured or killed by the Northeast bottom trawl fishery (proposed name change from North Atlantic bottom trawl fishery, see Fishery Name and Organizational Changes and Clarification section). Interactions between each of these marine mammal

stocks and this fishery have been documented in recent SARs.

Northeast/Mid-Atlantic Bottom Longline/Hook-and-Line Fishery

NMFS proposes to remove the Western North Atlantic stocks of harbor seals, gray seals, and humpback whales from the list of marine mammal species and stocks incidentally injured or killed by the Northeast/Mid-Atlantic bottom longline/hook-and-line fishery. Interactions between each of these marine mammal stocks and this fishery have not been documented in recent years.

Northeast Mid-water Trawl Fishery

NMFS proposes to add the Western North Atlantic stocks of long-finned pilot whales, short-finned pilot whales, and Atlantic white-sided dolphins to the list of marine mammal species and stocks incidentally injured or killed by the Northeast mid-water trawl fishery. Interactions between each of these marine mammal stocks and this fishery have been documented in recent SARs.

Northeast Sink Gillnet Fishery

NMFS proposes to remove the Western North Atlantic stocks of killer whales, spotted dolphins, and false killer whales from the list of marine mammal species and stocks incidentally injured or killed by the Northeast sink gillnet fishery. Interactions between each of these marine mammal stocks/species and this fishery have not been documented in recent years.

NMFS proposes to add the Western North Atlantic stocks of Risso's dolphins and hooded seals to the list of marine mammal species and stocks incidentally injured or killed by the Northeast sink gillnet fishery. Interactions between each of these marine mammal stocks/species and this fishery have been documented in recent SARs.

Rhode Island, Southern Massachusetts (to Monomoy Island), and New York Bight (Raritan and Lower New York Bays) Inshore Gillnet Fishery

NMFS proposes to remove the Gulf of Maine/Bay of Fundy stock of harbor porpoise, the Gulf of Maine stock of humpback whales, and the Western North Atlantic coastal stock of bottlenose dolphins from the list of marine mammal species and stocks incidentally injured or killed by the Rhode Island, Southern Massachusetts (to Monomoy Island), and New York Bight (Raritan and Lower New York Bays) inshore gillnet fishery. Interactions between each of these marine mammal stocks and this fishery have not been documented in recent years.

Southeastern U.S. Atlantic and Gulf of Mexico Shrimp Trawl Fishery

NMFS proposes to add the Western Gulf of Mexico coastal stock of bottlenose dolphins, the Eastern Gulf of Mexico coastal stock of bottlenose dolphins, the Gulf of Mexico bay, sound, and estuarine stock of bottlenose dolphins, and the Florida stock of the West Indian manatee to the list of marine mammal species and stocks incidentally injured or killed by the Southeastern U.S. Atlantic and Gulf of Mexico shrimp trawl fishery. Interactions between each of these marine mammal stocks/species and this fishery have been documented in recent SARs.

U.S. Atlantic Tuna Purse Seine Fishery

NMFS proposes to add the Western North Atlantic stocks of long-finned and short-finned pilot whales to the list of marine mammal species and stocks incidentally injured or killed by the U.S. Atlantic tuna purse seine fishery. Interactions between each of these marine mammal stocks/species and this fishery have been documented in recent SARs.

List of Fisheries

The following two tables list U.S. commercial fisheries according to their assigned categories under section 118 of the MMPA. The estimated number of vessels/participants is expressed in terms of the number of active participants in the fishery, when possible. If this information is not available, the estimated number of vessels or persons licensed for a particular fishery is provided. If no recent information is available on the number of participants in a fishery, the number from the most recent LOF is used.

The tables also list the marine mammal species and stocks that are incidentally killed or injured in each fishery based on observer data, logbook data, stranding reports, and fisher reports. This list includes all species or stocks known to experience injury or mortality in a given fishery, but also includes species or stocks for which there are anecdotal or historical, but not necessarily current, records of interaction. Additionally, species identified by logbook entries may not be verified. Not all species or stocks identified are the reason for a fishery's placement in a given category. There are a few fisheries that are in Category II that have no recently documented interactions with marine mammals. Justifications for placement of these fisheries are by analogy to other gear types that are known to cause mortality or serious injury of marine mammals, as discussed in the final LOF for 1996 (60 FR 67063, December 28, 1995), and according to factors listed in the definition of ''Category II fishery'' in 50 CFR 229.2.

Table 1 lists commercial fisheries in the Pacific Ocean (including Alaska); Table 2 lists commercial fisheries in the Atlantic Ocean, Gulf of Mexico, and Caribbean.

BILLING CODE 3510–22–S

Table 1 - List of Fisheries Commercial Fisheries in the Pacific Ocean

Fishery Description	Estimated # of vessels/persons	Marine mammal species and stocks incidentally killed/injured
Category I		
GILLNET FISHERIES:		
CA angel shark/halibut and other species set gillnet (>3.5 in. mesh)	58	California sea lion, U.S. Common dolphin, long-beaked CA Common dolphin, short-beaked, CA/OR/WA Harbor seal, CA Harbor porpoise, Central CA Northern elephant seal, CA breeding Sea otter, CA
CA/OR thresher shark/swordfish drift gillnet (≥14 in. mesh)	85	Baird's beaked whale, CA/OR/WA Bottlenose dolphin, CA/OR/WA offshore California sea lion, U.S. Cuvier's beaked whale, CA/OR/WA Dall's porpoise, CA/OR/WA Fin whale, CA/OR/WA Gray whale, Eastern North Pacific Humpback whale, CA/OR/WA-Mexico Killer whale, CA/OR/WA Pacific coast Long-beaked common dolphin, CA/OR/WA Mesoplodont beaked whale, CA/OR/WA Northern elephant seal, CA breeding Northern fur seal, San Miguel Island Northern Pacific white-sided dolphin, CA/OR/WA Northern right-whale dolphin, CA/OR/WA Pygmy sperm whale, CA/OR/WA Risso's dolphin, CA/OR/WA Short-beaked common dolphin, CA/OR/WA Short-finned pilot whale, CA/OR/WA Southern Pacific white-sided dolphin, CA/OR/WA Sperm whale, CA/OR/WA Steller sea lion, Eastern U.S. Striped dolphin, CA/OR/WA
LONGLINE/SET LINE FISHERIES:		
HI swordfish, tuna, billfish, mahi mahi, wahoo, oceanic sharks longline/set line	140	Bottlenose dolphin, HI False killer whales, HI Humpback whale, Central North Pacific Risso's dolphin, HI Short-finned pilot whale, HI Spinner dolphin, HI Sperm whale, HI
Category II		
GILLNET FISHERIES:		

Fishery Description	Estimated # of vessels/persons	Marine mammal species and stocks incidentally killed/injured
AK Bristol Bay salmon drift gillnet	1,903	Beluga whale, Bristol Bay Gray whale, Eastern North Pacific Harbor seal, Bering Sea Northern fur seal, Eastern Pacific Pacific white-sided dolphin, North Pacific Spotted seal, AK Steller sea lion, Western U.S.
AK Bristol Bay salmon set gillnet	1,014	Beluga whale, Bristol Bay Gray whale, Eastern North Pacific Harbor seal, Bering Sea Northern fur seal, Eastern Pacific Spotted seal, AK
AK Cook Inlet salmon drift gillnet	576	Beluga whale, Cook Inlet Dall's porpoise, AK Harbor porpoise, GOA Harbor seal, GOA Steller sea lion, Western U.S.
AK Kodiak salmon set gillnet	188	Harbor porpoise, GOA Harbor seal, GOA Sea otter, AK
AK Metlakatla/Annette Island salmon drift gillnet	60	None documented
AK Peninsula/Aleutian Islands salmon drift gillnet	164	Dall's porpoise, AK Harbor porpoise, GOA Harbor seal, GOA Northern fur seal, Eastern Pacific
AK Peninsula/Aleutian Islands salmon set gillnet	116	Harbor porpoise, Bering Sea Steller sea lion, Western U.S.
AK Prince William Sound salmon drift gillnet	541	Dall's porpoise, AK Harbor porpoise, GOA Harbor seal, GOA Northern fur seal, Eastern Pacific Pacific white-sided dolphin, North Pacific Sea Otter, AK Steller sea lion, Western U.S.
AK Southeast salmon drift gillnet	481	Dall's porpoise, AK Harbor porpoise, Southeast AK Harbor seal, Southeast AK Humpback whale, Central North Pacific Pacific white-sided dolphin, North Pacific Steller sea lion, Eastern U.S.
AK Yakutat salmon set gillnet	170	Gray whale, Eastern North Pacific Harbor seal, Southeast AK
CA yellowtail, barracuda, white seabass, and tuna drift gillnet fishery (mesh size > 3.5 inches and < 14 inches)	24	California sea lion, U.S. Long-beaked common dolphin, CA/OR/WA Short-beaked common dolphin, CA/OR/WA

Fishery Description	Estimated # of vessels/persons	Marine mammal species and stocks incidentally killed/injured
WA Puget Sound Region salmon drift gillnet (includes all inland waters south of US-Canada border and eastward of the Bonilla-Tatoosh line–Treaty Indian fishing is excluded)	210	Dall's porpoise, CA/OR/WA Harbor porpoise, inland WA Harbor seal, WA inland
PURSE SEINE FISHERIES:		
AK Southeast salmon purse seine	416	Humpback whale, Central North Pacific
CA anchovy, mackerel, tuna purse seine	110	Bottlenose dolphin, CA/OR/WA offshore California sea lion, U.S. Harbor seal, CA
CA squid purse seine	65	Short-finned pilot whale, CA/OR/WA
TRAWL FISHERIES:		
AK miscellaneous finfish pair trawl	2	None documented
AK Bering Sea, Aleutian Islands flatfish trawl	26	Killer whale, Eastern North Pacific resident Killer whale, Eastern North Pacific transient Steller sea lion, Western U.S.
AK Bering Sea, Aleutian Islands pollock trawl	120	Humpback whale, Central North Pacific Humpback whale, Western North Pacific Killer whale, Eastern North Pacific resident Killer whale, Eastern North Pacific transient Steller sea lion, Western U.S.
LONGLINE/SET LINE FISHERIES:		
AK Bering Sea, Aleutian Islands Greenland turbot longline	36	Killer whale, Eastern North Pacific resident Killer whale, Eastern North Pacific transient
AK Bering Sea, Aleutian Islands Pacific cod longline	114	Killer whale, Eastern North Pacific resident Killer whale, Eastern North Pacific transient
CA pelagic longline	6	California sea lion, U.S. Risso's dolphin, CA/OR/WA
OR swordfish floating longline	0	None documented
OR blue shark floating longline	1	None documented
POT, RING NET, AND TRAP FISHERIES:		
AK Bering Sea sablefish pot	6	Humpback whale, Central North Pacific Humpback whale, Western North Pacific
Category III		
GILLNET FISHERIES:		
AK Cook Inlet salmon set gillnet	745	Beluga whale, Cook Inlet Dall's porpoise, AK Harbor porpoise, GOA Harbor seal, GOA Steller sea lion, Western U.S.

Fishery Description	Estimated # of vessels/persons	Marine mammal species and stocks incidentally killed/injured
AK Kuskokwim, Yukon, Norton Sound, Kotzebue salmon gillnet	1,922	Harbor porpoise, Bering Sea
AK miscellaneous finfish set gillnet	3	Steller sea lion, Western U.S.
AK Prince William Sound salmon set gillnet	30	Harbor seal, GOA Steller sea lion, Western U.S.
AK roe herring and food/bait herring gillnet	2,034	None documented
CA set and drift gillnet fisheries that use a stretched mesh size of 3.5 in or less	341	None documented
Hawaii gillnet	115	Bottlenose dolphin, HI Spinner dolphin, HI
WA Grays Harbor salmon drift gillnet (excluding treaty Tribal fishing)	24	Harbor seal, OR/WA coast
WA, OR herring, smelt, shad, sturgeon, bottom fish, mullet, perch, rockfish gillnet	913	None documented
WA, OR lower Columbia River (includes tributaries) drift gillnet	110	California sea lion, U.S. Harbor seal, OR/WA coast
WA Willapa Bay drift gillnet	82	Harbor seal, OR/WA coast Northern elephant seal, CA breeding
PURSE SEINE, BEACH SEINE, ROUND HAUL AND THROW NET FISHERIES:		
AK Metlakatla salmon purse seine	10	None documented
AK miscellaneous finfish beach seine	1	None documented
AK miscellaneous finfish purse seine	3	None documented
AK octopus/squid purse seine	2	None documented
AK roe herring and food/bait herring beach seine	8	None documented
AK roe herring and food/bait herring purse seine	624	None documented
AK salmon beach seine	34	None documented
AK salmon purse seine (except Southeast Alaska, which is in Category II)	953	Harbor seal, GOA
CA herring purse seine	100	California sea lion, U.S. Harbor seal, CA
CA sardine purse seine	110	California sea lion, U.S.
HI opelu/akule net	16	None documented
HI purse seine	18	None documented

Fishery Description	Estimated # of vessels/persons	Marine mammal species and stocks incidentally killed/injured
HI throw net, cast net	47	None documented
WA (all species) beach seine or drag seine	235	None documented
WA, OR herring, smelt, squid purse seine or lampara	130	None documented
WA salmon purse seine	440	None documented
WA salmon reef net	53	None documented
DIP NET FISHERIES:		
CA squid dip net	115	None documented
WA, OR smelt, herring dip net	119	None documented
MARINE AQUACULTURE FISHERIES:		
CA salmon enhancement rearing pen	>1	None documented
OR salmon ranch	1	None documented
WA, OR salmon net pens	14	California sea lion, U.S. Harbor seal, WA inland waters
TROLL FISHERIES:		
AK North Pacific halibut, AK bottom fish, WA, OR, CA albacore, groundfish, bottom fish, CA halibut non-salmonid troll fisheries	1,530 (330 AK)	None documented
AK salmon troll	2,335	Steller sea lion, Eastern U.S. Steller sea lion, Western U.S.
American Samoa tuna troll	<50	None documented
CA/OR/WA salmon troll	4,300	None documented
Commonwealth of the Northern Mariana Islands tuna troll	50	None documented
Guam tuna troll	50	None documented
HI net unclassified	106	None documented
HI trolling, rod and reel	1,795	None documented
LONGLINE/SET LINE FISHERIES:		
AK Bering Sea, Aleutian Islands rockfish longline	17	None documented
AK Bering Sea, Aleutian Islands sablefish longline	63	None documented
AK Gulf of Alaska halibut longline	1302	None documented
AK Gulf of Alaska Pacific cod longline	440	None documented

Fishery Description	Estimated # of vessels/persons	Marine mammal species and stocks incidentally killed/injured
AK Gulf of Alaska rockfish longline	421	None documented
AK Gulf of Alaska sablefish longline	412	None documented
AK halibut longline/set line (State and Federal waters)	3,079	Steller sea lion, Western U.S.
AK octopus/squid longline	7	None documented
AK state-managed waters groundfish longline/setline (including sablefish, rockfish, and miscellaneous finfish)	731	None documented
WA, OR, CA groundfish, bottomfish longline/set line	367	None documented
WA, OR North Pacific halibut longline/set line	350	None documented
TRAWL FISHERIES:		
AK Bering Sea, Aleutian Islands Atka mackerel trawl	8	Steller sea lion, Western U.S.
AK Bering Sea, Aleutian Islands Pacific cod trawl	87	None documented
AK Bering Sea, Aleutian Islands rockfish trawl	9	None documented
AK Gulf of Alaska flatfish trawl	52	None documented
AK Gulf of Alaska Pacific cod trawl	101	None documented
AK Gulf of Alaska pollock trawl	83	None documented
AK Gulf of Alaska rockfish trawl	45	None documented
AK food/bait herring trawl	3	None documented
AK miscellaneous finfish otter or beam trawl	6	None documented
AK shrimp otter trawl and beam trawl (statewide and Cook Inlet)	58	None documented
AK state-managed waters of Cook Inlet, Kachemak Bay, Prince William Sound, Southeast AK groundfish trawl	2	None documented
WA, OR, CA groundfish trawl	585	California sea lion, U.S. Dall's porpoise, CA/OR/WA Harbor seal, OR/WA coast Northern fur seal, Eastern Pacific Pacific white-sided dolphin, Central North Pacific Steller sea lion, Western U.S.
WA, OR, CA shrimp trawl	300	None documented
POT, RING NET, AND TRAP FISHERIES:		

Fishery Description	Estimated # of vessels/persons	Marine mammal species and stocks incidentally killed/injured
AK Aleutian Islands sablefish pot	8	None documented
AK Bering Sea, Aleutian Islands Pacific cod pot	76	None documented
AK Bering Sea, Aleutian Islands crab pot	329	None documented
AK Gulf of Alaska crab pot	unknown	None documented
AK Gulf of Alaska Pacific cod pot	154	None documented
AK Southeast Alaska crab pot	unknown	None documented
AK Southeast Alaska shrimp pot	unknown	None documented
AK octopus/squid pot	72	None documented
AK snail pot	2	None documented
CA lobster, prawn, shrimp, rock crab, fish pot	608	Sea otter, CA
OR, CA hagfish pot or trap	25	None documented
WA, OR, CA crab pot	1,478	Gray whale, Eastern North Pacific
WA, OR, CA sablefish pot	176	None documented
WA, OR shrimp pot & trap	254	None documented
HI crab trap	22	None documented
HI fish trap	19	None documented
HI lobster trap	15	Hawaiian monk seal
HI shrimp trap	5	None documented
HANDLINE AND JIG FISHERIES:		
AK miscellaneous finfish handline and mechanical jig	100	None documented
AK North Pacific halibut handline and mechanical jig	93	None documented
AK octopus/squid handline	2	None documented
American Samoa bottomfish	<50	None documented
Commonwealth of the Northern Mariana Islands bottomfish	<50	None documented
Guam bottomfish	<50	None documented
HI aku boat, pole and line	54	None documented
HI deep sea bottomfish	434	Hawaiian monk seal
HI inshore handline	650	Bottlenose dolphin, HI

Fishery Description	Estimated # of vessels/persons	Marine mammal species and stocks incidentally killed/injured
HI tuna	144	Bottlenose dolphin, HI Hawaiian monk seal Rough-toothed dolphin, HI
WA groundfish, bottomfish jig	679	None documented
HARPOON FISHERIES:		
CA swordfish harpoon	30	None documented
POUND NET/WEIR FISHERIES:		
AK herring spawn on kelp pound net	452	None documented
AK Southeast herring roe/food/bait pound net	3	None documented
WA herring brush weir	1	None documented
BAIT PENS:		
WA/OR/CA bait pens	13	None documented
DREDGE FISHERIES:		
Coastwide scallop dredge	108 (12 AK)	None documented
DIVE, HAND/MECHANICAL COLLECTION FISHERIES:		
AK abalone	1	None documented
AK clam	156	None documented
WA herring spawn on kelp	4	None documented
AK dungeness crab	3	None documented
AK herring spawn on kelp	363	None documented
AK urchin and other fish/shellfish	471	None documented
CA abalone	111	None documented
CA sea urchin	583	None documented
HI coral diving	2	None documented
HI fish pond	10	None documented
HI handpick	135	None documented
HI lobster diving	6	None documented
HI squiding, spear	267	None documented
WA, CA kelp	4	None documented

Fishery Description	Estimated # of vessels/persons	Marine mammal species and stocks incidentally killed/injured
WA/OR sea urchin, other clam, octopus, oyster, sea cucumber, scallop, ghost shrimp hand, dive, or mechanical collection	637	None documented
WA shellfish aquaculture	684	None documented
COMMERCIAL PASSENGER FISHING VESSEL (CHARTER BOAT) FISHERIES:		
AK, WA, OR, CA commercial passenger fishing vessel	>7,000 (1,107 AK)	None documented
HI "other"	114	None documented
LIVE FINFISH/SHELLFISH FISHERIES:		
CA finfish and shellfish live trap/hook-and-line	93	None documented

List of Abbreviations Used in Table 1: AK - Alaska; CA - California; GOA - Gulf of Alaska; HI - Hawaii; OR - Oregon; WA - Washington

Table 2 - List of Fisheries Commercial Fisheries in the Atlantic Ocean, Gulf of Mexico, and Caribbean

Fishery Description	Estimated # of vessels/persons	Marine mammal species and stocks incidentally killed/injured
Category I		
GILLNET FISHERIES:		
Mid-Atlantic gillnet	>655	Bottlenose dolphin, WNA coastal Bottlenose dolphin, WNA offshore Common dolphin, WNA Fin whale, WNA Gray seal, WNA Harbor porpoise, GME/BF Harbor seal, WNA Harp seal, WNA Humpback whale, Gulf of Maine Long-finned pilot whale, WNA Minke whale, Canadian east coast Short-finned pilot whale, WNA White-sided dolphin, WNA
Northeast sink gillnet	341	Bottlenose dolphin, WNA offshore Common dolphin, WNA Fin whale, WNA Gray seal, WNA Harbor porpoise, GME/BF Harbor seal, WNA Harp seal, WNA Hooded seal, WNA Humpback whale, WNA Minke whale, Canadian east coast North Atlantic right whale, WNA Risso's dolphin, WNA White-sided dolphin, WNA
LONGLINE FISHERIES:		
Atlantic Ocean, Caribbean, Gulf of Mexico large pelagics longline	<200	Atlantic spotted dolphin, Northern GMX Atlantic spotted dolphin, WNA Bottlenose dolphin, GMX outer continental shelf Bottlenose dolphin, GMX continental shelf edge and slope Bottlenose dolphin, WNA offshore Common dolphin, WNA Cuvier's beaked whale, WNA Long-finned pilot whale, WNA Mesoplodon beaked whale, WNA Pantropical spotted dolphin, Northern GMX Pantropical spotted dolphin, WNA Pygmy sperm whale, WNA Risso's dolphin, Northern GMX Risso's dolphin, WNA Short-finned pilot whale, Northern GMX Short-finned pilot whale, WNA
TRAP/POT FISHERIES:		

Fishery Description	Estimated # of vessels/persons	Marine mammal species and stocks incidentally killed/injured
Northeast/Mid-Atlantic American lobster trap/pot	13,000	Fin whale, WNA Harbor seal, WNA Humpback whale, WNA Minke whale, Canadian east coast North Atlantic right whale, WNA
TRAWL FISHERIES:		
Mid-Atlantic mid-water trawl	620	Bottlenose dolphin, WNA offshore Common dolphin, WNA Long-finned pilot whale, WNA Risso's dolphin, WNA Short-finned pilot whale, WNA White-sided dolphin, WNA
Category II		
GILLNET FISHERIES:		
Gulf of Mexico gillnet	724	Bottlenose dolphin, Eastern GMX coastal Bottlenose dolphin, GMX bay, sound, and estuarine Bottlenose dolphin, Northern GMX coastal Bottlenose dolphin, Western GMX coastal
North Carolina inshore gillnet	94	Bottlenose dolphin, WNA coastal
Northeast anchored float gillnet	133	Harbor seal, WNA Humpback whale, WNA White-sided dolphin, WNA
Northeast drift gillnet	unknown	None documented
Southeast Atlantic gillnet	779	Bottlenose dolphin, WNA coastal
Southeastern U.S. Atlantic shark gillnet	6	Atlantic spotted dolphin, WNA Bottlenose dolphin, WNA coastal North Atlantic right whale, WNA
TRAWL FISHERIES:		
Mid-Atlantic bottom trawl	>1,000	Common dolphin, WNA Long-finned pilot whale, WNA Short-finned pilot whale, WNA
Northeast mid-water trawl (including pair trawl)	17	Harbor seal, WNA Long-finned pilot whale, WNA Short-finned pilot whale, WNA White-sided dolphin, WNA
Northeast bottom trawl	1,052	Bottlenose dolphin, WNA offshore Common dolphin, WNA Harbor porpoise, GME/BF Harp seal, WNA Long-finned pilot whale, WNA Short-finned pilot whale, WNA Striped dolphin, WNA White-sided dolphin, WNA
TRAP/POT FISHERIES:		

Fishery Description	Estimated # of vessels/persons	Marine mammal species and stocks incidentally killed/injured
Atlantic blue crab trap/pot	>16,000	Bottlenose dolphin, WNA coastal West Indian manatee, FL
Atlantic mixed species trap/pot	unknown	Fin whale, WNA Humpback whale, Gulf of Maine
PURSE SEINE FISHERIES:		
Gulf of Mexico menhaden purse seine	50	Bottlenose dolphin, Eastern GMX coastal Bottlenose dolphin, GMX bay, sound, estuarine Bottlenose dolphin, Northern GMX coastal Bottlenose dolphin, Western GMX coastal
HAUL/BEACH SEINE FISHERIES:		
Mid-Atlantic haul/beach seine	25	Bottlenose dolphin, WNA coastal Harbor porpoise, GME/BF
North Carolina long haul seine	33	Bottlenose dolphin, WNA coastal
STOP NET FISHERIES:		
North Carolina roe mullet stop net	13	Bottlenose dolphin, WNA coastal
POUND NET FISHERIES:		
Virginia pound net	187	Bottlenose dolphin, WNA coastal
Category III		
GILLNET FISHERIES:		
Caribbean gillnet	>991	Dwarf sperm whale, WNA West Indian manatee, Antillean
Chesapeake Bay inshore gillnet	45	None documented
Delaware River inshore gillnet	60	None documented
Long Island Sound inshore gillnet	20	None documented
Rhode Island, southern Massachusetts (to Monomoy Island), and New York Bight (Raritan and Lower New York Bays) inshore gillnet	32	None documented
TRAWL FISHERIES:		
Atlantic shellfish bottom trawl	972	None documented
Gulf of Mexico butterfish trawl	2	Bottlenose dolphin, Northern GMX outer continental shelf Bottlenose dolphin, Northern GMX continental shelf edge and slope
Gulf of Mexico mixed species trawl	20	None documented

Fishery Description	Estimated # of vessels/persons	Marine mammal species and stocks incidentally killed/injured
Southeastern U.S. Atlantic, Gulf of Mexico shrimp trawl	>18,000	Bottlenose dolphin, WNA coastal Bottlenose dolphin, Eastern GMX coastal Bottlenose dolphin, Western GMX coastal Bottlenose dolphin, GMX bay, sound, estuarine West Indian Manatee, FL
MARINE AQUACULTURE FISHERIES:		
Finfish aquaculture	48	Harbor seal, WNA
Shellfish aquaculture	unknown	None documented
PURSE SEINE FISHERIES:		
Gulf of Maine Atlantic herring purse seine	30	Harbor porpoise, GME/BF Harbor seal, WNA Gray seal, WNA
Gulf of Maine menhaden purse seine	50	None documented
Florida west coast sardine purse seine	10	Bottlenose dolphin, Eastern GMX coastal
Mid-Atlantic menhaden purse seine	22	Bottlenose dolphin, WNA coastal
U.S. Atlantic tuna purse seine	5	Long-finned pilot whale, WNA Short-finned pilot whale, WNA
U.S. Mid-Atlantic hand seine	>250	None documented
LONGLINE/HOOK-AND-LINE FISHERIES:		
Northeast/Mid-Atlantic bottom longline/hook-and-line	46	None documented
Gulf of Maine, U.S. Mid-Atlantic tuna, shark swordfish hook-and-line/harpoon	26,223	Humpback whale, WNA
Southeastern U.S. Atlantic, Gulf of Mexico, and Caribbean snapper-grouper and other reef fish bottom longline/hook-and-line	>5,000	None documented
Southeastern U.S. Atlantic, Gulf of Mexico shark bottom longline/hook-and-line	<125	None documented
Southeastern U.S. Atlantic, Gulf of Mexico, and Caribbean pelagic hook-and-line/harpoon	1,446	None documented
TRAP/POT FISHERIES		
Caribbean mixed species trap/pot	>501	None documented
Caribbean spiny lobster trap/pot	>197	None documented
Florida spiny lobster trap/pot	2,145	Bottlenose dolphin, Eastern GMX coastal

Fishery Description	Estimated # of vessels/persons	Marine mammal species and stocks incidentally killed/injured
Gulf of Mexico blue crab trap/pot	4,113	Bottlenose dolphin, Western GMX coastal Bottlenose dolphin, Northern GMX coastal Bottlenose dolphin, Eastern GMX coastal Bottlenose dolphin, GMX Bay, Sound, & Estuarine West Indian manatee, FL
Gulf of Mexico mixed species trap/pot	unknown	None documented
Southeastern U.S. Atlantic, Gulf of Mexico golden crab trap/pot	10	None documented
Southeastern U.S. Atlantic, Gulf of Mexico stone crab trap/pot	4,453	None documented
U.S. Mid-Atlantic eel trap/pot	>700	None documented
STOP SEINE/WEIR/POUND NET FISHERIES:		
Gulf of Maine herring and Atlantic mackerel stop seine/weir	50	Gray seal, Northwest North Atlantic Harbor porpoise, GME/BF Harbor seal, WNA Minke whale, Canadian east coast White-sided dolphin, WNA
U.S. Mid-Atlantic crab stop seine/weir	2,600	None documented
U.S. Mid-Atlantic mixed species stop seine/weir/pound net (except the North Carolina roe mullet stop net)	751	None documented
DREDGE FISHERIES:		
Gulf of Maine mussel	>50	None documented
Gulf of Maine, U.S. Mid-Atlantic sea scallop dredge	233	None documented
U.S. Mid-Atlantic/Gulf of Mexico oyster	7,000	None documented
U.S. Mid-Atlantic offshore surf clam and quahog dredge	100	None documented
HAUL/BEACH SEINE FISHERIES:		
Caribbean haul/beach seine	15	West Indian manatee, Antillean
Gulf of Mexico haul/beach seine	unknown	None documented
Southeastern U.S. Atlantic, haul/beach seine	25	None documented
DIVE, HAND/MECHANICAL COLLECTION FISHERIES:		
Atlantic Ocean, Gulf of Mexico, Caribbean shellfish dive, hand/mechanical collection	20,000	None documented
Gulf of Maine urchin dive, hand/mechanical collection	>50	None documented

Fishery Description	Estimated # of vessels/persons	Marine mammal species and stocks incidentally killed/injured
Gulf of Mexico, Southeast Atlantic, Mid-Atlantic, and Caribbean cast net	unknown	None documented
COMMERCIAL PASSENGER FISHING VESSEL (CHARTER BOAT) FISHERIES:		
Atlantic Ocean, Gulf of Mexico, Caribbean commercial passenger fishing vessel	4,000	None documented

List of Abbreviations Used in Table 2: FL - Florida; GA - Georgia; GME/BF - Gulf of Maine/Bay of Fundy; GMX - Gulf of Mexico; NC - North Carolina; SC - South Carolina; TX - Texas; WNA - Western North Atlantic

BILLING CODE 3510–22–C

Classification

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule would not have a significant economic impact on a substantial number of small entities. For convenience, the factual basis leading to the certification is repeated below.

Under existing regulations, all fishers participating in Category I or II fisheries must register under the MMPA, obtain an Authorization Certificate, and pay a fee of $25. Additionally, fishers may be subject to a take reduction plan and requested to carry an observer. The Authorization Certificate authorizes the taking of marine mammals incidental to commercial fishing operations. NMFS has estimated that approximately 41,600 fishing vessels, most of which are small entities, operate in Category I or II fisheries, and therefore, are required to register. However, registration has been integrated with existing state or Federal registration programs for the majority of these fisheries so that the majority of fishers do not need to register separately under the MMPA. Currently, approximately 5,800 fishers register directly with NMFS under the MMPA authorization program.

Though this proposed rule would affect a number of small entities, the $25 registration fee, with respect to anticipated revenues, is not considered a significant economic impact. If a vessel is requested to carry an observer, fishers will not incur any economic costs associated with carrying that observer. As a result of this certification, an initial regulatory flexibility analysis was not prepared. In the event that reclassification of a fishery to Category I or II results in a take reduction plan, economic analyses of the effects of that plan will be summarized in subsequent rulemaking actions. Further, if a vessel is requested to carry an observer, fishers will not incur any economic costs associated with carrying that observer.

This proposed rule contains collection-of-information requirements subject to the Paperwork Reduction Act. The collection of information for the registration of fishers under the MMPA has been approved by the Office of Management and Budget (OMB) under OMB control number 0648–0293 (0.25 hours per report for new registrants and 0.15 hours per report for renewals). The requirement for reporting marine mammal injuries or moralities has been approved by OMB under OMB control number 0648–0292 (0.15 hours per report). These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these reporting burden estimates or any other aspect of the collections of information, including suggestions for reducing burden, to NMFS and OMB (see **ADDRESSES**).

Notwithstanding any other provision of law, no person is required to respond to nor shall a 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 OMB control number.

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

An environmental assessment (EA) was prepared under the National Environmental Policy Act (NEPA) for regulations to implement section 118 of the MMPA (1995 EA). The 1995 EA concluded that implementation of those regulations would not have a significant impact on the human environment. This proposed rule would not make any significant change in the management of reclassified fisheries, and therefore, this proposed rule is not expected to change the analysis or conclusion of the 1995 EA. If NMFS takes a management action, for example, through the development of a Take Reduction Plan (TRP), NMFS will first prepare an environmental document as required under NEPA specific to that action.

This proposed rule would not affect species listed as threatened or endangered under the Endangered Species Act (ESA) or their associated critical habitat. The impacts of numerous fisheries have been analyzed in various biological opinions, and this proposed rule will not affect the conclusions of those opinions. The classification of fisheries on the LOF is not considered to be a management action that would adversely affect threatened or endangered species. If NMFS takes a management action, for example, through the development of a TRP, NMFS would conduct consultation under section 7 of the ESA for that action.

This proposed rule would have no adverse impacts on marine mammals and may have a positive impact on marine mammals by improving knowledge of marine mammals and the fisheries interacting with marine mammals through information collected from observer programs or take reduction teams.

This proposed rule would not affect the land or water uses or natural resources of the coastal zone, as specified under section 307 of the Coastal Zone Management Act.

Dated: November 26, 2004.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

[FR Doc. 04–26577 Filed 12–1–04; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 69, No. 231
Thursday, December 2, 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.

AFRICAN DEVELOPMENT FOUNDATION

African Development Board of Directors Meeting; Sunshine Act

TIME: Sunday, December 5, 2004—12 p.m. to 6 p.m., Monday, December 6, 2004—8:30 a.m. to 12 p.m.

PLACE: Cherry Blossom Room, Grand Hyatt Hotel, 1000 H Street, NW., Washington, DC 20001.

DATE: December 5 and 6, 2004.

STATUS:

Open Sessions: Sunday, 12 p.m. to 4 p.m. Monday, 8:30 a.m. to 12 p.m.

Closed Executive Session: Sunday, 4:30 p.m. to 6 p.m.

Agenda

Sunday, December 5, 2004:
- 12 p.m.—Chairman's Report.
- 12:30 p.m.—Strategic Planning Session.
- 4:30 p.m.—Executive Session.
- 6 p.m.—Adjournment for day.

Monday, December 6, 2004:
- 8:30 a.m.—Administrative and Management Session.
- 12 p.m.—Adjournment.

If you have any questions or comments, please direct them to Doris Martin, General Counsel, who may be reached at (202) 673–3916.

Nathaniel Fields,

President.

[FR Doc. 04–26658 Filed 11–30–04; 2:01 pm]

BILLING CODE 6116–01–P

DEPARTMENT OF THE INTERIOR

DEPARTMENT OF AGRICULTURE

[CA 668–05–1610–PG–083A]

Monument Advisory Committee Meeting Schedule

AGENCY: Bureau of Land Management, U.S. Department of the Interior; United States Forest Service, U.S. Department of Agriculture.

ACTION: Notice of meetings for FY05.

SUMMARY: The Bureau of Land Management (BLM) and United States Forest Service (USFS) announce the schedule of meetings for the Advisory Committee to the Santa Rosa and San Jacinto Mountains National Monument (hereinafter referred to as National Monument). The meetings will be held on the following dates:

- Saturday, February 5, 2005.
- Saturday, June 4, 2005.
- Saturday, October 1, 2005.

The meetings will be held in the Palm Desert City Hall Council Chambers, located at 73–510 Fred Waring Drive, Palm Desert, California 92260. The meetings take place from 9 a.m. until 12 p.m. Meeting agendas will be developed and available to the public prior to meeting dates. Agendas will be located through the Bureau of Land Management, Palm Springs-South Coast Field Office Web Page linking to the Santa Rosa San Jacinto Mountains National Monument home page at *http://www.ca.blm.gov/palmsprings/santarosa /santa_rosa_national_monument.html.*

The subject matter of each meeting will focus on the implementation of the Santa Rosa and San Jacinto Mountains National Monument Management Plan. There will be a half hour at each meeting dedicated to public comment and input, beginning at 11 a.m.

Speakers wishing to comment publicly should sign-in on the sign up sheet, which will be located at the meeting room on the day of the meeting. Speakers making comments to the Advisory Committee are requested to provide a written copy of their statement for the record.

The Monument Advisory Committee (MAC) is a committee of citizens appointed to provide advice to the Secretary of the Interior and Secretary of Agriculture, with respect to the implementation of the National Monument Management Plan as required by the Santa Rosa and San Jacinto Mountains National Monument Act of 2000 (16 U.S.C. 106–351). The act authorized establishment of the MAC with representative members from State and local jurisdictions, the Agua Caliente Band of Cahuilla Indians, a natural science expert, local conservation organization, local developer or building organization, the Winter Park Authority, and a representative from the Pinyon Community Council.

All of the meetings are open to the public with attendance limited only by the space available. Individuals who plan to attend and need special assistance such as sign language interpretations, or other reasonable accommodations should notify the contact person listed below two (2) weeks in advance of the meeting. Persons wishing to make public comment will need to sign up at the meeting location.

DATES: February 5, 2005; June 4, 2005; October 1, 2005. All meetings will take place from 9 a.m. to 12 p.m. (noon) with a morning public comment period beginning at 11 a.m.

ADDRESSES: The meetings are held in the Council Chambers of the Palm Desert City Hall, 73–510 Fred Waring Drive, Palm Desert, California 92260.

FOR FURTHER INFORMATION CONTACT: Written comments should be sent to the Santa Rosa San Jacinto Mountains National Monument Writer-Editor, in care of the Bureau of Land Management, P.O. Box 581260, North Palm Springs, CA 92258; by fax at (760) 251–4899; or e-mail at *ca_srsj_nm@ca.blm.gov.*

Additional information may be located on the National Monument Home Page at *http://www.ca.blm.gov/palmsprings/santarosa/santa_rosa_national_ monument.html.*

Documents pertinent to this notice, including comments with the names and addresses of respondents, will be available for public review at the Palm Springs-South Coast Field Office located at 690 W. Garnet Avenue, North Palm Springs, California, during regular business hours 8 a.m. to 4:30 p.m., Monday through Friday, except for holidays.

SUPPLEMENTARY INFORMATION: The Santa Rosa and San Jacinto Mountains National Monument was established by Act of Congress and signed into law on October 24, 2000, by the President. The National Monument was established in order to preserve the nationally significant biological, cultural, recreational, geological, educational and scientific values found in the Santa Rosa and San Jacinto Mountains. This legislation established the first monument to be jointly managed by the

Bureau of Land Management (BLM) and the U.S. Forest Service (USFS). The Santa Rosa and San Jacinto Mountains National Monument Act of 2000 affects only Federal lands and Federal interests located within the established boundaries.

The 272,000-acre National Monument encompasses 86,400 acres of Bureau of Land Management lands, 64,400 acres of Forest Service lands, 23,000 acres of Agua Caliente Band of Cahuilla Indians lands, 8,500 acres of California Department of Parks and Recreation lands, 35,800 acres of other State of California agencies lands, and 53,900 acres of private land.

The BLM and the Forest Service jointly manage all Federal lands in the National Monument in coordination with the Agua Caliente Band of Cahuilla Indians, other Federal Agencies, State agencies and local governments.

All committee and subcommittee meetings, including field examinations, are open to the public, including representatives of the media. Any organization, association, or individual may file a statement with, or appear before the committee and/or its subcommittees regarding topics on a meeting agenda.

Dated: November 19, 2004.

Gail Acheson,

Bureau of Land Management, Palm Springs-South Coast Field Office Manager.

Dated: November 18, 2004.

Danella George,

Santa Rosa & San Jacinto Mountains, National Monument Manager.

Dated: November 17, 2004.

Laurie Rosenthal,

District Ranger, San Jacinto Ranger District, San Bernardino National Forest.

[FR Doc. 04–26544 Filed 12–1–04; 8:45 am]

BILLING CODE 4310–40–P; 3410–34–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Posting of Stockyards

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice.

SUMMARY: We posted two stockyards. We determined that the stockyards meet the definition of a stockyard under the Packers and Stockyards Act and, therefore, needed to be posted. Posted stockyards are subject to the provisions of the Packers and Stockyards Act.

SUPPLEMENTARY INFORMATION: The Grain Inspection, Packers and Stockyards Administration (GIPSA) administers and enforces the Packers and Stockyards Act of 1921, as amended and supplemented (7 U.S.C. 181–229) (P&S Act). The P&S Act prohibits unfair, deceptive, and fraudulent practices by livestock market agencies, dealers, stockyard owners, meat packers, swine contractors, and live poultry dealers in the livestock, poultry, and meatpacking industries.

Section 302 of the P&S Act (7 U.S.C. 202) defines the term ''stockyard'' as follows:

* * * any place, establishment, or facility commonly known as stockyards, conducted, operated, or managed for profit or nonprofit as a public market for livestock producers, feeders, market agencies, and buyers, consisting of pens, or other inclosures, and their appurtenances, in which live cattle, sheep, swine, horses, mules, or goats are received, held, or kept for sale or shipment in commerce.

Section 302 (b) of the P&S Act requires the Secretary to determine which stockyards meet this definition, and to notify the owner of the stockyard and the public of that determination by posting a notice in each designated stockyard. After giving notice to the stockyard owner and to the public, the stockyard remains subject to the provisions of Title III of the P&S Act (7 U.S.C. 201–203 and 205–217a) until the Secretary deposts the stockyard by public notice.

We published notices proposing to post the two stockyards on October 8, 2001 and November 7, 2003 (66 FR 52887 and 68 FR 63055–63056, respectively). We received no comments in response to either of these proposed posting notices.

This document notifies the public that the following two stockyards meet the definition of stockyard and that we posted the stockyards. To post stockyards, we assign the stockyard a facility number, notify the owner of the stockyard facility, and send notices to the owner of the stockyard to post on display in public areas of the stockyard. The date of posting is the date on which the posting notices are physically displayed.

Facility number	Stockyward name and location	Date of posting
KY–177	Mayfield Auction Barn, Mayfield, Kentucky	April 10, 2002.
WI–147	WFA Cattle Sales, Brooklyn, Wisconsin	March 10, 2004.

Authority: 7 U.S.C. 202.

Dated: November 29, 2004.

Donna Reifschneider,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 04–26583 Filed 12–01–04; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

White Tank Mountains Watershed, Arizona

AGENCY: Natural Resources Conservation Service.

ACTION: Notice of intent to deauthorize Federal funding.

SUMMARY: Pursuant to the Watershed Protection and Flood Prevention Act, Pub. L. 83–566, and the Natural Resources Conservation Service Guidelines (7 CFR part 622), the Natural Resources Conservation Service gives notice of the intent to deauthorize Federal funding for the White Tank Mountains Watershed, Maricopa County, Arizona.

FOR FURTHER INFORMATION CONTACT: Michael Somerville, State Conservationist, Natural Resources Conservation Service, 230 North First Avenue, Suite 509, Phoenix, Arizona 85003, telephone: 602–280–8810.

SUPPLEMENTARY INFORMATION: A determination has been made by Michael Somerville that the proposed works of improvement for the White Tank Mountains Watershed project will not be installed. The sponsoring local organizations have concurred in this determination and agree that Federal funding should be deauthorized for the project. Information regarding this determination may be obtained from Michael Somerville, State Conservationist, at the above address and telephone number.

No administrative action on implementation of the proposed deauthorization will be taken until 60 days after the date of this publication in the **Federal Register**.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention. Office of Management and Budget Circular A–95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable.)

Dated: November 19, 2004.

Michael Somerville,

State Conservationist.

[FR Doc. 04–26561 Filed 12–1–04; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF COMMERCE

[I.D. 112904B]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: U.S.-Canada Albacore Treaty Reporting System.

Form Number(s): None.

OMB Approval Number: 0648–0492.

Type of Request: Regular submission.

Burden Hours: 928.

Number of Respondents: 700.

Average Hours Per Response: 5 minutes.

Needs and Uses: The 1981 Treaty Between the Government of the United States and the Government of Canada on Pacific Coast Albacore Tuna Vessels and Port Privileges (Treaty) provides for reciprocal privileges for vessels of one country to fish in waters under the fisheries jurisdiction of the other country and to use certain ports. H.R. 2584 was enacted in 2004 and amended the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) to authorize the Secretary of Commerce, with the concurrence of the Secretary of State, to issue regulations needed to carry out U.S. obligations under the Treaty. On June 1, 2004, the National Marine Fisheries Service (NMFS) implemented such regulations, and the information collection involved was then given a short-term authorization from the Office of Management and Budget. The regulations require U.S. vessel operators to report their desire to be on the list of vessels provided to Canada each year indicating vessels that are eligible to fish for albacore in waters under the fisheries jurisdiction of Canada; report in advance their intention to fish or transit before crossing the border from the U.S. to Canada, or vice versa; maintain and submit to NMFS logbooks of catch and effort covering fishing in Canadian waters; and mark their fishing vessels to facilitate effective enforcement.

Affected Public: Business or other for-profit organizations.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, FAX number (202) 395–7285, or *David__Rostker@omb.eop.gov*.

Dated: November 23, 2004.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 04–26574 Filed 12–1–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

[I.D. 112904A]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Reporting of Sea Turtle Entanglement in Pot Gear Fisheries.

Form Number(s): None.

OMB Approval Number: 0648–0496.

Type of Request: Regular submission.

Burden Hours: 45.

Number of Respondents: 15.

Average Hours Per Response: 1.

Needs and Uses: Sea turtles can become accidentally entangled in active or discarded fixed fishing gear. These entanglements may prevent the recovery of endangered and threatened sea turtle populations. NOAA Fisheries had established the Sea Turtle Disentanglement Network to promote reporting and increase successful disentanglement of sea turtles. As there is limited to no observer coverage of pot gear fisheries, NOAA Fisheries relies on the U.S. Coast Guard, fishing industry, stranding network, Federal, state, and local authorities, and the public for this information. The information provided will help NOAA Fisheries better assess pot gear fisheries (lobster, whelk/conch, crab, fish trap) and their impacts on sea turtle populations in the northeast region (Maine to Virginia).

Affected Public: Business or other for-profit organizations; individuals or households; not-for-profit institutions; Federal Government; State, Local or Tribal Government.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, FAX number (202) 395–7285, or *David__Rostker@omb.eop.gov*.

Dated: November 23, 2004.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 04–26575 Filed 12–1–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1360]

Grant of Authority for Subzone Status; Rockwell Automation, Inc. (Industrial Automation Products), Champaign, IL

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 Economic Development Council for Central Illinois, grantee of Foreign-Trade Zone 114, has made application to the Board for authority to establish special-purpose subzone status at the warehousing, processing and distribution facility (industrial automation products) of Rockwell Automation, Inc., located in Champaign, Illinois (FTZ Docket 6–2004, filed 3/5/2004);

Whereas, notice inviting public comment has been given in the **Federal Register** (69 FR 12300, 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 would be in the public interest;

Now, therefore, the Board hereby grants authority for subzone status at the industrial automation products warehousing, processing and distribution facility of Rockwell Automation, Inc., located in Champaign, Illinois (Subzone 114E), at the location described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28.

Signed in Washington, DC, this 18th day of November, 2004.

James J. Jochum,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 04–26562 Filed 12–1–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1359]

Expansion of Foreign-Trade Zone 72; Indianapolis, IN

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 Indianapolis Airport Authority, grantee of Foreign-Trade Zone 72, submitted an application to the Board for authority to expand FTZ 72 to include four additional sites at locations in Madison, Marion and Hendricks Counties, Indiana, within the Indianapolis Customs port of entry (FTZ Docket 45–2003; filed 9/10/03);

Whereas, notice inviting public comment was given in the **Federal Register** (68 FR 54717, 9/18/03) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to expand FTZ 72 is approved, subject to the Act and the Board's regulations, including Section 400.28, and further subject to the Board's standard 2,000-acre activation limit for the overall zone project.

Signed in Washington, DC, this 18th day of November, 2004.

James J. Jochum,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 04–26563 Filed 12–1–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 53–2004]

Foreign-Trade Zone 7—Mayaguez, PR; Application for Subzone, Ortho Biologics, LLC (Pharmaceutical Intermediates), Manatí, PR

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Puerto Rico Industrial Development Company (PRIDCO), grantee of FTZ 7, requesting special-purpose subzone status for the pharmaceutical intermediate manufacturing facility of Ortho Biologics, LLC (OBI) in Manatí, Puerto Rico. OBI is a subsidiary of Johnson & Johnson. 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 November 19, 2004.

The OBI facility is located within a Johnson & Johnson-affiliated complex (10 buildings, 128,548 sq. ft. on 58.518 acres) located at State Road No. 2, Km. 45.6 in Manatí, Puerto Rico. The property is owned by Ortho-McNeil-Janssen Pharmaceutical, Inc., which produces finished pharmaceutical products at one of 2 manufacturing plants at the site. Only the OBI plant will be activated at this time. The OBI plant (218 employees) is used for warehousing and manufacturing of EPO bulk intermediate; activities which OBI is proposing to perform under FTZ procedures. Most of the intermediate is exported for further processing into a hormone which stimulates red blood cell production for the treatment of anemia. Foreign-sourced materials will account for some 14 percent of the bulk intermediate's value, and include Q-sepharose, citric acid, TRIS–HCL and Tris Base.

Zone procedures would exempt OBI from Customs duty payments on foreign materials used in production for export. At least 95 percent of the EPO bulk intermediate will be exported. The remaining five percent will be shipped domestically to a contractor to be processed into finished product that is then exported to Canada. On domestic shipments, the company would be able to defer Customs duty payments on foreign materials, and to choose the duty rate that applies to the EPO bulk intermediate (duty-free), instead of the rates otherwise applicable to the foreign input materials noted above (predominantly active ingredient, Q-sepharose, 3.9% *ad valorem*). OBI would also be able to avoid duty on

foreign input which becomes scrap/waste, estimated at 10 percent of imported material. The application also indicates that OBI may realize logistical/procedural benefits from subzone status. All of the above-cited savings from zone procedures could help improve the plant's international competitiveness.

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 is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following addresses:

1. Submissions Via Express/Package Delivery Services: Foreign-Trade-Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099 14th St., NW., Washington, DC 20005; or

2. Submissions Via the U.S. Postal Service: Foreign-Trade-Zones Board, U.S. Department of Commerce, FCB–Suite 4100W, 1401 Constitution Ave., NW., Washington, DC 20230.

The closing period for their receipt is January 31, 2005. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to February 15, 2005).

A copy of the application and accompanying exhibits will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at address Number 1 listed above, and at the U.S. Department of Commerce Export Assistance Center, 525 F.D. Roosevelt Ave., Suite 905, San Juan, PR 00918.

Dated: November 19, 2004.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 04–26565 Filed 12–1–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 51–2004]

Foreign-Trade Zone 167—Brown County, WS, Application for Expansion; Correction

The **Federal Register** notice (69 FR 67699–67700, 11/19/04) describing the expansion of Foreign-Trade Zone 167 in Brown County and Winnebago County, Wisconsin, to include Proposed Site 2A should read: Proposed Site 2A (289 acres)—Oshkosh Southwest Industrial Park located west of Oakwood Road, north of State Highway 91, east of Clairville Road and south of 20th Avenue in the City of Oshkosh and Town of Algoma (listed as Parcel C in the application). The application otherwise remains unchanged.

Dated: November 19, 2004.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 04–26564 Filed 12–1–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–891]

Notice of Antidumping Duty Order: Hand Trucks and Certain Parts Thereof From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of antidumping duty order.

EFFECTIVE DATES: December 2, 2004.

FOR FURTHER INFORMATION CONTACT: Daniel J. Alexy, Stephen Cho, or Audrey Twyman, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1540, (202) 482–3798, or (202) 482–3534, respectively.

SUPPLEMENTARY INFORMATION:

Scope of Order

The merchandise subject to this antidumping duty order consists of hand trucks manufactured from any material, whether assembled or unassembled, complete or incomplete, suitable for any use, and certain parts thereof, namely the vertical frame, the handling area and the projecting edges or toe plate, and any combination thereof.

A complete or fully assembled hand truck is a hand-propelled barrow consisting of a vertically disposed frame having a handle or more than one handle at or near the upper section of the vertical frame; at least two wheels at or near the lower section of the vertical frame; and a horizontal projecting edge or edges, or toe plate, perpendicular or angled to the vertical frame, at or near the lower section of the vertical frame. The projecting edge or edges, or toe plate, slides under a load for purposes of lifting and/or moving the load.

That the vertical frame can be converted from a vertical setting to a horizontal setting, then operated in that horizontal setting as a platform, is not a basis for exclusion of the hand truck from the scope of this petition. That the vertical frame, handling area, wheels, projecting edges or other parts of the hand truck can be collapsed or folded is not a basis for exclusion of the hand truck from the scope of the petition. That other wheels may be connected to the vertical frame, handling area, projecting edges, or other parts of the hand truck, in addition to the two or more wheels located at or near the lower section of the vertical frame, is not a basis for exclusion of the hand truck from the scope of the petition. Finally, that the hand truck may exhibit physical characteristics in addition to the vertical frame, the handling area, the projecting edges or toe plate, and the two wheels at or near the lower section of the vertical frame, is not a basis for exclusion of the hand truck from the scope of the petition.

Examples of names commonly used to reference hand trucks are hand truck, convertible hand truck, appliance hand truck, cylinder hand truck, bag truck, dolly, or hand trolley. They are typically imported under heading 8716.80.50.10 of the *Harmonized Tariff Schedule of the United States* (''HTSUS''), although they may also be imported under heading 8716.80.50.90. Specific parts of a hand truck, namely the vertical frame, the handling area and the projecting edges or toe plate, or any combination thereof, are typically imported under heading 8716.90.50.60 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, the Department's written description of the scope is dispositive.

Excluded from the scope are small two-wheel or four-wheel utility carts specifically designed for carrying loads like personal bags or luggage in which the frame is made from telescoping tubular material measuring less than ⅝ inch in diameter; hand trucks that use motorized operations either to move the hand truck from one location to the next or to assist in the lifting of items placed on the hand truck; vertical carriers designed specifically to transport golf bags; and wheels and tires used in the manufacture of hand trucks.

Antidumping Duty Order

In accordance with section 735(d) of the Tariff Act of 1930, as amended (''the Act''), the Department published its final determination that hand trucks from the PRC are being sold in the United States at less than fair value. *See Notice of Final Determination of Sales at Less Than Fair Value: Hand Trucks and Certain Parts Thereof from the People's Republic of China*, 69 FR 60980

(October 14, 2004). Subsequently, the Department amended its final determination of the antidumping duty investigation of hand trucks from the PRC to correct certain ministerial errors in the final margin calculation. *See* Notice of Amended Final Determination of Sales at Less Than Fair Value: Hand Trucks and Certain Parts Thereof from the People's Republic of China, 69 FR 65410 (November 12, 2004). On November 23, 2004, in accordance with section 735(d) of the Act, the U.S. International Trade Commission (''ITC'') notified the Department that a U.S. industry is ''threatened with material injury,'' within the meaning of section 735(b)(1)(A)(ii) of the Act, by reason of less-than-fair-value imports of hand trucks from the PRC.

According to section 736(b)(2) of the Act, duties shall be assessed on subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the ITC's notice of final determination if that determination is based on the threat of material injury and is not accompanied by a finding that injury would have resulted without the imposition of suspension of liquidation of entries since the Department's preliminary determination. In addition, section 736(b)(2) of the Act requires U.S. Customs and Border Protection (''CBP'') to refund any cash deposits or bonds of estimated antidumping duties posted since the Department's preliminary antidumping determination if the ITC's final determination is threat-based.

Because the ITC's final determination is based on the threat of material injury and is not accompanied by a finding that injury would have resulted but for the imposition of suspension of liquidation of entries since the Department's preliminary determination, section 736(b)(2) of the Act is applicable to this order. Therefore, the Department will direct CBP to assess, upon further advice, antidumping duties on all unliquidated entries of hand trucks from the PRC entered, or withdrawn from warehouse, for consumption on or after the date of publication of the ITC's notice of final determination of threat of material injury in the **Federal Register** and to terminate the suspension of liquidation for entries of hand trucks from the PRC entered, or withdrawn from warehouse, for consumption prior to that date. The Department will also instruct CBP to refund any cash deposits made, or bonds posted, between the publication date of the Department's preliminary antidumping determination and the publication date of the ITC's final determination.

On or after the date of publication of the ITC's notice of final determination in the **Federal Register**, CBP must require, at the same time as importers would normally deposit estimated duties, cash deposits for the subject merchandise equal to the weighted-average antidumping duty margins as noted below:

Producers or exporters	Weighted-average margin percentage
Qingdao Huatian Hand Truck Co., Ltd	46.48
Qingdao Taifa Group Co., Ltd	26.49
True Potential Co	33.68
Qingdao Future Tool Inc	32.76
Shandong Machinery Import & Export Group Corp	32.76
PRC-wide Rate	383.60

This notice constitutes the antidumping duty order with respect to hand trucks from the PRC, pursuant to section 736(a) of the Act. Interested parties may contact the Central Records Unit, Room B–099 of the main Commerce building, for copies of an updated list of antidumping duty orders currently in effect.

This order is published in accordance with section 736(a) of the Act and 19 CFR 351.211.

Dated: November 29, 2004.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. E4–3449 Filed 12–1–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–507–502]

Certain In-Shell Raw Pistachios From Iran: Extension of Time Limit for Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATES: December 2, 2004.

SUMMARY: The U.S. Department of Commerce (the Department) is extending the time limit, from December 7, 2004, until no later than February 7, 2005, for the final results of the administrative review of the antidumping duty order on certain in-shell raw pistachios (pistachios) from Iran. The period of review (POR) is July 1, 2002, through June 30, 2003. This extension is made pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act).

FOR FURTHER INFORMATION CONTACT: Angelica Mendoza at (202) 482–3019; AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On July 2, 2003, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on pistachios from Iran, 68 FR 39511. On July 30, 2003, Tehran Negah Nima Trading Company, Inc. (Nima), an exporter of subject merchandise during the period of review, requested that the Department conduct an administrative review of its sales to the United States covered by the antidumping duty order. On August 22, 2003, the Department initiated an administrative review of the antidumping duty order on pistachios from Iran for the period July 1, 2002, through June 30, 2003, in order to determine whether merchandise imported into the United States was sold at less than fair value by Nima. *See* Initiation of Antidumping and Countervailing Duty Administrative Review and Requests for Revocations in Part, 68 FR 50750.

On February 5, 2004, the Department extended fully its deadline for the preliminary results of this review. *See* Certain In-Shell Raw Pistachios from Iran; Extension of Time Limit for Preliminary Results of Administrative Review, 69 FR 5487.

On August 9, 2004, the Department published the preliminary results of this review (69 FR 48197).

Extension of Time Limit for Final Results

Pursuant to section 751(a)(3)(A) of the Act, the Department may extend the deadline for completion of the final results of an administrative review if it determines that it is not practicable to complete the final results within the statutory time limit of 120 days from the date on which the preliminary results were published. The Department has determined that due to the complexity of the issues in this review, including (1) whether the producer of the subject merchandise (*i.e.*, Razi Domghan Agricultural and Animal Husbandry Company) had known or should have known that the pistachios it sold to Nima were destined for the United States, and (2) the calculation of profit for purposes of constructed value, it is

not practicable to complete this review within the time limits mandated by section 751(a)(3)(A) of the Act and section 19 CFR 351.213(h)(1) of the Department's regulations. Therefore, the Department is extending the time limit for the completion of these final results by 60 days. Accordingly, the final results of this review will now be due no later than February 7, 2005.[1]

This notice is published in accordance with section 751(a)(3)(A) of the Act and section 19 CFR 351.213(h)(2) of the Department's regulations.

Dated: November 26, 2004.

Gary Taverman,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. E4–3448 Filed 12–1–04; 8:45 am]

BILLING CODE 3510–DS–P

[1] Because the final results are due February 5, 2005 (a non-business day), we will issue the final results no later than the next business day (*i.e.*, February 7, 2005).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–501]

Continuation of Antidumping Duty Order: Natural Bristle Paint Brushes and Brush Heads From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (''the Department''), pursuant to sections 751(c) and 752 of the Tariff Act of 1930, as amended (''the Act''), determined that revocation of the antidumping duty order on natural bristle paint brushes and brush heads (''paint brushes'') from the People's Republic of China (''PRC'') would be likely to lead to continuation or recurrence of dumping.[1]

On November 19, 2004, the International Trade Commission (''ITC''), pursuant to section 751(c) of the Act, determined that revocation of the antidumping duty order on paint brushes from the PRC would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[2] Therefore, pursuant to 19 CFR 351.218(f)(4), the Department is publishing notice of the continuation of the antidumping duty order on paint brushes from the PRC.

EFFECTIVE DATES: December 2, 2004.

FOR FURTHER INFORMATION CONTACT: Hilary E. Sadler, Esq., Office of Policy, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW., Washington, DC 20230; telephone: (202) 482–4340.

SUPPLEMENTARY INFORMATION

Background

On May 3, 2004, the Department initiated and the ITC instituted a sunset review of the antidumping duty order on paint brushes from the PRC pursuant to section 751(c) of the Act.[3] As a result of its review, the Department found that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping and notified the ITC of the magnitude of the margins likely to prevail were the order to be revoked. *See Department's Final Results.*

On November 19, 2004, the ITC determined, pursuant to section 751(c) of the Act, that revocation of the antidumping duty order on paint brushes from the PRC would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. *See ITC Determination.*

Scope of the Order

The products covered by the order are natural bristle paintbrushes and brush heads from the PRC. Excluded from the order are paintbrushes and brush heads with a blend of 40 percent natural bristles and 60 percent synthetic filaments. The merchandise under review is currently classifiable under item 9603.40.40.40 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Although the HTSUS subheading is provided for convenience and customs purposes, the Department's written description of the merchandise is dispositive.

Determination

As a result of the determinations by the Department and the ITC that revocation of this antidumping duty order would be likely to lead to continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the antidumping duty order on paint brushes from the PRC.

The Department will instruct U.S. Customs and Border Protection to continue to collect antidumping duty deposits at the rates in effect at the time of entry for all imports of subject merchandise. The effective date of continuation of this order will be the date of publication in the **Federal Register** of this Notice of Continuation. Pursuant to section 751(c)(2) and 751(c)(6) of the Act, the Department intends to initiate the next five-year review of this order not later than November 2009.

Dated: November 26, 2004.

Barbara E. Tillman,

Acting Assistant Secretary for Import Administration.

[FR Doc. E4–3446 Filed 12–1–04; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Natural Bristle Paint Brushes and Brush Heads from the People's Republic of China; Final Results of the Expedited Sunset Review of the Antidumping Duty Order,* 69 FR 61795 (October 21, 2004) (''*Department's Final Results*'').

[2] *See Natural Bristle Paint Brushes from China,* Investigation No. 731–TA–244 (Second Review), 69 FR 67759 (November 19, 2004) (''*ITC Determination*'').

[3] *See Initiation of Five-Year (''Sunset'') Reviews,* 69 FR 24118 (May 3, 2004).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–824]

Stainless Steel Sheet and Strip in Coils From Italy: Extension of Time Limit for Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: December 2, 2004.

SUMMARY: The U.S. Department of Commerce (the Department) is extending the time limit, from December 7, 2004, until no later than February 7, 2005, for the final results of the administrative review of the antidumping duty order on stainless steel sheet and strip (SSSS) in coils from Italy. The period of review (POR) is July 1, 2002, through June 30, 2003. This extension is made pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act).

FOR FURTHER INFORMATION CONTACT: Angelica Mendoza at (202) 482–3019; AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On July 2, 2003, the Department published in the **Federal Register** a notice of opportunity to request an administrative review of the antidumping duty order on SSSS from Italy. *See* Antidumping or Countervailing Duty Order, Finding, or

Suspended Investigation; Opportunity to Request Administrative Review, 68 FR 39511. On July 31, 2003, ThyssenKrupp Acciai Speciali Terni S.p.A. (TKAST) and petitioners requested that the Department conduct an administrative review of the antidumping duty order. On August 22, 2003, the Department initiated an administrative review of the antidumping duty order on SSSS from Italy with regard to TKAST. *See* Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part, 68 FR 50750.

On February 9, 2004, the Department extended by 60 days the deadline for issuing the preliminary results of this review. *See* Extension of Time Limit of the Preliminary Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from Italy, 69 FR 9590 (March 1, 2004). On August 9, 2004, the Department published the preliminary results of this review (69 FR 48205).

Extension of Time Limit for Final Results

Pursuant to section 751(a)(3)(A) of the Act, the Department may extend the deadline for completion of the final results of an administrative review if it determines that it is not practicable to complete the final results within the statutory time limit of 120 days from the date on which the preliminary results were published. The Department has determined that due to the complexity of the issues raised in this review, including how to treat premiums paid by respondent's (*i.e.*, ThyssenKrupp Acciai Speciali Terni S.p.A.'s) parent company to buyback company stock held by an Iranian company, it is not practicable to complete this review within the time limits mandated by section 751(a)(3)(A) of the Act and section 19 CFR 351.213(h)(1) of the Department's regulations. Therefore, the Department is extending the time limit for the completion of these final results by 60 days. Accordingly, the final results of this review will now be due no later than February 7, 2005.[1]

This notice is published in accordance with section 751(a)(3)(A) of the Act and section 19 CFR 351.213(h)(2) of the Department's regulations.

[1] Because the final results are due February 5, 2005 (a non-business day), we will issue the final results no later than the next business day (*i.e.*, February 7, 2005).

Dated: November 26, 2004.

Gary Taverman,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. E4–3447 Filed 12–1–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

The President's Export Council: Meeting of the President's Export Council

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of an open meeting via teleconference.

SUMMARY: The President's Export Council will hold a meeting via teleconference to discuss a draft recommendation to the President regarding export control legislation.

DATES: December 2, 2004.

Time: 1 p.m. e.s.t.

For the Conference Call-In Number and Further Information Contact: The President's Export Council Executive Secretariat, Room 4043, Washington, DC 20230 (phone: 202–482–1124), or visit the PEC Web site, *http://www.ita.doc.gov/td/pec*.

Dated: November 29, 2004.

J. Marc Chittum,

Staff Director and Executive Secretary, President's Export Council.

[FR Doc. E4–3445 Filed 12–1–04; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 111904D]

Endangered Species; File No. 1507

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

ACTION: Receipt of application.

SUMMARY: Notice is hereby given that Llewellyn Ehrhart, University of Central Florida, 4000 Central Florida Blvd., Orlando, Florida 32816–2368, has applied in due form for a permit to take green (*Chelonia mydas*), loggerhead (*Caretta caretta*), hawksbill (*Eretmochelys imbricata*), Kemp's ridley (*Lepidochelys kempii*), and leatherback (*Dermochelys coriacea*) sea turtles for purposes of scientific research.

DATES: Written, telefaxed, or email comments must be received on or before January 3, 2005.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376; and

Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432; phone (727)570–5301; fax (727)570–5320.

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301)713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period.

Comments may also be submitted by email. The mailbox address for providing email comments is *NMFS.Pr1Comments@noaa.gov*. Include in the subject line of the email comment the following document identifier: File No. 1507.

FOR FURTHER INFORMATION CONTACT: Patrick Opay or Carrie Hubard, (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

The applicant proposes to conduct five sea turtle studies under the same permit. The first would involve in-water research of marine turtle populations in the central region of the Indian River Lagoon of Florida. The research would continue a study designed to determine the long-term trends in abundance, distribution and population structure of sea turtles in this region. The applicant proposes to capture by tangle net, flipper and passive integrated transponder (PIT) tag, measure, weigh, blood sample, photograph and release 600 green, 135 loggerhead, 3 Kemp's ridley and 2 hawksbill turtles. Green sea turtles would also be lavaged.

The second project proposes to continue studies of long-term trends in the abundance, distribution and population structure of sea turtle populations residing on the sabellariid worm reef in Indian River County, Florida. The applicant would capture by tangle net, flipper and PIT tag, measure, weigh, blood sample, photograph and release 200 green, 20 loggerhead, 2 Kemp's ridley and 2 hawksbill sea turtles. Green sea turtles would also be lavaged.

The third project proposes to use satellite telemetry to study the movements of juvenile green sea turtles in inshore waters of eastern Florida. Forty green sea turtles would be captured by tangle net, flipper and PIT tagged, measured, weighed, blood sampled, photographed, fitted with a satellite transmitter and released.

The fourth project proposes to elucidate patterns and trends in the abundance, distribution, and population structure of sea turtles at the Trident Turning Basin, Cape Canaveral, Florida. The applicant would capture by tangle net, flipper and PIT tag, measure, weigh, blood sample, photograph, and release 200 green and 10 loggerhead sea turtles. Green sea turtles would also be marked with non-toxic paint.

The fifth project proposes to study green and loggerhead sea turtle habitat utilization in the central region of the Indian River Lagoon System in Florida. Eighteen green and 18 loggerhead sea turtles would be captured by tangle net, flipper and PIT tagged, measured, weighed, photographed, fitted with VHF transmitters and time-depth-temperature recorders, released, and tracked.

The applicant requests a five-year permit. Each of the above projects would provide information that would be used to help recover and conserve threatened and endangered sea turtles.

Dated: November 24, 2004.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 04–26576 Filed 12–1–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Department of the Navy

Cancellation of the Notice of Intent To Prepare an Environmental Impact Statement for Stabilization of In-Water Facilities at the Fox Island Laboratory, Tacoma, WA

ACTION: Notice; cancellation.

SUMMARY: The Department of the Navy (DON) hereby cancels its notice of intent to prepare an Environmental Impact Statement for Stabilization of In-Water Facilities at the Fox Island Laboratory, Tacoma, WA, as published in the **Federal Register**, March 28, 2002, (67 FR 14921).

The previously published notice is cancelled because DON will be considering consolidation of the Fox Island Laboratory with the Bremerton Detachment of the Naval Surface Warfare Center Carderock Division at another location. There are efficiencies of size and economy to be realized by this consolidation. DON will initiate review of the consolidation under the National Environmental Policy Act in the near future.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Kollars, Director, Naval Surface Warfare Center Carderock Division, Detachment Bremerton, Bldg. 290, First Floor, 530 Farragut Ave., Bremerton, WA 98314–5215, phone: (360) 476–4335.

Dated: November 22, 2004.

J.H. Wagshul,

Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 04–26543 Filed 12–1–04; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC04–515–001, FERC–515]

Commission Information Collection Activities, Proposed Collection; Comment Request; Submitted for OMB Review

November 23, 2004.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice.

SUMMARY: In compliance with the requirements of section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507, the Federal Energy Regulatory Commission (Commission) has submitted the information collection described below to the Office of Management and Budget (OMB) for review of this information collection requirement. Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission received no comments in response to an earlier **Federal Register** notice of September 27, 2004 (69 FR 57678–79) and has made this notification in its submission to OMB.

DATES: Comments on the collection of information are due by December 30, 2004.

ADDRESSES: Address comments on the collection of information to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Federal Energy Regulatory Commission Desk Officer. Comments to OMB should be filed electronically, c/o *Pamela_L._Beverly@omb.eop.gov* and include the OMB Control No. as a point of reference. The Desk Officer may be reached by telephone at (202) 395–4650. A copy of the comments should also be sent to the Federal Energy Regulatory Commission, Office of the Executive Director, ED–30, Attention: Michael Miller, 888 First Street, NE., Washington, DC 20426. Comments may be filed either in paper format or electronically. Those persons filing electronically do not need to make a paper filing. For paper filings, such comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 and should refer to Docket No. IC04–515–001.

Documents filed electronically via the Internet must be prepared in WordPerfect, MS Word, Portable Document Format, or ASCII format. To file the document, access the Commission's Web site at *http://www.ferc.gov* and click on ''Make an E-filing,'' and then follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgment to the sender's e-mail address upon receipt of comments. User assistance for electronic filings is available at (202) 502–8258 or by e-mail to *efiling@ferc.gov*. Comments should not be submitted to the e-mail address.

All comments are available for review at the Commission 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 (866) 208–3676, or for TTY, contact (202) 502–8659.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202) 502–8415, by fax at (202) 273–0873, and by e-mail at *michael.miller@ferc.gov*.

SUPPLEMENTARY INFORMATION:

Description

The information collection submitted for OMB review contains the following:

1. *Collection of Information:* FERC–515 ''Declaration of Intention''.
2. *Sponsor:* Federal Energy Regulatory Commission.
3. *Control No.:* 1902–0079.

The Commission is now requesting that OMB approve and reinstate with a three-year extension of the expiration date, with no changes to the existing collection. The information filed with the Commission is mandatory.

3. *Necessity of the Collection of Information:* Submission of this information is necessary to enable the Commission to carry out its responsibilities in implementing the statutory provisions of part I, Sections 23(b) of the Federal Power Act (FPA). Section 23(b) authorizes the Commission to make a determination as to whether it has jurisdiction over a proposed hydroelectric project. Section 23(b) also requires that any person intending to construct project works on navigable commerce clause waters must file a declaration of their intention to do so with the Commission. If the Commission finds the proposed project will have an impact on ''interstate or foreign commerce'', then the person(s) intending to construct the project must obtain a Commission license or exemption before construction. Such sites are generally on streams defined as U.S. navigation waters, and over which the Commission has jurisdiction under its authority to regulate foreign and interstate commerce. The information is collected in the form of a written application, declaring the applicant's intent and used by Commission staff to research the jurisdictional aspects of the project. A finding of non-jurisdictional by the Commission eliminates a substantial paperwork burden for the applicant who might otherwise have to file for a license or an exemption application.

The information filed with the Commission is a mandatory requirement. The Commission implements these filing requirements in the Code of Federal Regulations (CFR) under 18 CFR part 24.

5. *Respondent Description:* The respondent universe currently comprises 10 respondents (average) subject to the Commission's jurisdiction.

6. *Estimated Burden:* 800 total hours, 10 respondent (average per year), 1 response per respondent, and 80 hours per response (average).

7. *Estimated Cost Burden to respondents:* 800 hours/2080 hours per years × $108,588 per year = $41,764.

Statutory Authority: Sections 23(b) of the Federal Power Act (16 U.S.C. 816).

Magalie R. Salas,

Secretary.

[FR Doc. 04–26536 Filed 12–1–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC04–511–001, FERC–511]

Commission Information Collection Activities, Proposed Collection; Comment Request; Submitted for OMB Review

November 23, 2004.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice.

SUMMARY: In compliance with the requirements of section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507, the Federal Energy Regulatory Commission (Commission) has submitted the information collection described below to the Office of Management and Budget (OMB) for review of this information collection requirement. Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission received no comments in response to an earlier **Federal Register** notice of September 22, 2004 (69 FR 5750–51) and has made this notification in its submission to OMB.

DATES: Comments on the collection of information are due by December 30, 2004.

ADDRESSES: Address comments on the collection of information to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Federal Energy Regulatory Commission Desk Officer. Comments to OMB should be filed electronically, c/o *Pamela_L._Beverly@omb.eop.gov* and include the OMB Control No. as a point of reference. The Desk Officer may be reached by telephone at (202) 395–4650. A copy of the comments should also be sent to the Federal Energy Regulatory Commission, Office of the Executive Director, ED–30, Attention: Michael Miller, 888 First Street, NE., Washington, DC 20426. Comments may be filed either in paper format or electronically. Those persons filing electronically do not need to make a paper filing. For paper filings, such comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 and should refer to Docket No. IC04–511–001.

Documents filed electronically via the Internet must be prepared in WordPerfect, MS Word, Portable Document Format, or ASCII format. To file the document, access the Commission's Web site at *http://www.ferc.gov* and click on ''Make an e-filing,'' and then follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgment to the sender's E-mail address upon receipt of comments. User assistance for electronic filings is available at (202) 502–8258 or by e-mail to *efiling@ferc.gov*. Comments should not be submitted to the e-mail address.

All comments are available for review at the Commission 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 (866) 208–3676, or for TTY, contact (202) 502–8659.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202) 502–8415, by fax at (202) 273–0873, and by e-mail at *michael.miller@ferc.gov*.

SUPPLEMENTARY INFORMATION:

Description

The information collection submitted for OMB review contains the following:

1. *Collection of Information:* FERC–511 ''Application for Transfer of License''.
2. *Sponsor:* Federal Energy Regulatory Commission.
3. *Control No.:* 1902–0069.

The Commission is now requesting that OMB approve and reinstate with a three-year extension of the expiration date, with no changes to the existing

collection. The information filed with the Commission is mandatory.

4. *Necessity of the Collection of Information:* Submission of this information is necessary to enable the Commission to carry out its responsibilities in implementing the statutory provisions of sections 4(e) and 8 of the Federal Power Act (FPA). Section 4(e) authorizes the Commission to issue licenses for the construction, operation and maintenance of reservoirs, power houses and transmission lines or other facilities necessary for development and improvement of navigation and for the development, transmission, and utilization of power from bodies of water that Congress has jurisdiction over. Section 8 of the FPA provides that the voluntary transfer of any license can only be made with the written approval of the Commission. Any successor to the licensee may assign the rights of the original license but is subject to all of the conditions of the license.

The information filed with the Commission is mandatory requirement contained in the format of a written application for transfer of license, executed jointly by the parties to the proposed transfer. The transfer of a license may be occasioned by the sale or merger of a licensed hydroelectric project. It is used by the Commission's staff to determine the qualifications of the proposed transferee to hold the license, and to prepare the transfer of the license order. The Commission implements these requirements in the Code of Federal Regulations (CFR) under 18 CFR part 9 and 131.20.

5. *Respondent Description:* The respondent universe currently comprises 23 respondents (average) subject to the Commission's jurisdiction

6. *Estimated Burden:* 920 total hours, 23 respondents (average per year), 1 response per respondent, and 40 hours per response (average).

7. *Estimated Cost Burden to respondents:* 920 hours/2080 hours per years × $108,588 per year = $48,029.

Statutory Authority: Sections 4(e) and 8 of the Federal Power Act (16 U.S.C. 792–828c).

Magalie R. Salas,

Secretary.

[FR Doc. 04–26537 Filed 12–1–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–86–000]

Chandeleur Pipe Line Company; Notice of Proposed Changes in FERC Gas Tariff

November 24, 2004.

Take notice that on November 22, 2004, Chandeleur Pipe Line Company tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Sixteenth Revised Sheet No. 5, to become effective January 1, 2005.

Chandeleur is filing to support an adjustment to its Fuel and Line Loss Allowance (FLLA) of 0.0%, effective January 1, 2005.

Chandeleur proposes that this filing be accepted to become effective January 1, 2005 as stipulated by section 21.0 of the General Terms and Conditions of Chandeleur's FERC Gas Tariff, Second Revised Volume No. 1.

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. E4–3428 Filed 12–1–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–36–010]

Dauphin Island Gathering Partners; Notice of Negotiated Rate

November 24, 2004.

Take notice that on November 19, 2004, Dauphin Island Gathering Partners (Dauphin Island) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the revised tariff sheets listed below to become effective December 19, 2004. Dauphin Island states that these tariff sheets reflect changes to its statement of negotiated rates.

Nineteenth Revised Sheet No. 9
Sixteenth Revised Sheet No. 10
Fourth Revised Sheet No. 359

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. E4–3417 Filed 12–1–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–15–001]

El Paso Natural Gas Company; Notice of Compliance Filing

November 19, 2004.

Take notice that on November 17, 2004, El Paso Natural Gas Company (El Paso) tendered for filing a compliance filing pursuant to the Commission's order issued November 3, 2004, at Docket No. RP05–15–000.

El Paso states that Sub 1st Rev Twenty-First Rev Sheet No. 1 and Second Revised Sheet No. 2 are filed to list the transportation service agreements that contain the permissible non-conforming provisions identified in the Commission's order issued November 3, 2004. The tariff sheets are to become effective November 3, 2004.

El Paso states that copies of its filing have been sent to all parties of record and affected state commissions.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–3435 Filed 12–1–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR05–3–000]

Enogex Inc.; Notice of Petition for Rate Approval

November 19, 2004.

Take notice that on November 15, 2004, Enogex Inc. (Enogex) tendered for filing a revised fuel factor of 0.47% for its Enogex System for the calendar year 2005, as calculated pursuant to the formulas in Enogex's Statement of Operating Conditions. This fuel factor represents a slight increase from the 0.45% interim fuel factor filed in Docket No. PR04–15–000. Enogex seeks an effective date of January 1, 2005.

Enogex states that it is serving notice of the filing and the revised fuel percentage on all current shippers.

Pursuant to section 284.123(b)(2)(ii), if the Commission does not act within 150 days of the date of this filing, the rates will be deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to charge for similar transportation service. The Commission may, prior to the expiration of the 150 day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentation of views, data, and arguments.

Any person desiring to participate in this rate 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, 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.

Intervention and Protest Date: 5 p.m. eastern time on December 10, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4–3434 Filed 12–1–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–81–000]

Florida Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

November 24, 2004.

Take notice that on November 19, 2004, Florida Gas Transmission Company (FGT) tendered for filing to

become part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, effective December 1, 2004:

Sixty-Eighth Revised Sheet No. 8A
Sixtieth Revised Sheet No. 8A.01
Sixtieth Revised Sheet No. 8A.02
Twentieth Revised Sheet No. 8A.04
Sixty-Third Revised Sheet No. 8B
Fifty-Sixth Revised Sheet No. 8B.01
Twelfth Revised Sheet No. 8B.02

FGT states that the tariff sheets listed above are being filed pursuant to section 27.A.2.b of the General Terms and Conditions of FGT's Tariff, which provides for flex adjustments to the Base FRCP.

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. E4–3424 Filed 12–1–04; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–76–000]

Gulf South Pipeline Company, LP; Notice of Proposed Changes in FERC Gas Tariff

November 24, 2004.

Take notice that on November 18, 2004, Gulf South Pipeline Company, LP (Gulf South) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following tariff sheets, to become effective December 18, 2004:

Eighth Revised Sheet No. 20
Fifth Revised Sheet No. 21
Fifth Revised Sheet No. 22
Fifth Revised Sheet No. 23

Gulf South is proposing to eliminate the rate it charges for fuel for volumes that are both received and delivered on specific pipeline Indices in the Lake Charles, Louisiana area.

Gulf South states that copies of this filing have been served upon Gulf South's customers, state commissions 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. E4–3419 Filed 12–1–04; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–136–006]

Iroquois Gas Transmission System, L.P.; Notice of Compliance Filing

November 24, 2004.

Take notice that on November 19, 2004, Iroquois Gas Transmission System, L.P. (Iroquois) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, First Revised Sheet No. 4C, to be effective on December 1, 2004.

Iroquois states that copies of its filing were served on all jurisdictional customers and interested state regulatory agencies and all parties to the proceeding.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an

original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–3418 Filed 12–1–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–78–000]

Iroquois Gas Transmission System, L.P.; Notice of Proposed Change in FERC Gas Tariff

November 24, 2004.

Take notice that on November 19, 2004, Iroquois Gas Transmission System, L.P. (Iroquois) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Fourth Revised Sheet No. 11A, to be effective on December 19, 2004.

Iroquois states that copies of its filing were served on all jurisdictional customers and interested state regulatory agencies and all parties to the proceeding.

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. E4–3421 Filed 12–1–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–75–000]

Iroquois Gas Transmission System, L.P.; Notice of Proposed Changes in FERC Gas Tariff

November 19, 2004

Take notice that on November 17, 2004, Iroquois Gas Transmission System, L.P. (Iroquois) tendered for filing the following revised sheet to its FERC Gas Tariff, First Revised Volume No. 1, to be effective on December 17, 2004:

Seventh Revised Sheet No. 41
Second Revised Sheet No. 81
Third Revised Sheet No. 88
Third Revised Sheet No. 117
Eighth Revised Sheet No. 118
Third Revised Sheet No. 119

Iroquois explains that on November 25, 2003, the Commission issued Order No. 2004, which among other things, amended the Commission's regulations pertaining to the Standards of Conduct for interstate natural gas pipelines, and that Iroquois proposes modifications to the above referenced tariff sheets to reflect the Commission's amendments. Specifically, Iroquois proposes to: (1) Replace references to the market affiliate rule with a more inclusive reference to the Commission's Standards of Conduct regulations; (2) provide that the information required by the Standards of Conduct regulations will be posted on the Internet web site under Informational Postings; and (3) identify the appropriate contact for a party to submit a formal complaint regarding compliance with the Standards of Conduct.

Iroquois states that copies of its filing were served on all jurisdictional customers and interested state regulatory agencies and all parties to the proceeding.

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. E4–3430 Filed 12–1–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ES05–12–000]

MDU Resources Group, Inc.; Notice of Filing

November 19, 2004.

Take notice that on November 12, 2004, MDU Resources Group, Inc. (MDU Resources) submitted an application pursuant to section 204 of the Federal Power Act seeking authorization to incur short-term indebtedness in an amount not to exceed $125 million.

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 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 December 3, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4–3432 Filed 12–1–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–80–000]

Midwestern Gas Transmission Company; Notice of Annual Cashout Report

November 24, 2004.

Take notice that on November 19, 2004, Midwestern Gas Transmission Company (Midwestern) tendered for filing its annual cashout report for the September 2003 through August 2004 period.

Midwestern states that the cashout report reflects a net cashout gain of $306,049. Midwestern will credit this gain to its firm shippers in its next issuance of invoices.

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. E4–3423 Filed 12–1–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–176–105]

Natural Gas Pipeline Company of America; Notice of Negotiated Rate

November 19, 2004.

Take notice that on November 15, 2004, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following tariff sheets, to become effective December 1, 2004:

Fifth Revised Sheet No. 26B
Second Revised Sheet No. 26B.01
First Revised Sheet No. 26B.02

Natural states that the purpose of this filing is to implement an extension to an existing negotiated rate transaction.

Natural states that copies of the filing are being mailed to all parties set out on the Commission's official service list in Docket No. RP99–176–000.

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 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. E4–3439 Filed 12–1–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–83–000]

Northwest Pipeline Corporation; Notice of Proposed Changes in FERC Gas Tariff

November 24, 2004.

Take notice that on November 19, 2004, Northwest Pipeline Corporation (Northwest) tendered for filing as part of its FERC Gas Tariff the following tariff sheets, to be effective January 1, 2005.

Third Revised Volume No. 1

Twenty-Ninth Revised Sheet No. 5
Fifth Revised Sheet No. 5–C
Fourteenth Revised Sheet No. 7
Sixteenth Revised Sheet No. 8
Fourteenth Revised Sheet No. 8.1

Original Volume No. 2

Thirty-Ninth Revised Sheet No. 2.1

Northwest states that the purpose of this filing is to restate its current leap year daily reservation and demand rates to the same level of rates that were in effect prior to the 2004 leap year rate adjustments.

Northwest states that a copy of this filing has been served upon Northwest's customers and interested state regulatory commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–3426 Filed 12–1–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–23–001]

Northwest Pipeline Corporation; Notice of Compliance Filing

November 19, 2004.

Take notice that on November 17, 2004, Northwest Pipeline Corporation (Northwest) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Substitute Ninth Revised Sheet No. 373, to be effective November 12, 2004.

Northwest states that the purpose of this filing is to comply with the Commission's letter order dated November 9, 2004, by submitting a substitute tariff sheet to replace a sheet containing a typographical error that was filed on October 12, 2004, in Docket No. RP05–23–000.

Northwest states that a copy of this filing has been served upon each person designated on the official service list compiled by the Secretary in this proceeding.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–3437 Filed 12–1–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–84–000]

Pine Needle LNG Company, LLC; Notice of Proposed Changes in FERC Gas Tariff

November 24, 2004.

Take notice that on November 19, 2004, Pine Needle LNG Company, LLC (Pine Needle) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the tariff sheets enumerated on Appendix A to its filing, to become effective December 19, 2004.

Pine Needle states that the purpose of the instant filing is to modify its tariff to: (1) Remove section 6.3 of Rate Schedule LNG–1 which provides for contingency storage withdrawals by truck, (2) remove Rate Schedule LNG–2, which provides for liquefaction and terminal delivery service, and all references thereto, (3) clarify section 12, Pressures, of the General Terms and Conditions; and (4) add a new section 31, Extension of Service Agreement, to the General Terms and Conditions of its tariff.

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. E4–3427 Filed 12–1–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–77–000]

Sabine Pipe Line LLC; Notice of Tariff Filing

November 24, 2004.

Take notice that on November 19, 2004, Sabine Pipe Line LLC, (Sabine) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, First Revised Sheet No. 275, to become effective December 19, 2004.

Sabine states that the purpose of this filing is to update Sabine's tariff to specify in greater detail the procedures by which Sabine determines the presence of liquid hydrocarbons entering its gas stream.

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. E4–3420 Filed 12–1–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–87–000]

Sea Robin Pipeline Company and Sea Robin Pipeline Company, LLC; Notice of Proposed Changes in FERC Gas Tariff

November 24, 2004.

Take notice that on November 22, 2004, Sea Robin Pipeline Company (Sea Robin) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the tariff sheets listed in Appendix A attached to the filing, to become effective December 31, 2004.

Sea Robin states that the purpose of this filing is to revise Sea Robin's FERC Gas Tariff to reflect its name change to Sea Robin Pipeline Company, LLC and to organize the new Sea Robin tariff in accordance with the requirements in sections 154.101 through 154.110 of the Commission's Regulations. Further, Sea Robin states it is making other housekeeping changes to remove outdated provisions and make certain specific clarifications, modifications and corrections.

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. E4–3416 Filed 12–1–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–82–000]

Southern Natural Gas Company; Notice of Tariff Filing

November 24, 2004.

Take notice that on November 19, 2004, Southern Natural Gas Company (Southern) submitted a filing pursuant to the Commission's November 5, 2004, Letter Order in Docket No. PA04–8–000. Southern states that the tariff filing revises its capacity release procedures to require releasing shippers to post in their offers for permanent releases whether they are willing to pay to potential acquiring shippers consideration for the release of firm capacity. The tariff sheets that are the subject of this filing are:

Eighth Revised Sheet No. 177
Fifth Revised Sheet No. 182
Fourth Revised Sheet No. 184

Southern states that copies of the filing were served upon Southern's customers and interested state commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–3425 Filed 12–1–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–16–001]

Tennessee Gas Pipeline Company; Notice of Compliance Filing

November 19, 2004.

Take notice that on November 17, 2004, Tennessee Gas Pipeline Company (Tennessee) tendered for filing a compliance filing pursuant to the Commission's order issued November 4, 2004, at Docket No. RP05–16–000.

Tennessee states that copies of the filing were served on parties on the official service list in the above captioned proceeding.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–3436 Filed 12–1–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–79–000]

Texas Gas Transmission, LLC; Notice of Proposed Changes in FERC Gas Tariff

November 24, 2004.

Take notice that on November 19, 2004, Texas Gas Transmission, LLC, tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, to become effective December 1, 2004:

Fourth Revised Sheet No. 20
Fourth Revised Sheet No. 22
Third Revised Sheet No. 23
Fourth Revised Sheet No. 26
Fourth Revised Sheet No. 29
Fourth Revised Sheet No. 30
Second Revised Sheet No. 32
Third Revised Sheet No. 201
Third Revised Sheet No. 277
First Revised Sheet No. 283
Sheet No. 284

Texas Gas states that the purpose of this filing is to remove the Gas Supply Realignment (GSR) recovery mechanism from Texas Gas's rates and to delete ''Section 33. Order 636 Transition Cost Recovery Mechanisms'' from the General Terms and Conditions of Texas Gas's tariff.

The termination of the IT GSR mechanism will result in a $0.0175 decrease in IT and ITX Winter and Summer rates, NNS Overrun rates, SNS Overrun rates, FT Overrun rates, STF Overrun rates, STFX Overrun rates, and HOT rates. The rate adjustments are set forth on the affected tariff sheets presented herein.

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. E4–3422 Filed 12–1–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP05–24–000]

Transcontinental Gas Pipe Line Corporation; Notice of Application for Abandonment

November 19, 2004.

Take notice that on November 12, 2004, Transcontinental Gas Pipe Line Corporation (Transco), tendered for filing an application under Section 7 of the Natural Gas Act to abandon and terminate for purposes of consolidation, in accordance with the provisions in Section 22 of the General Terms and Conditions in its FERC Gas Tariff, a certain service agreement under Transco's Rate Schedule FT for Piedmont Natural Gas Company, Inc., as more fully described therein.

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 online 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.

Intervention and Protest Date: 5 p.m. eastern time on December 8, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4–3431 Filed 12–1–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP05–23–000]

Transcontinental Gas Pipe Line Corporation; Notice of Application for Abandonment

November 19, 2004.

Take notice that on November 12, 2004, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing an application under Section 7 of the Natural Gas Act to abandon and terminate for purposes of consolidation, in accordance with the provisions in Section 22 of the General Terms and Conditions in its FERC Gas Tariff, certain service agreements under Transco's Rate Schedule FT for Piedmont Natural Gas Company, Inc., as more fully described therein.

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 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. *Intervention and Protest Date:* 5 p.m. eastern time on December 8, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4–3438 Filed 12–1–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL04–125–000, et al.]

Connexus Energy, et al.; Electric Rate and Corporate Filings

November 19, 2004.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Connexus Energy

[Docket No. EL04–125–000]

Take notice that on August 13, 2004, Connexus Energy (Connexus) filed a request for waivers of certain of the Commission's regulations applicable to public utilities under the Federal Power Act and blanket authority under certain statutory provisions.

Comment Date: 5 p.m. eastern time on November 29, 2004.

2. Madison Gas and Electric Company

[Docket No. ER00–586–004]

Take notice that on November 15, 2004, Madison Gas and Electric Company (MGE) submitted for filing an amendment to its November 9, 2004, updated market analysis filing in Docket No. ER00–586–000. MGE states that the amendment consists of MGE's Market-Based Power Sales Tariff (Tariff), revised to incorporate the Commission's Market Behavior Rules adopted by the Commission in *Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations,* 105 FERC ¶ 61,218. MGE also states that the Tariff also includes non-substantive pagination and designation revisions.

Comment Date: 5 p.m. eastern time on December 6, 2004.

3. California Independent System Operator Corporation; Pacific Gas and Electric Company; San Diego Gas & Electric System Operator Corporation

[Docket Nos. ER01–313–006, ER01–424–006, and ER01–424–006]

Take notice that on November 15, 2004, the California Independent System Operator Corporation (ISO) filed a refund report in compliance with the Commission's order in *California Independent System Operator Corporation,* 106 FERC ¶ 61,032 (2004).

Comment Date: 5 p.m. eastern time on December 6, 2004.

4. ISO New England Inc.

[Docket No. ER02–2153–009]

Take notice that on November 15, 2004, ISO New England Inc. (ISO) submitted a compliance report on Standard Market Design pursuant to the Commission's order issued July 31, 2002 in Docket No. ER02–2153–000, *ISO New England Inc.,* 100 FERC ¶ 61,130.

ISO states that copies of the filing have been served upon all parties to this proceeding, the New England utility regulatory agencies, and electronically upon the New England Power Pool participants.

Comment Date: 5 p.m. eastern time on December 6, 2004.

5. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER04–106–005]

Take notice that on November 15, 2004, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted a compliance filing pursuant to the Commission's Order issued September 16, 2004 in *Midwest Independent Transmission System Operator, Inc.,* 108 FERC ¶ 61,236 (2004). The Midwest ISO requests an effective date of October 31, 2003.

The Midwest ISO states that it has electronically served a copy of this filing, with its attachments, upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, Policy Subcommittee participants, as well as all State commission within the region. In addition, the Midwest ISO states that the filing has been electronically posted on the Midwest ISO's Web site at *http://www.midwestiso.org* under the heading ''Filings to FERC'' and that it will provide hard copies upon request.

Comment Date: 5 p.m. eastern time on November 29, 2004.

6. PJM Interconnection, L.L.C.

[Docket No. ER04–893–002]

Take notice that on November 15, 2004, PJM Interconnection, L.L.C. (PJM) submitted an executed network integration transmission service agreement (NITSA) with the City of Batavia, Illinois (Batavia) in compliance with the Commission's order issued September 10, 2004, in Docket Nos. ER04–893–000 and 001.

PJM states that it has served a copy of this letter and its attachments on all persons on the Commission's official services list for Docket No. ER04–893–000 and on counsel for ComEd and Batavia.

Comment Date: 5 p.m. eastern time on December 6, 2004.

7. Ohio Valley Electric Corporation System Operator, Inc.

[Docket No. ER04–1026–001]

Take notice that on November 19, 2004, Ohio Valley Electric Corporation (OVEC) tendered for filing an amendment to its July 16, 2004, filing in Docket No. ER04–1026–000, an Amended and Restated Inter-Company Power Agreement among OVEC and certain other companies named within the agreement as ''Sponsoring Companies''. OVEC has requested an effective date of March 13, 2006.

OVEC states that copies of the filing were served on Allegheny Energy Supply Company, LLC, Appalachian Power Company, The Cincinnati Gas & Electric Company, Columbus Southern Power Company, The Dayton Power and Light Company, FirstEnergy Generation Corp., Indiana Michigan Power Company, Kentucky Utilities Company, Louisville Gas and Electric Company, Monongahela Power Company, Ohio Power Company, Southern Indiana Gas and Electric Company, the Utility Regulatory Commission of Indiana, the Public Service Commission of Kentucky, the Public Service Commission of Maryland, the Public Service Commission of Michigan, the Public Utilities Commission of Ohio, the Public Utility Commission of Pennsylvania, Tennessee Regulatory Authority, the State Corporation Commission of Virginia and the Public Service Commission of West Virginia.

Comment Date: 5 p.m. eastern time on November 29, 2004.

8. PJM Interconnection, L.L.C.

[Docket No. ER05–214–000]

Take notice that on November 15, 2004, PJM Interconnection, L.L.C. (PJM) submitted for filing amendments to the PJM Open Access Transmission Tariff and the PJM Amended and Restated Operating Agreement to clarify when and how nodal settlements for eligible retail access customers, subject to Attachment F–1, can be accommodated. PJM requests an effective date of January 15, 2005.

PJM states that copies of this filing have been served on all PJM members and the utility regulatory commissions in the PJM region.

Comment Date: 5 p.m. eastern time on December 6, 2004.

9. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER05–215–000]

Take notice that on November 15, 2004, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted an unexecuted Interconnection and Operating Agreement by and between Prairie State Generating Company, LLC and Illinois Power Company. The Midwest ISO requests an effective date of November 16, 2004.

Midwest ISO states that a copy of this filing was served on the parties to the Interconnection Agreement.

Comment Date: 5 p.m. eastern time on December 6, 2004.

10. Allegheny Power

[Docket No. ER05–216–000]

Take notice that on November 15, 2004, Allegheny Power filed a Notice of Cancellation of its FERC Electric Tariff, Original Volume No. 1, effective February 1, 2005.

Allegheny Power states that a copy of the Notice of Cancellation has been served upon all persons with currently effective service agreements under the rate schedule referred to above.

Comment Date: 5 p.m. eastern time on December 6, 2004.

11. Allegheny Power

[Docket No. ER05–217–000]

Take notice that on November 15, 2004, Allegheny Power filed a Notice of Cancellation of its FERC Electric Tariff, Original Volume No. 2, effective February 1, 2005.

Allegheny Power states that a copy of the Notice of Cancellation has been served upon all persons with currently effective service agreements under the rate schedule referred to above.

Comment Date: 5 p.m. eastern time on December 6, 2004.

12. Allegheny Power

[Docket No. ER05–218–000]

Take notice that on November 15, 2004, Allegheny Power filed a Notice of Cancellation of its FERC Electric Tariff, Original Volume No. 4, effective February 1, 2005.

Allegheny Power states that a copy of the Notice of Cancellation has been served upon all persons with currently effective service agreements under the rate schedule referred to above.

Comment Date: 5 p.m. eastern time on December 6, 2004.

13. Allegheny Power

[Docket No. ER05–219–000]

Take notice that on November 15, 2004, Allegheny Power filed a Notice of Cancellation of its FERC Electric Tariff, Original Volume No. 3, effective February 1, 2005.

Allegheny Power states that a copy of the Notice of Cancellation has been served upon all persons with currently effective service agreements under the rate schedule referred to above.

Comment Date: 5 p.m. eastern time on December 6, 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.

Linda Mitry,

Deputy Secretary.

[FR Doc. E4–3440 Filed 12–1–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AC05–7–000, et al.]

American Transmission Systems, Inc., et al.; Electric Rate and Corporate Filings

November 24, 2004.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. American Transmission Systems, Inc.

[Docket No. AC05–7–000]

Take notice that on November 1, 2004, FirstEnergy Service Company, a wholly owned subsidiary of FirstEnergy Corp. (FirstEnergy), on behalf of American Transmission Systems, Incorporation (ATSI), submitted a request for authorization to defer certain extraordinary vegetation management costs as a regulatory asset and amortize the same costs over a specified 5-year future period. ATSI, also a wholly owned subsidiary of FirstEnergy, states that it owns the Company's jurisdictional transmission facilities in Ohio and a portion of western Pennsylvania. ATSI also states that its transmission facilities are under the operational control of the Midwest Independent System Operator.

Comment Date: 5 p.m. eastern time on December 13, 2004.

2. PPL Sundance Energy, LLC PPL EnergyPlus, LLC, Arizona Public Service Company

[Docket No. EC05–20–000]

Take notice that on November 22, 2004, PPL Sundance Energy, LLC (PPL Sundance), PPL EnergyPlus, LLC (PPL EnergyPlus) and Arizona Public Service Company (APS) (collectively, the Applicants) filed with the Federal Energy Regulatory Commission pursuant to section 203 of the Federal Power Act (FPA), 16 U.S.C. 824b, and part 33 of the Commission's regulations, 18 CFR part 33, an application for authorization of a disposition and

acquisition of jurisdictional facilities. Applicants state that the transaction for which authorization is sought is the transfer by PPL Sundance through sale, and the acquisition by APS through purchase of the nominally rated 450 MW PPL Sundance generating facility located in Pinal County, Arizona, as well as the transfer of a jurisdictional contract. The Applicants request confidential treatment of certain portions of the Asset Purchase Agreement relating to the proposed transaction, and have provided redacted versions that omit the confidential information.

Comment Date: 5 p.m. eastern time on December 30, 2004.

3. Tenaska Alabama II Partners, L.P., Complainant, v. Alabama Power Company and Southern Company Services, Inc., Respondents

[Docket No. EL05–25–000]

Take notice that on November 22, 2004, Tenaska Alabama II Partners, L.P. (Tenaska Alabama II) filed a Complaint with the Commission, pursuant to Section 206 of the Federal Power Act, against Alabama Power Company and Southern Company Services, Inc. (collectively, Southern Company). The Complaint asserts that Southern Company is violating the Commission's Interconnection Policy, engaging in prohibited ''and'' pricing, and charging unjust and unreasonable rates because Southern Company has misclassified certain interconnection-related facilities in the Tenaska Alabama II-Southern Company Interconnection Agreement and is refusing to provide transmission credits for facilities that should properly be classified as Network Upgrades under the Commission's Interconnection Policy.

Tenaska Alabama II states that copies of the Complaint have been served on Southern Company.

4. Tenaska Alabama Partners, L.P., Complainant, v. Alabama Power Company and Southern Company Services, Inc., Respondents

[Docket No. EL05–26–000]

Take notice that on November 22, 2004, Tenaska Alabama Partners, L.P. (Tenaska Alabama) filed a Complaint with the Commission, pursuant to section 206 of the Federal Power Act, against Alabama Power Company and Southern Company Services, Inc. (collectively, Southern Company). The Complaint asserts that Southern Company is violating the Commission's Interconnection Policy, engaging in prohibited ''and'' pricing, and charging unjust and unreasonable rates because Southern Company has misclassified certain interconnection-related facilities in the Tenaska Alabama-Southern Company Interconnection Agreement and is refusing to provide transmission credits for facilities that should properly be classified as Network Upgrades under the Commission's Interconnection Policy.

Tenaska Alabama states that copies of the Complaint have been served on Southern Company.

Comment Date: 5 p.m. eastern time on December 14, 2004.

5. Tenaska Georgia Partners, L.P., Complainant, v. Georgia Power Company and Southern Company Services, Inc., Respondents

[Docket No. EL05–27–000]

Take notice that on November 22, 2004, Tenaska Georgia Partners, L.P. (Tenaska Georgia) filed a Complaint with the Commission, pursuant to Section 206 of the Federal Power Act, against Georgia Power Company and Southern Company Services, Inc. (collectively, Southern Company). The Complaint asserts that Southern Company is violating the Commission's Interconnection Policy, engaging in prohibited ''and'' pricing, and charging unjust and unreasonable rates because Southern Company has misclassified certain interconnection-related facilities in the Tenaska Georgia-Southern Company Interconnection Agreement and is refusing to provide transmission credits for facilities that should properly be classified as Network Upgrades under the Commission's Interconnection Policy.

Tenaska Georgia states that copies of the Complaint have been served on Southern Company.

Comment Date: 5 p.m. eastern time on December 14, 2004.

6. CL Power Sales One, L.L.C., CL Power Sales Two, L.L.C., CL Power Sales Seven, L.L.C., CL Power Sales Eight, L.L.C., CL Power Sales Ten, L.L.C.

[Docket Nos. ER95–892–057 and ER96–2652–051]

Take notice that on November 18, 2004, Edison Mission Marketing & Trading, Inc., on behalf of its public utility affiliates listed above, filed an amendment to its November 9, 2004 filing in Docket Nos. ER95–892–056 and ER96–2652–050.

Comment Date: 5 p.m. eastern time on December 9, 2004.

7. Consolidated Edison Company of New York, Inc., Orange and Rockland Utilities, Inc., Consolidated Edison Energy, Inc., Consolidated Edison Solutions, Inc., Ocean Peaking Power, L.L.C., CED Rock Springs, Inc., Consolidated Edison Energy of Massachusetts, Inc., Lakewood Cogeneration, L.P., Newington Energy, L.L.C.

[Docket Nos. ER99–2251–002, ER98–2491–008, ER97–705–013, ER02–2080–002, ER02–2546–003, ER99–3248–005, ER99–1213–003, and ER01–1526–003]

Take notice that on November 18, 2004, Consolidated Edison Company of New York, Inc., Orange and Rockland Utilities, Inc., Consolidated Edison Energy, Inc., Consolidated Edison Solutions, Inc., Ocean Peaking Power L.L.C., CED Rock Springs, Inc., Consolidated Edison Energy of Massachusetts, Inc., Lakewood Cogeneration, L.P., and Newington Energy, L.L.C. (collectively, the Con Edison Companies) submitted for filing their triennial market power analysis.

Comment Date: 5 p.m. eastern time on December 9, 2004.

8. PJM Interconnection, L.L.C.

[Docket No. ER05–85–001]

Take notice that on November 19, 2004 PJM Interconnection, L.L.C. (PJM) and Duquesne Light Company (Duquesne Light) filed an amendment to their October 28, 2004, filing in Docket No. ER05–85–001 to formally identify a Duquesne Light grandfathered transmission service agreement and briefly describe how such agreement will be implemented following the integration of Duquesne Light into the PJM markets and tariff on January 1, 2005.

PJM and Duquesne Light state that copies of the filing were served upon all persons on the Commission's service list for this proceeding.

Comment Date: 5 p.m. eastern time on December 3, 2004.

9. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER05–232–000]

Take notice that on November 18, 2004, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted an Interconnection and Operating Agreement among GM Transmission, LLC, Northern States Power Company d/b/a Xcel Energy and the Midwest ISO. Midwest ISO requests an effective date of November 10, 2004.

Midwest ISO states that a copy of this filing was served on GM Transmission,

LLC and Northern States Power Company d/b/a Xcel Energy.

Comment Date: 5 p.m. eastern time on December 9, 2004.

10. MGE Power West Campus LLC

[Docket No. ER05–233–000]

Take notice that on November 18, 2004, MGE Power West Campus LLC (West Campus) submitted for filing a Power Purchase Agreement Providing for Sales of Test Power between West Campus and Madison Gas and Electric Company. West Campus requests an effective date of January 18, 2005.

West Campus states that copies of the filing were served upon the Public Service Commission of Wisconsin.

Comment Date: 5 p.m. eastern time on December 9, 2004.

11. Rayo Energy, LLC

[Docket No. ER05–234–000]

Take notice that on November 18, 2004, Rayo Energy, LLC (Rayo) filed a notice of withdrawal of its market based rates authorization in Docket Nos. ER03–782–000 and 001.

Comment Date: 5 p.m. eastern time on December 9, 2004.

12. El Paso Marketing, L.P.

[Docket No. ER05–235–000]

Take notice that on November 18, 2004, El Paso Marketing, L.P. (El Paso Marketing) filed a Notice of Succession stating that pursuant to a corporate name change, it is adopting El Paso Merchant Energy, L.P.'s market-based rate authorizations and its FERC Electric Rate Schedule No. 1. El Paso Marketing requests an effective date of November 9, 2004.

Comment Date: 5 p.m. eastern time on December 9, 2004.

13. Northeast Energy Associates, a Limited Partnership

[Docket No. ER05–236–000]

Take notice that on November 18, 2004, Northeast Energy Associates, a Limited Partnership submitted an application for market-based rate authority. Applicant requests an effective date of January 2, 2005.

Applicant states that copies of the filing were served upon the Florida Public Service Commission.

Comment Date: 5 p.m. eastern time on December 9, 2004.

14. American Transmission Company LLC

[Docket No. ER05–237–000]

Take notice that on November 18, 2004, American Transmission Company LLC (ATCLLC) tendered for filing a Distribution-Transmission Interconnection Agreement between ATCLLC and Mount Horeb Electric Utility. ATCLLC requests an effective date of April 8, 2004.

Comment Date: 5 p.m. eastern time on December 9, 2004.

15. American Transmission Company LLC

[Docket No. ER05–238–000]

Take notice that on November 18, 2004, American Transmission Company LLC (ATCLLC) tendered for filing a Distribution-Transmission Interconnection Agreement between ATCLLC and Mazomanie Electric Utility. ATCLLC requests an effective date of May 27, 2004.

Comment Date: 5 p.m. eastern time on December 9, 2004.

16. American Transmission Company LLC

[Docket No. ER05–239–000]

Take notice that on November 18, 2004, American Transmission Company LLC (ATCLLC) tendered for filing a Distribution-Transmission Interconnection Agreement between ATCLLC and Wisconsin Dells Electric Utility. ATCLLC requests an effective date of April 30, 2004.

Comment Date: 5 p.m. eastern time on December 9, 2004.

17. American Transmission Company LLC

[Docket No. ER05–240–000]

Take notice that on November 18, 2004, American Transmission Company LLC (ATCLLC) tendered for filing a Distribution-Transmission Interconnection Agreement between ATCLLC and Pioneer Power and Light. ATCLLC requests an effective date of June 29, 2004.

Comment Date: 5 p.m. eastern time on December 9, 2004.

18. American Transmission Company LLC

[Docket No. ER05–241–000]

Take notice that on November 18, 2004, American Transmission Company LLC (ATCLLC) tendered for filing a Distribution-Transmission Interconnection Agreement between ATCLLC and Stoughton Municipal Utilities. ATCLLC requests an effective date of September 29, 2004.

Comment Date: 5 p.m. eastern time on December 9, 2004.

19. Calpine King City Cogen, LLC

[Docket No. QF85–735–006]

Take notice that on November 16, 2004, Calpine King City Cogen, LLC (Calpine), filed with the Federal Energy Regulatory Commission an application for recertification of a facility as a qualifying cogeneration facility pursuant to 18 CFR 292.207(b) of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

Comment Date: 5 p.m. eastern time on December 16, 2004.

20. ISO New England, Inc.

[Docket No. ES05–13–000]

Take notice that on November 13, 2004, ISO New England, Inc. (ISO–NE) submitted an application pursuant to section 204 of the Federal Power Act seeking authorization to issue up to $50,000,000 in Senior Secured Notes.

Comment Date: 5 p.m. eastern time on December 6, 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 online 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.

Linda Mitry,

Deputy Secretary.

[FR Doc. E4–3441 Filed 12–1–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2064–004–WI]

Flambeau Hydro LLC; Notice of Availability of Final Environmental Assessment

November 19, 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), Commission staff have reviewed the application for a new license for the Winter Hydroelectric Project, located on the East Fork of the Chippewa River, in Sawyer County, Wisconsin, and have prepared an Environmental Assessment (FEA). The FEA analyzes the potential environmental effects of relicensing the project and concludes that issuing a new license for the project, with appropriate environmental measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

A copy of the FEA is on file with the Commission and is available for public inspection. The FEA 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 ''Winter Project No. 2064'' to all comments. 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 under the ''e-Filing'' link. For further information, contact Michael Spencer at (202) 502–6093, or e-mail *michael.spencer@ferc.gov*.

Magalie R. Salas,

Secretary.

[FR Doc. E4–3433 Filed 12–1–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. P–2082–027]

Klamath Hydroelectric Project; Notice Of Meetings

November 24, 2004.

The Commission is scheduled to meet with representatives of the Quartz Valley Indian Community and the Resighini Rancheria regarding the Klamath Hydroelectric Project relicensing. Meetings will be held with those tribes at the locations and times listed below:

Quartz Valley Indian Community, 13601 Quartz Valley Road, Fort Jones, California, December 15, 2004, 2 p.m. (P.s.t.);

Resighini Rancheria, 158 Klamath Beach Road, Klamath, California, December 16, 2004, 10 a.m. (P.s.t.).

Members of the public and intervenors in the referenced proceedings may attend these meetings; however, participation will be limited to tribal representatives and the Commission representatives. If the Tribes decide to disclose information about a specific location which could create a risk or harm to an archeological site or Native American cultural resource, the public will be excused for that portion of the meeting when such information is disclosed.[1] If you plan to attend any of these meetings, please contact John Mudre at the Federal Energy Regulatory Commission at 202–502–8902 or *john.mudre@ferc.gov*. The meetings will be transcribed by a court reporter, and public transcripts will be made available by the Commission following the meetings.

Magalie R. Salas,

Secretary.

[FR Doc. E4–3429 Filed 12–1–04; 8:45 am]

BILLING CODE 6717–01–P

[1] Protection from public disclosure involving this kind of specific information is based upon 18 CFR § 4.32(b)(3)(ii) of the Commission's regulations implementing the Federal Power Act.

ENVIRONMENTAL PROTECTION AGENCY

[OARM–2004–0001; FRI–7844–5]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; General Administrative Requirements for Assistance Programs: EPA Administrative Capability Questionnaire, EPA ICR Number 0938.10, OMB Control Number 2030–0020

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request for a new collection.

DATES: Additional comments may be submitted on or before January 3, 2005.

ADDRESSES: Submit your comments, referencing docket ID number OARM–2004–0001, to (1) EPA online using EDOCKET (our preferred method), by e-mail to *oei.docket@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Office of Environmental Information—Mail Code–28221T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Marguerite Pridgen, Office of Grants and Debarment—Mail Code 3903–R, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 564–5308; fax number: (202) 565–2470; e-mail address: *pridgen.marguerite@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On August 19, 2004 (69 FR 51462), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID No. OARM–2004–0001, which is available for public viewing at the Office of Environmental Information Docket in the EPA Docket Center (EPA/DC), EPA

West, Room B102, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Office of Environmental Information Docket is (202) 566–1752. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket*. Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, *see* EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket*.

Title: General Administrative Requirements For Assistance Programs: EPA Administrative Capability Questionnaire.

Abstract: The Environmental Protection Agency (EPA) is establishing procedures for assessing administrative capability of non-profit organizations applying for EPA grants. Under the new procedures, EPA will require certain non-profit applicants to complete a checklist entitled ''EPA Administrative Capability Questionnaire'' and return it to EPA with supporting documentation. The responses to the form will be a basis for assessing administrative capability and deciding whether to award grants to the non-profit applicant. Applicants that provide information that demonstrates they are administratively capable will be ''certified'' for the next four years, and therefore, would not have to resubmit the questionnaire and supporting documents in the next four years unless administrative management issues arise before the certification period has ended. Note: One potentially significant revision since the publication of the first **Federal Register** notice has been the inclusion of an additional (optional) data element. This data element ''CPA CERTIFICATION (OPTIONAL),'' at the end of the questionnaire, allows the applicant to further demonstrate that the recipient has established fiscal controls and accounting procedures which assure that project funds are distributed and accounted for properly.

In applying for a non-construction, discretionary grant from EPA, each applicant is currently required to complete and submit Standard Form (SF) series forms SF424, SF424A, and SF424B. By signing the SF424B, ''Assurances—Non-Construction Programs'', the applicant is assuring compliance with various statutory and regulatory requirements (40 CFR part 30—Grants and Agreements with Institutions of Higher Education, Hospitals, and other Non-Profit Organizations) and is assuring that it ''[h]as the legal authority to apply for Federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non Federal share of project cost) to ensure proper planning, management and completion of the project described in this application''. Despite this assurance, EPA's Office of the Inspector General and Office of Grants and Debarment within EPA's Office of Administration and Resources Management have documented numerous instances of non-profit recipients that have inadequate administrative systems to manage EPA funds or lack the capability to successfully perform the project scope of work.

Recognizing that it is preferable to address such issues before, rather than after a grant is awarded, EPA is prescribing uniform pre-award procedures for evaluating the administrative and programmatic capability of non-profit applicants. As part of these procedures, EPA will require that non-profit applicants seeking funding for a new award in excess of $200,000 complete a checklist entitled ''EPA Administrative Capability Questionnaire'' and return it to the designated EPA office with supporting documentation. In limited cases EPA may also require non-profit applicants seeking new awards below this threshold to complete the same questionnaire, where the Agency learns that significant weakness/deficiencies may be present that could compromise a non-profit's administrative capability. Note that much of the information to be collected in the proposed questionnaire is currently being collected from grant recipients during EPA's post-award monitoring activities (ref.: OMB 2030—0020, Expiration date 12/31/05). The information to be collected also directly relates to the administrative management systems which recipients are required to establish under 40 CFR part 30.

For purposes of this Notice, EPA uses the term ''administrative capability'' interchangeably with the term ''managerial and financial capability''. The term ''administrative capability'' means the capability of an applicant or recipient to develop and implement administrative systems required by 40 CFR part 30, including systems related to financial management, property management, procurement standards and financial reporting and recordkeeping. For purposes of this Notice, EPA uses the term ''programmatic capability'' interchangeably with the term ''institutional capability''. The term ''programmatic capability'' means the technical capability of an applicant or recipient to successfully carry out a project, taking into account factors such as past performance on similar projects, prior experience, timely progress reporting, the qualifications of key personnel and allocation of roles and responsibilities for proper project management, and the adequacy of equipment, resources and facilities.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9 and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 4.0 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing

and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: EPA non-profit applicants recommended for new assistance awards of greater than $200,000.

Estimated Number of Respondents: 100.

Frequency of Response: Once every four years.

Estimated Total Annual Hour Burden: 400.

Estimated Total Annual Cost: $16,875, includes $0 annualized capital or O&M costs.

Changes in the Estimates: There is a increase of 400 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This increase is due to the addition of a new Data Collection Instrument (protocol) to the others already utilized in EPA's ''General Administrative Requirements For Assistance Programs''—OMB Control Number 2030–0020 (Expiration Date: 12/31/2005). This new protocol is necessary to maintain and enhance EPA's Federal stewardship responsibilities.

Dated: November 14, 2004.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 04–26559 Filed 12–1–04; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

November 19, 2004.

SUMMARY: The Federal Communications Commissions, 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, as required by the Paperwork Reduction Act 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 (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before January 3, 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 comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *Leslie.Smith@fcc.gov* or Kristy L. LaLonde, Office of Management and Budget (OMB), Room 10236 NEOB, Washington, DC 20503, (202) 395–3087 or via the Internet at *Kristy_L._LaLonde@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copy of the information collection(s) contact Les Smith at (202) 418–0217 or via the Internet at *Leslie.Smith@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–XXXX.

Title: Radio Frequency Identification Equipment, 47 CFR 15.240.

Type of Review: New collection.

Form Number: N/A.

Respondents: Not-for-profit institutions; business or other for-profit; and State, local, or tribal governments.

Number of Respondents: 10.

Estimated Time per Response: 2 hour.

Frequency of Response: On occasion reporting requirement; Third party disclosure.

Total Annual Burden: 200 hours.

Total Annual Cost: None.

Privacy Act Impact Assessment: No impact(s).

Needs and Uses: On April 15, 2004, the FCC adopted a *Third Report and Order*, In the Matter of Review of part 15 and other Parts of the Commission's Rules, ET Docket No. 01–278, RM–9375, RM–10051, FCC 04–98. The *Third Report and Order* requires each grantee of certification for Radio Frequency Identification (RFID) Equipment to register the location of the equipment/devices its markets with the Commission. The information the grantee must supply to the Commission when registering the devices shall include the name, address and other pertinent contact information of users, the geographic coordinates of the operating location, and the FCC identification number(s) of the equipment. The improved RFID equipment could benefit commercial shippers and have significant homeland security benefits by enabling the entire contents of shipping containers to be easily and immediately identified, and by allowing a determination of whether tampering with their contents has occurred during shipping.

OMB Control Number: 3060–0004.

Title: Guidelines for Evaluating the Environmental Effects of Radiofrequency Radiation, Second Memorandum Opinion and Order, ET Docket No. 93–62.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Not-for-profit institutions; business or other for-profit; and State, local or tribal government.

Number of Respondents: 122,985.

Estimated Time per Response: 2.02 hours (avg.).

Frequency of Response: On occasion reporting requirement; third party disclosure.

Total Annual Burden: 256,080 hours.

Total Annual Cost: $1,193,000.

Privacy Act Impact Assessment: N.A.

Needs and Uses: The National Environmental Policy Act of 1969 (NEPA) required Federal agencies to evaluate the effects of their actions on ''human environmental quality.'' To comply with NEPA, the Commission adopted rules, 47 CFR 1.1307, which revised the Radio Frequency (RF) exposure guidelines for FCC-regulated facilities. The new guidelines reflect more recent scientific studies of RF electromagnetic fields and their biological effects and are designed to ensure that the public and workers receive adequate protection from exposure to potentially harmful RF electromagnetic fields. The FCC staff uses the information required under section 1.1307 to determine whether the environmental evaluation is sufficiently complete and in compliance with the FCC Rules to be acceptable for filing.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–26555 Filed 12–1–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

November 22, 2004.

SUMMARY: The Federal Communications Commissions, 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, 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 comments should be submitted on or before January 3, 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 comments to Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *Cathy.Williams@fcc.gov* or Kristy L. LaLonde, Office of Management and Budget (OMB), Room 10236 NEOB, Washington, DC 20503, (202) 395–3087 or via the Internet at *Kristy_L._LaLonde@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copy of the information collection(s) contact Cathy Williams at (202) 418–2918 or via the Internet at *Cathy.Williams@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0188.

Title: Call Sign Reservation and Authorization System, FCC Form 380.

Form Number: FCC Form 380.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions.

Number of Respondents: 1,600.

Estimated Time per Response: 0.166—0.25 hours.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 333 hours.

Total Annual Cost: $142,000.

Privacy Impact Assessment: No impact(s).

Needs and Uses: 47 CFR 73.3550 provides that all requests for new or modified call signs be made via the on-line call sign reservation and authorization. The FCC Form 380 is an on-line system for electronic preparation and submission of requests for the reservation and authorization of new and modified call signs. Access to the call sign reservation and authorization system is made by broadcast licensees and permittees, or by persons acting on their behalf, via the Internet's World Wide Web. This on-line, electronic call sign system enables users to determine the availability and licensing status of call signs; to request an initial, or change an existing, call sign; and to determine and submit more easily the appropriate fee, if any. 47 CFR 74.783 also permits any low power television (LPTV) station to request a four-letter call sign after receiving its construction permit. All initial LPTV construction permits will continue to be issued with a five-character alpha-numeric LPTV call sign. LPTV licensees/permittees are also required to use the on-line call sign reservation and authorization system. The call sign reservation and authorization system is used by permittees, licensees or persons acting on their behalf to determine the availability of a call sign and to request an initial call sign or change an existing call sign.

OMB Control Number: 3060–0844.

Title: Carriage of the Transmissions of Digital Television Broadcast Stations, Report & Order (R&O) and Further Notice of Proposed Rulemaking (FNPRM).

Form Number: Not Applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 10,100.

Estimated Time per Response: 30 minutes—40 hours.

Frequency of Response: On occasion reporting requirement; Third party disclosure requirement.

Total Annual Burden: 81,296 hours.

Total Annual Cost: $2,359,681.

Privacy Impact Assessment: No impact(s).

Needs and Uses: The FCC adopted a *Report and Order (R&O)* on January 23, 2001, and *Further Notice of Proposed Rulemaking (FNPRM).* The *R&O* modified 47 CFR 76.64(f) to provide that stations that return their analog spectrum and broadcast only in digital format are entitled to elect must-carry or retransmission consent status following the procedures previously applicable to new television stations. The *R&O* also provided only carriage rights for a very limited number of digital-only television broadcast station (DTV) and may result in voluntary carriage for a subset of other DTV stations. Furthermore, the R&O established a framework for voluntary retransmission consent agreements between DTV station licensees and multi-channel video programming distributors and modified several sections of the rules accordingly. The *FNPRM* sought additional comments on carriage requirements relating to digital television stations generally, as proposed in the initial NPRM.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–26556 Filed 12–1–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

November 23, 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 3, 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 comments regarding this Paperwork Reduction Act submission to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., 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.: 3060–0851.

Title: Application for Assignment of a Multipoint Distribution Service Authorization.

Form No: FCC Form 305.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit and not-for-profit institutions.

Number of Respondents: 160.

Estimated Time Per Response: 1.5–5 hours.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 800 hours.

Total Annual Cost: $1,610,350.

Privacy Act Impact Assessment: Not applicable.

Needs and Uses: The Commission is now revising FCC Form 305 to request additional information to complete the Universal Licensing System (ULS) data elements since Multipoint Distribution Service (MDS) has been integrated into ULS. Additional information such as the licensee's e-mail address, fax number, type of applicant, contact's e-mail address and fax number will be added to this form. There will also be clarification of data elements, instructions and corrections of mailing addresses and Web sites.

OMB Control No.: 3060–0852.

Title: Application for Transfer of Control of a Multipoint Distribution Service Authorization.

Form No: FCC Form 306.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit and not-for-profit institutions.

Number of Respondents: 20.

Estimated Time Per Response: .75–3.5 hours.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 110 hours.

Total Annual Cost: $211,275.

Privacy Act Impact Assessment: Not applicable.

Needs and Uses: The Commission is now revising FCC Form 306 to request additional information to complete the Universal Licensing System (ULS) data elements since Multipoint Distribution Service (MDS) has been integrated into ULS. Additional information such as the licensee's e-mail address, fax number, type of applicant, contact's e-mail address and fax number will be added to this form. There will also be clarification of data elements, instructions and corrections of mailing addresses and Web sites.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–26557 Filed 12–1–04; 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 22, 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, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before January 31, 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.: 3060–0395.

Title: The ARMIS USOA Report (ARMIS Report 43–02); the ARMIS Service Quality Report (ARMIS Report 43–05); and the ARMIS Infrastructure Report (ARMIS Report 43–07).

Report Nos.: FCC Reports 43–02, 43–05 and 43–07.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 50.

Estimated Time Per Response: 415 hours.

Frequency of Response: Annual reporting requirement.

Total Annual Burden: 20,750 hours.

Total Annual Cost: $4,347,000.

Privacy Act Impact Assessment: N/A.

Needs and Uses: The FCC Report 43–02 provides the annual results of the carriers' activities for each account of the Uniform System of Accounts. The FCC Report 43–05 provides service quality information in the areas of inter-exchange access service, installation and repair intervals, local service installation and repair intervals, trunk blockage, and total switch downtime for price cap carriers. FCC Report 43–07 provides switch deployment and capabilities data.

OMB Control No.: 3060–0410.

Title: Forecast of Investment Usage Report and Actual Usage of Investment Report.

Form Nos.: FCC Forms 495A and 495B.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 97.

Estimated Time Per Response: 80 hours.

Frequency of Response: Annual reporting requirement.

Total Annual Burden: 7,760 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Needs and Uses: FCC Forms 495A and 495B are needed to detect and correct forecast errors that could lead to significant misallocation of network plant between regulated and non-regulated activities. FCC's purpose is to protect the regulated ratepayer from subsidizing the non-regulated activities of rate regulated telephone companies. Only large incumbent local exchange carriers (ILECs) file these forms/reports.

OMB Control No.: 3060–0496.

Title: The ARMIS Operating Data Report.

Report No.: FCC Report 43–08.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 56.

Estimated Time Per Response: 139 hours.

Frequency of Response: Annual reporting requirement.

Total Annual Burden: 7,784 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Needs and Uses: FCC Report 43–08 collects annual statistical data in a consistent format that is essential for the Commission to monitor network growth, usage, and reliability.

OMB Control No.: 3060–0511.

Title: ARMIS Access Report.

Report No.: FCC Report 43–04.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 82.

Estimated Time Per Response: 153 hours.

Frequency of Response: Annual reporting requirement.

Total Annual Burden: 12,546 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Needs and Uses: FCC Report 43–04 is needed to administer the Commission's accounting, jurisdictional separations and access charge rule; to analyze revenue requirements and rates of return; and to collect financial data from Tier 1 incumbent local exchange carriers (ILECs).

OMB Control No.: 3060–0512.

Title: The ARMIS Annual Summary Report.

Report No.: FCC Report 43–01.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 124.

Estimated Time Per Response: 89 hours.

Frequency of Response: Annual reporting requirement.

Total Annual Burden: 11,036 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Needs and Uses: FCC Report 43–01 contains financial and operating data and is used to monitor the incumbent local exchange carrier (ILEC) industry and to perform routine analyses of costs and revenues on behalf of the Commission. For this collection, and the ones referenced above, the Commission is seeking extension (no change in requirements) in order to obtain the full three year clearance from the Office of Management and Budget (OMB).

OMB Control No.: 3060–0986.

Title: Federal State Joint Board on Universal Service—Plan for Reforming the Rural Universal Service Support Mechanism, CC Docket No. 96–45.

Form No.: FCC Form 525.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit and state, local or tribal government.

Number of Respondents: 2,000.

Estimated Time Per Response: 1.5 hours.

Frequency of Response: On occasion, annual, and quarterly reporting requirements and third party disclosure requirements.

Total Annual Burden: 3,000 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Needs and Uses: With this revision, the Commission plans to implement a new form (FCC Form 525) in which competitive eligible telecommunications carriers (CETCs) will submit line count data. CETCs currently submit this data in a letter format for this and other collections under various OMB control numbers. The use of one form, *i.e.*, FCC Form 525, will now facilitate this information for all reporting requirements. Finally, this collection is also being revised to eliminate one time filing requirements that have now expired and are being removed from this collection.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–26558 Filed 12–1–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2682]

Petitions for Reconsideration of Action in Rulemaking Proceedings

November 17, 2004.

Petitions for Reconsideration have been filed in the Commission's Rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of this document is available for viewing and copying in Room CY–B402, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI) (1–800–378–3160). Oppositions to these petitions must be filed by December 17, 2004. *See* section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions have expired.

Subject: In the Matter of Table of Allotments, FM Broadcast Stations (Gunnison, Crawford, and Olathe, Breckenridge, Eagle, Fort Morgan, Greenwood Village, Loveland, and Strasburg, Colorado, and Laramie, Wyoming) (MB Docket No. 03–144).

Number of Petitions Filed: 2.

Subject: In the Matter of Mitigation of Orbital Debris (IB Docket No. 02–54).

Number of Petitions Filed: 2.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–26554 Filed 12–1–04; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services (HHS) announces the following advisory committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS), Subcommittee on Standards and Security (SSS).

Time and Date:

December 8, 2004, 9 a.m.—5:30 p.m.

December 9, 2004, 8:30 a.m.—6 p.m.

December 10, 2004, 8:30 a.m.—12:15 p.m.

Place: Hubert H. Humphrey Building, 200 Independence Avenue, SW., Room 705A, Washington, DC 20201.

Status: Open.

Purpose: The Subcommittee on Standards and Security will meet on December 8–10. December 8 and 9 will be devoted to hearing testimony from various stakeholders in government and the industry about standards

and issues related to the use of e-signatures and electronic prescribing. The morning of the 10th will focus on updates from the industry workgroups on the codified SIG, formulary and benefits standards, and the HL7/NCPDP harmonization, which will be followed by Subcommittee discussion.

For Further Information Contact: Substantive program information as well as summaries of meetings and a roster of Committee members may be obtained from Maria Friedman, Health Insurance Specialist, Security and Standards Group, Centers for Medicare and Medicaid Services, MS: C5–24–04, 7500 Security Boulevard, Baltimore, MD 21244–1850, telephone: (410) 786–6333 or Marjorie S. Greenberg, Executive Secretary, NCVHS, National Center for Health Statistics, Centers for Disease Control and Prevention, Room 1100, 3311 Toledo Road, Hyattsville, Maryland 20782, telephone: (301) 458–4245. Information also is available on the NCVHS home page of the HHS Web site: *http://www.ncvhs.hhs.gov/* where an agenda for the meeting will be posed when available.

Should you require reasonable accommodation, please contract the CDC Office of Equal Employment Opportunity on (301) 458–4EEO (4336) as soon as possible.

Dated: November 22, 2004.

James Scanlon,

Acting Deputy Assistant Secretary for Science and Data Policy, Office of the Assistant Secretary for Planning and Evaluation.

[FR Doc. 04–26553 Filed 12–01–04; 8:45 am]

BILLING CODE 4151–05–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects:

Title: Grants for Battered Women's Shelters.

OMB No.: New Collection.

Description: This information collection is authorized under Title III of the Child Abuse Amendments of 1984, Public Law 98–457, as amended. In response to the program announcement, the respondents submit information about their services program and their eligibility. Information that is collected is used to award grants under the Grants for Battered Women's Shelters program.

Respondents: State agencies administering the Family Violence Prevention and Services program.

Annual Burden Estimates:

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
State FVPSA Agencies	53	1	6	318

Estimated Total Annual Burden Hours: 318.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington DC 20447, Attn: ACF Reports Clearance Officer. E-mail address: *grjohnson@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: November 24, 2004.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 04–26534 Filed 12–1–04; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004N–0516]

Agency Information Collection Activities; Proposed Collection; Comment Request; 2005 Food Safety Survey

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information and to allow 60 days for public comment in response to the notice. This notice solicits comments on a voluntary consumer survey about food safety.

DATES: Submit written or electronic comments on the collection of information by January 31, 2005.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.fda.gov/dockets/ecomments.* Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal

agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

2005 Food Safety Survey

Under section 903(b)(2) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 393(b)(2)), FDA is authorized to conduct research relating to foods and to conduct educational and public information programs relating to the safety of the Nation's food supply. FDA is planning to conduct a consumer survey about food safety under this authority. The food safety survey will provide information about consumers' food safety awareness, knowledge, concerns, and practices. A nationally representative sample of 4,000 adults in households with telephones will be selected at random and interviewed by telephone. This survey will include an oversample of Hispanics with a minimum of 500 Hispanics sampled. Additionally, 200 initial nonrespondents will be asked to participate in a short version of the survey to conduct a nonresponse analysis. Participation will be voluntary. Detailed information will be obtained about food safety risk perception, perceived sources of food contamination, knowledge of particular microorganisms, food handling practices, consumption of raw foods from animals, and perceived foodborne illness and food allergy experience.

The majority of the questions to be asked are identical to ones asked in the 2001 Food Safety Survey (the 2001 survey). Because of recent national consumer education campaigns about food safety and the large amount of media attention to food safety issues in the past few years, consumer attitudes, knowledge, and practices are likely to have changed greatly since the 2001 survey. FDA needs current information to support consumer education programs and regulatory development. Additionally, this data will be used to measure changes in food safety handling practices and food allergy reactions as part of the Healthy People 2010 food safety objectives and allergen goals. New areas on the survey include awareness of bovine spongiform encephalopathy and acrylamide, refrigeration practices, and updated questions on washing practices for fresh fruits and vegetables.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
10,000—Screener	1	10,000	.0167	167
4,000—Survey	1	4,000	.3	1,200
200—Short survey of "initial non-responders"	1	200	.10	20
Total	1	14,200	.4167	1,387

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The burden estimate is based on FDA's experience with the 2001 survey mentioned previously in this document.

Dated: November 26, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–26551 Filed 12–1–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2002N–0291]

Baldev Raj Bhutani; Denial of Hearing; Final Debarment Order

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is denying Baldev Raj Bhutani's request for a hearing and is issuing a final order under the Federal Food, Drug, and Cosmetic Act (the act) permanently debarring Baldev Raj Bhutani from providing services in any capacity to a person that has an approved or pending drug product application. FDA bases this order on a finding that Mr. Bhutani was convicted of a felony under Federal law for conduct related to the regulation of a drug product under the act. Mr. Bhutani has failed to file with the agency information and analyses sufficient to create a basis for a hearing concerning this action.

DATES: This order is effective December 2, 2004.

ADDRESSES: Submit applications for termination of debarment to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: S. Mitchell Weitzman, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION:

I. Background

On February 12, 1996, Mr. Bhutani, former President and Treasurer of Alra Laboratories, Inc. (Alra), was found

guilty of one count of conspiracy, a Federal felony offense under 18 U.S.C. 371, and six other counts, also Federal felonies, related to violations under sections 301(a), (e), and (k) and 303 of the act (21 U.S.C. 331(a), (e), and (k) and 333(a)(2)). A new trial was ordered by the U.S. District Court for the Northern District of Illinois-Eastern Division on December 17, 1997. On April 28, 1999, the U.S. Court of Appeals for the Seventh Circuit reversed the District Court's ruling that Mr. Bhutani was entitled to a new trial and reinstated his convictions. On October 12, 1999, Mr. Bhutani pled guilty to one count of wire fraud, a Federal felony under 18 U.S.C. 1343. On February 15, 2000, Mr. Bhutani was adjudged guilty of all of these offenses and sentenced by the U.S. District Court for the Northern District of Illinois-Eastern Division. The U.S. Court of Appeals for the Seventh Circuit affirmed the District Court's denial of a motion for a new trial on September 12, 2001.

The basis for these convictions were Mr. Bhutani's violations of various sections of the act involving the drug products LACTULOSE Syrup and K+10 (potassium chloride extended-release tablets). Specifically, Mr. Bhutani, the President and Treasurer of Alra, was convicted of the following:

- Conspiracy (in violation of 18 U.S.C. 371) to commit the following offenses against the United States: (1) Manufacturing and introducing adulterated and misbranded generic drug products into interstate commerce (in violation of 21 U.S.C. 331(a)); (2) failing to establish and maintain records as required under the act (in violation of 21 U.S.C. 331(e)); (3) making false statements to FDA (in violation of 18 U.S.C. 1001); (4) obstructing the administration of law in proceedings pending before FDA (in violation of 18 U.S.C. 1505); and (5) obstructing proceedings before a Federal grand jury (in violation of 18 U.S.C. 1503).
- Adulterating the drug product LACTULOSE Syrup, United States Pharmacopeia (USP), lot 52–230–P, in violation of 21 U.S.C. 331(k), by including decomposed LACTULOSE raw material in the finished drug product, and by deviating from the approved manufacturing procedures by adding an undocumented substance, sodium hydroxide, to this drug product in an unapproved manner.
- Failing to establish and maintain records as required under the act (in violation of 21 U.S.C. 331(e)), specifically failing to establish and maintain accurate drug manufacturing batch production records for the drug product LACTULOSE Syrup, USP, lot 52–230–P, in that he failed to document the unauthorized addition of sodium hydroxide more than 2 years after the original manufacture of this lot.
- Introducing into interstate commerce, in violation of 21 U.S.C. 331(a), the drug product LACTULOSE Syrup, USP, lot 52–230–P, which (1) was not manufactured in accordance with current good manufacturing practice regulations and (2) contained an undocumented substance, sodium hydroxide.
- Adulterating the drug product LACTULOSE Syrup, USP, lot 92–558–P, by violating current good manufacturing practice regulations and by preparing and holding the drug product under unsanitary conditions whereby it may have been contaminated with filth (21 U.S.C. 331(k)). Specifically, Mr. Bhutani received the drug product's active raw material, LACTULOSE concentrate, in punctured drums and then directed Alra employees to inject hot glue into the punctures to plug the leaks, and to wrap self-adhesive duct tape over the punctures, and thereafter used this contaminated raw material in the manufacture of a finished drug product.
- Introducing into interstate commerce the drug product LACTULOSE, lot 92–558–P, which was adulterated in that it was not manufactured in accordance with current good manufacturing practice regulations, and it was prepared and held under unsanitary conditions whereby it may have been contaminated with filth, in violation of 21 U.S.C. 331(a). Alra then used this contaminated raw material in the manufacture of a finished drug product and shipped it in interstate commerce to customers.
- Adulterating the drug product K+10 by violating current good manufacturing practice regulations under 21 U.S.C. 331(k), by contaminating this drug product with metal shavings from a stainless steel pipe, and by preparing and holding the drug product under unsanitary conditions whereby it may have been contaminated with filth and rendered injurious to health. Specifically, Mr. Bhutani directed employees to make tablets from the drug product when he knew the granulation powder contained metal fragments from a stainless steel pipe.

As a result of Mr. Bhutani's convictions and because he was convicted of felonies that were clearly related to the regulation of a drug product under the act, FDA served him by certified letter on February 6, 2003, a proposal to permanently debar him from providing services in any capacity to a person that has an approved or pending drug product application. The proposal also offered Mr. Bhutani an opportunity for a hearing on the proposal. FDA based the debarment proposal on a finding that Mr. Bhutani was convicted of a felony under Federal law for conduct relating to the regulation of Alra's drug products.

The certified letter informed Mr. Bhutani that his request for a hearing could not rest upon mere allegations or denials, but must present specific facts showing that there was a genuine and substantial issue of fact requiring a hearing. The letter also informed Mr. Bhutani that the only material issue of fact was whether he was convicted as alleged in the letter. Finally, the letter informed Mr. Bhutani that if it conclusively appeared from the face of the information and factual analyses in his request for a hearing that there was no genuine and substantial issue of fact that precluded the order of debarment, FDA would enter summary judgment against him and deny his request for a hearing.

In a letter dated January 30, 2003, [1] Mr. Bhutani requested a hearing on the proposal and attached supporting materials. In his request for a hearing, Mr. Bhutani acknowledges his convictions under Federal law as alleged by FDA. However, he disputes many of the facts and judicial decisions that formed the basis for his convictions.

We reviewed these materials, as well as supplementary submissions from Mr. Bhutani dated February 25, 2003, March 17, 2003, February 17, 2004, and November 12, 2004, and find that they do not create a basis for a hearing because hearings will be granted only if there is a genuine and substantial issue of fact. Hearings will be granted neither on issues of policy or law or on mere allegations, denials, or general descriptions of positions and contentions, nor on data and information insufficient to justify the factual determination urged. (See 21 CFR 12.24(b).)

The Associate Commissioner for Regulatory Affairs has considered Mr. Bhutani's arguments and concludes that they are unpersuasive and fail to raise

[1] Mr. Bhutani's response pre-dated his actual receipt of the certified letter. This was because service was initially attempted at his home instead of at the prison at which he was incarcerated. We presume that Mr. Bhutani was informed of this attempted service and preemptively submitted his request for a hearing. A second attempt at service at the prison facility at which he is incarcerated was successful. In any event, the delivery dates do not alter the nature of Mr. Bhutani's request for a hearing or our application of summary judgment in this matter.

a genuine and substantial issue of fact requiring a hearing.

II. Legal Arguments Raised by Mr. Bhutani

Mr. Bhutani raised a number of legal arguments in support of his hearing request. These legal arguments are not relevant to the decision to grant a hearing because Mr. Bhutani has not raised a genuine and substantial issue of fact. A hearing will not be granted on issues of law. See 21 CFR 12.24(b)(1). Mr. Bhutani's legal arguments are discussed in the following paragraphs.

A. Materiality as an Element of ''Intent to Defraud''

Mr. Bhutani contends that ''materiality'' as an element of ''intent to defraud'' was erroneously not given as a jury instruction, citing *U.S.* v. *Neder*, 527 U.S. 1 (1999). *Neder* held that when Congress used the term ''to defraud'' in the mail and wire fraud statutes, Congress incorporated the common law requirement of materiality as an element of the offense.

Mr. Bhutani maintains that the violations cited by the proposal to debar are not material and that there is no evidence that the acts underlying the violations affected the quality, strength, purity, or potency of the drug products under his control.

The act requires FDA to mandatorily debar an individual who has been convicted of certain Federal felonies. Thus, the only relevant factual issue here is whether Mr. Bhutani was, in fact, convicted of a Federal felony for conduct related to the regulation of a drug product, and not whether the acts underlying the violations are material. Accordingly, Mr. Bhutani's argument is without merit.

B. Ex Post Facto

Mr. Bhutani maintains that in 1988, section 301(e) of the act did not specifically require batch documentation, as it does now, and therefore *ex post facto* principles apply. An *ex post facto* law is one that reaches back to punish acts that occurred before enactment of the law or that adds a new punishment to one that was in effect when the crime was committed. *Ex Parte Garland*, 4 Wall 333, 337, 18L. Ed 366 (1866); *Collins* v. *Youngblood*, 497 U.S. 37 (1990).

Mr. Bhutani's assertion regarding section 301(e) relates to the facts and findings underlying his conviction. These facts and findings are not relevant to this debarment proceeding. As stated previously in this document, the only relevant consideration under section 306(a)(2) of the act (21 U.S.C. 335a(a)(2)) is whether Mr. Bhutani was convicted of a felony under Federal law for conduct related to the regulation of a drug product under the act. Therefore, Mr. Bhutani's argument regarding section 301(e) and the Ex Post Facto Clause in connection with this debarment proceeding is without merit.

Mr. Bhutani also suggests that, in general, the Ex Post Facto Clause of the U.S. Constitution prohibits application of section 306(a)(2) of the act (21 U.S.C. 335a(a)(2)) to him because this section was not in effect at the time of Mr. Bhutani's criminal conduct.

With the enactment of the Generic Drug Enforcement Act (GDEA) on May 13, 1992, Congress amended the act to include section 306(a)(2) of the act. Mr. Bhutani's implication that application of the mandatory debarment provisions of the act is prohibited by the Ex Post Facto Clause is unpersuasive. Because the intent behind debarment under section 306(a)(2) of the act is remedial rather than punitive, this section does not violate the Ex Post Facto Clause. The congressional intent with respect to actions under section 306(a)(2) of the act is clearly remedial. Congress created the GDEA in response to findings of fraud and corruption in the generic drug industry. Both the language of the GDEA itself and its legislative history reveal that the purpose of the debarment provisions set forth in the GDEA is ''to restore and ensure the integrity of the ANDA [abbreviated new drug application] approval process and to protect the public health.'' (See section 1, Public Law 102–282, the Generic Drug Enforcement Act of 1992.) This is a remedial rather than punitive goal. In *Bae* v. *Shalala*, 44 F. 3d 489 (7th Cir. 1995), the Seventh Circuit upheld FDA's debarment under the GDEA of the former president of a generic drug manufacturing firm, based on his antecedent conviction for providing an ''unlawful gratuity'' to an FDA official. Although Bae argued that his debarment was ''retroactive punishment'' in violation of the Ex Post Facto Clause of the U.S. Constitution, the Seventh Circuit found that Bae's debarment was remedial, not punitive, and therefore did not violate the Ex Post Facto Clause. (*Bae*, 44 F. 3d at 493, 495–96). The Seventh Circuit recognized that, to achieve its remedial goal of restoring consumer confidence in the generic drug industry, Congress appropriately determined that it could prohibit felons such as Bae from future activity in the industry. (*Id*. at 496.) (See also *DiCola* v. *FDA*, 77 F. 3d 504 (D.C. Cir. 1996 (debarment of a convicted felon did not violate Ex Post Facto Clause); *Manocchio* v. *Kusserow*, 961 F. 2d 1539, 1542 (11th Cir. 1992) (exclusion of physician from participation in Medicare programs because of criminal conviction is remedial, not punitive and therefore did not violate the Ex Post Facto Clause).)

The Supreme Court has long held that statutes that deny future privileges to convicted offenders because of their previous criminal activities to insure against corruption in specified areas do not impose penalties for past conduct and, therefore, do not violate the *ex post facto* prohibitions. (See, e.g., *Hawker* v. *New York*, 170 U.S. 189, 190 (1898) (physician barred from practicing medicine for a prior felony conviction); *De Veau* v. *Braisted*, 363 U.S. 144 (1960) (convicted felon's exclusion from employment as officer of waterfront union is not a violation of the Ex Post Facto Clause).) In *De Veau*, the court upheld a law that prohibited a convicted felon from employment as an officer in a waterfront union. The purpose of the law was to remedy the past corruption and to insure against future corruption in the waterfront unions. The court in *De Veau*, 363 U.S. at 160, stated:

> The question in each case where unpleasant consequences are brought to bear upon an individual for prior conduct, is whether the legislative aim was to punish that individual for past activity, or whether the restriction of the individual comes about as a relevant incident to a regulation of a present situation, such as the proper qualifications for a profession * * *.

As in *De Veau*, the legislative purpose of section 306(a)(2) of the act is to ensure that fraud and corruption are eliminated from the drug industry. The restrictions placed on individuals convicted of a felony under Federal law are not intended as punishment but are ''incident to a regulation of a present situation'' (*De Veau*, 363 U.S. at 160) and are necessary to remedy the past fraud and corruption in the industry. Because the intent of the GDEA is remedial rather than punitive, Mr. Bhutani's argument that the GDEA violates the Ex Post Facto Clause must fail.

C. Scope of Debarment Authority

Mr. Bhutani asserts that the proposal to debar him and the debarment provisions themselves (section 306(a)(2)(B) of the act) are too broad and not specific, so he is entitled to a hearing. This argument is without merit.

Neither the proposal to debar nor the act's debarment provisions, on which the proposal to debar was based, are broad or unspecific. The debarment proposal set forth expressly the conduct on which the proposal is based, the findings of FDA, the agency's proposed

action, and the procedure for requesting a hearing. Section 306(a)(2)(B) of the act clearly mandates the debarment of an individual who has been convicted of a Federal felony for conduct relating to the regulation of any drug product. The act defines the conduct and felony conviction that lead to debarment. The period of debarment is also in section 306(c)(2) of the act, which states that the debarment is permanent.

In fact, the debarment provisions are narrowly drawn to accomplish the legitimate government purposes of ensuring the integrity of the drug regulatory process and protecting the public health. The debarment provisions further the compelling governmental interest of ''restor[ing] consumer confidence in generic drugs by eradicating the widespread corruption in the generic drug approval process.'' (*Bae* v. *Shalala*, 44 F. 3d 489, 493 (7th Cir. 1995).)

D. Double Jeopardy

Mr. Bhutani asserts that as he has already been convicted and sentenced for his actions, further punishment in the form of a permanent debarment violates the Double Jeopardy Clause of the Fifth Amendment to the U.S. Constitution. The Double Jeopardy Clause states that no person shall ''be subject for the same offense to be twice put in jeopardy of life or limb.'' Mr. Bhutani relies on *U.S.* v. *Halper*, 490 U.S. 435 (1989), which held that a civil sanction can constitute a multiple punishment of the sort prohibited by the Double Jeopardy Clause, to argue that permanent debarment is not rationally related to any remedial purpose and is disproportionate to damages resulting from his violative acts.

Mr. Bhutani's arguments are unpersuasive. First, ''jeopardy'' cannot attach because the effect of section 306(a)(2) of the act is remedial, not punitive. As previously stated, the legislative goal of this section of the act is to restore and ensure the integrity of the drug approval process and to protect the public health by eradicating fraud and corruption from the drug industry. This is plainly a remedial rather than punitive goal.

Second, the Supreme Court in *Hudson* v. *United States*, 522 U.S. 93 (1997), in large part disavowed the method of analysis used in *Halper* to determine whether a sanction violates the Double Jeopardy Clause. The Court in *Hudson* stated that the Double Jeopardy Clause protects only against the imposition of multiple criminal punishments for the same offense in successive proceedings. (*Hudson*, 522 U.S. at 98–99). It does not prohibit the imposition of any additional sanction that could, ''in common parlance,'' be described as punishment. (*Id.*) (Internal quotation marks and citations omitted).

The Court added that whether a particular punishment is considered criminal or civil is first a matter of statutory construction. (*Id.*) That is, a court first must ask whether the legislature, ''in establishing the penalizing mechanism, indicated either expressly or impliedly a preference for one label or the other.'' (*Id.* at 99 (quoting *United States* v. *Ward*, 448 U.S. 242, 248 (1980)).) Moreover, where the legislature has indicated an intention to establish a civil penalty, a court must inquire further whether the statutory scheme is ''so punitive either in purpose or effect'' as to ''transform what was clearly intended as a civil remedy into a criminal penalty.'' (*Id.* at 99 (quoting *Rex Trailer Co.* v.*United States*, 350 U.S. 148, 154 (1956)).)

The debarment of Mr. Bhutani is not a criminal penalty under *Hudson*. In enacting the GDEA, Congress clearly intended that debarment serve as a civil penalty. In *Hudson*, the Court found ''it significant that the authority to issue debarment orders is conferred [by statute] upon the 'appropriate Federal banking agencies','' holding ''[t]hat such [debarment] authority was conferred upon administrative agencies is prima facie evidence that Congress intended to provide for a civil sanction.'' (*Id.* at 103 (citations omitted).)

The GDEA explicitly provides FDA with the authority to permanently debar individuals convicted of certain felonies, such as Mr. Bhutani, from ''providing services in any capacity to a person that has an approved or pending drug product application'' (section 306(a)(2) of the act). Thus, under *Hudson*, the terms of the GDEA are prima facie evidence that Congress intended the debarment provisions to be civil in nature.

Under the second prong of *Hudson*, the debarment authorized by the GDEA is not so punitive either in purpose or effect as to transform this civil remedy into a criminal penalty. In *Hudson*, the Court considered whether a permanent debarment sanction prohibiting participation in any banking activities had such a punitive purpose or effect. The Court concluded that there was no evidence to establish that the debarment sanction at issue was ''so punitive in form and effect as to render [it] criminal despite Congress' intent to the contrary.'' (*Hudson* v. *United States*, 522 U.S. at 104 (quoting *United States* v. *Ursery*, 518 U.S. 267, 290 (1996)).) The Court in *Hudson* relied on the analysis of *Kennedy* v. *Mendoza-Martinez*, 372 U.S. 144, 168–169 (1963), in reaching this holding.

The *Hudson* court further noted that debarment proceedings have not historically been viewed as punishment. (*Hudson*, 552 U.S. at 104). The Court found that ''the [debarment] sanctions imposed do not involve an 'affirmative disability or restraint, ' as that term is normally understood.'' (*Id.* (quoting *Flemming* v. *Nestor*, 363 U.S. 603, 617 (1960)).) The Court also found that the debarment sanction in the banking statute at issue in the *Hudson* case does not ''come into play 'only ' on a finding of scienter,'' because willfulness is not a prerequisite to the imposition of the debarment sanction. (*Id.* (quoting *Kennedy*, 372 U.S. at 169).) Likewise, the GDEA does not require a finding of willfulness as a prerequisite to imposing debarment. In addition, the Court explained that the fact that the conduct for which the debarment is imposed may also be criminal is insufficient to render the debarment sanctions criminally punitive. (*Id.*) Finally, and significantly, the Court explained that the general deterrence of the conduct at issue resulting from an individual debarment is insufficient to render the debarment criminal. (*Id.*) These factors apply as much to debarment under the GDEA.

Furthermore, the GDEA's permanent prohibition on services in any capacity to a person with an approved or pending drug product application is not excessive in relation to the statute's remedial purpose. The Supreme Court has upheld similar statutes which, for remedial purposes, impose permanent prohibitions. (See *Hudson* v.*United States*, 522 U.S. 93 (1997); *Hawker* v. *New York*, 170 U.S. 189, 190 (1898); *De Veau* v. *Braisted*, 363 U.S. 144 (1960).)

The preclusion of Mr. Bhutani from providing any type of service to holders of pending or approved drug product applications is not excessive in relation to the remedial goals of the GDEA. The D.C. Circuit has held that the GDEA's prohibition on services in any capacity serves the statute's remedial purpose. (*FDA* v. *DiCola*, 77 F. 3d 504 (D.C. Cir. 1996).) Congress prohibited all services to avoid the serious administrative difficulties involved in distinguishing between those positions clearly related to drug regulation and those not clearly related. (*Id.* at 507; see also *Siegel* v. *Lyng*, 851 F. 2d 412, 416 (D.C. Cir. 1988).) Furthermore, the GDEA's prohibition ensures that the purposes underlying the debarment provisions are not circumvented or undermined. (*DiCola*, 77 F. 3d at 507; see also *Farley and Calfee, Inc.* v. *USDA*, 941 F. 2d 964, 968 (9th Cir. 1991).) Finally, as

previously noted, the Supreme Court in *Hudson* upheld a similar statute that, for remedial purposes, imposes a prohibition on participation in any banking activity. (See also *DiCola*, 77 F. 3d at 506–507 (debarment of a convicted felon does not violate the Double Jeopardy Clause); *Manocchio* v. *Kusserow*, 961 F. 2d 1539, 1542 (11th Cir. 1992) (exclusion of a physician from the Medicaid program because of a criminal conviction does not violate the Double Jeopardy Clause).)

Under *Hudson*, debarment under the GDEA is not so punitive either in purpose or effect as to render the penalty criminal. Thus, Mr. Bhutani's argument that debarment under the GDEA violates the Double Jeopardy Clause is unpersuasive.

E. Waiver of Further Remedial, Civil, or Criminal Actions

Mr. Bhutani maintains that FDA is estopped from seeking to debar him because the agency waived additional remedial, civil, or criminal actions against him by entering into ''agreements'' with him concerning his cooperation in bringing Alra's operations in compliance with FDA regulations. Mr. Bhutani also asserts that the proposal to debar is punitive rather than remedial. These arguments are also unpersuasive.

As discussed in section II.D of this document, a debarment is a remedial, not punitive, action. Furthermore, Mr. Bhutani's argument that FDA is estopped from pursuing further administrative action by virtue of prior ''agreements'' is unpersuasive. Mr. Bhutani cites no legal authority, and we are unaware of any such authority, that would bar FDA from pursuing this appropriate remedial action as mandated by the GDEA.

F. ''Clean Hands'' Doctrine

Mr. Bhutani maintains that he and Alra entered into two agreements (a consent agreement and a voluntary agreement) with FDA that he and Alra complied with and that FDA was satisfied with. He asserts that under Congressional pressure, FDA initiated a seizure action and a criminal proceeding against Alra. Mr. Bhutani contends that FDA has acted in bad faith and, under the ''clean hands'' doctrine, should not be allowed to seek additional remedies and relief. This argument is also without merit.

Under the ''clean hands'' doctrine, a party seeking a judgment is not entitled to relief in equity if the person has done anything unfair or illegal in relation to the subject of the lawsuit. *Precision Instrument Mfg. Co.* v. *Automotive Maintenance Machinery Co.*, 324 U.S. 806, 814 (1945). FDA has not acted in bad faith with respect to any agreements with Mr. Bhutani or Alra. Furthermore, FDA is not seeking any judgment or relief in equity against Mr. Bhutani. FDA is applying to Mr. Bhutani the statutory requirement regarding mandatory debarment of individuals convicted of a felony under Federal law for conduct related to the regulation of a drug product under the act. Therefore, Mr. Bhutani's argument regarding the ''clean hands'' doctrine is without merit.

G. Estoppel by Laches

Mr. Bhutani maintains that FDA is estopped from taking this regulatory action due to an ''unreasonable amount of time that has elapsed.'' He cites *Costello* v. *U.S.*, 365 U.S. 265 (1961), in support of his contention. *Costello* involved an individual whose U.S. naturalization was revoked 27 years after his application. The *Costello* case is not in any way relevant or analogous to the circumstances at issue here, but even if it were, the Court's holding that the petitioner's rights were not violated by a 27-year delay in initiating citizenship revocation undermines, as opposed to supports, Mr. Bhutani's argument. The Court cited, as is the case here, the availability of accurate records and documents attesting to the petitioner's misdeeds (*Id.* at 282–283).

FDA initiated administrative action to debar Mr. Bhutani in a timely fashion. Section 306(l)(2) of the act provides a 5-year window from the date of conviction for the agency to initiate the debarment process. Mr. Bhutani's conviction was reinstated on April 29, 1999. The agency issued a proposal to debar on February 6, 2003, within the 5-year statutory window. Therefore, Mr. Bhutani's assertion is unpersuasive.

H. Other Arguments

Finally, Mr. Bhutani argues that FDA must consider a number of factors in this debarment proceeding, including the nature and seriousness of the offense; management participation in the offense; voluntary steps taken to minimize the impact of the offense on the public; changes in ownership, management, or operations that have corrected the cause of the offense and decreased the likelihood of a recurrence; evidence that current production of drugs subject to abbreviated drug applications and all pending abbreviated drug applications are free of fraud or material false statements; and prior convictions. Again, the only relevant fact under section 306(a)(2) of the act is whether Mr. Bhutani was convicted of a felony under Federal law for conduct related to the regulation of a drug product. Therefore, Mr. Bhutani's argument that FDA must consider other factors is without merit.

III. Denial of Hearing

In his requests for a hearing, Mr. Bhutani does not present any information showing there is a genuine and substantial issue of fact requiring a hearing. Mr. Bhutani does not dispute that he pled guilty to one count of wire fraud and that he was found guilty of seven other counts, all felonies under Federal law. Nor does he dispute that he was convicted of felonies that were clearly related to the regulation of a drug product under the act. The facts underlying Mr. Bhutani's convictions have been established by his convictions and, therefore, are not at issue. Thus, FDA finds that Mr. Bhutani has failed to identify any genuine and substantial issue of fact requiring a hearing. In addition, Mr. Bhutani's legal arguments do not create a basis for a hearing and, in any event, are unpersuasive. Accordingly, FDA denies Mr. Bhutani's request for a hearing.

IV. Findings and Order

Therefore, the Associate Commissioner for Regulatory Affairs, under section 306(a) of the act and under authority delegated to him, finds that Mr. Baldev Bhutani has been convicted of a felony under Federal law for conduct relating to the regulation of a drug product under the act (Section 306(a)(2)(B)) of the act).

As a result of the foregoing findings, Mr. Baldev Raj Bhutani is permanently debarred from providing services in any capacity to a person with an approved or pending drug product application under sections 505, 512, or 802 of the act (21 U.S.C. 355, 360b, or 382), or under section 351 of the Public Health Service Act (42 U.S.C. 262), effective (see **DATES**) (sections 306(c)(1)(B) and (c)(2)(A)(iii) and 201(dd) of the act (21 U.S.C. 321(dd))). Any person with an approved or pending drug product application who knowingly uses the services of Mr. Bhutani in any capacity, during his period of debarment, will be subject to civil money penalties (section 307(a)(6) of the act (21 U.S.C. 335b(a)(6)). If Mr. Bhutani, during the period of his debarment, provides services in any capacity to a person with an approved or pending drug product application, he will be subject to civil money penalties (section 307(a)(7) of the act). In addition, FDA will not accept or review any ANDAs submitted by or with the assistance of Mr. Bhutani during the period of his debarment.

We note that Mr. Bhutani has petitioned the U.S. Supreme Court for writ of certiorari of the Seventh Circuit's decision in his case. Should the outcome of further judicial proceeding result in Mr. Bhutani's conviction being reversed, under section 306(d)(3)(B)(i) of the act, the order of debarment will be withdrawn. Mr. Bhutani may file an application to terminate his debarment, under section 306(d)(4)(A) of the act. Any such application would be reviewed under the criteria and processes set forth in section 306(d)(4)(C) and (d)(4)(D) of the act. Such an application should be identified with Docket No. 2002N–0291 and sent to the Division of Dockets Management (see **ADDRESSES**). All such submissions are to be filed in four copies. The public availability of information in these submissions is governed by 21 CFR 10.20(f). Publicly available submissions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 24, 2004.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 04–26532 Filed 12–1–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004D–0493]

Draft Guidance for Industry on Recommended Approaches to Integration of Genetic Toxicology Study Results; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled ''Recommended Approaches to Integration of Genetic Toxicology Study Results.'' This draft guidance is intended to inform industry on how the Center for Drug Evaluation and Research (CDER) views positive findings in genetic toxicology assays, and to provide recommendations to industry on how to proceed in assuring safety of healthy subjects or patients when results in genotoxicity studies suggest a potential cancer or genetic hazard.

DATES: Submit written or electronic comments on the draft guidance by January 31, 2005. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the draft guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: David Jacobson-Kram, Center for Drug Evaluation and Research (HFD–024), Food and Drug Administration, 5515 Security Lane, Rockville, MD 20852, 301–443–5346.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Recommended Approaches to Integration of Genetic Toxicology Study Results.'' Risk for carcinogenesis is usually determined in rodent assays, in either 2–year studies or shorter-term studies using alternative models (ICH S1B). Regulatory decisions involving both single- and repeat-dose clinical studies are discussed in this guidance. Pharmaceuticals administered through oral, intravenous, topical, and other routes, as appropriate, are subject to this guidance.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the agency's current thinking on recommended approaches to integration of genetic toxicology study results. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments on the draft guidance. Two paper copies of mailed comments are to be submitted, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments are available for public examination in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/cder/guidance/index.htm* or *http://www.fda.gov/ohrms/dockets/default.htm*.

Dated: November 23, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–26533 Filed 12–1–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request; Longitudinal Investigation of Fertility and the Environment

SUMMARY: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institute of Child Health and Human Development, the National Institutes of Health has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection was previously published in the **Federal Register**, under the title ''Determinants of Male and Female Fecundity and Fertility,'' on January 9, 2004, page 1589 and allowed 60-days for public comment. Two public comments were received from the American Society for Reproductive Medicine and the American Chemistry Council Phthalate Esters Panel regarding specific aspects of the proposed methodology. Overall, comments from the former group pertained predominantly to clinical issues while the latter group's comments provided their rationale for the omission of phthalates from the protocol. These comments were useful in modifying the proposed study and instruments. The purpose of this notice is to allow an additional 30 days for public comment.

5 CFR 1320.5 (General Requirements) Reporting and Recordkeeping

Requirements: Final Rule requires that the agency inform the potential

persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number. This information is required to be stated in the 30-day **Federal Register** notice.

Proposed Collection: Title: Longitudinal Investigation of Fertility and the Environment (LIFE Study). *Type of Information Collection Request:* NEW. *Need and Use of Information Collection:* The purpose of the LIFE Study is to assess the impact of environmental factors, broadly defined to include lifestyle factors, on human reproduction and development. The LIFE Study is consistent with the mission of the National Institute of Child Health and Human Development that includes conducting basic, clinical and epidemiologic research focusing on factors and processes associated with human reproduction and development, thereby, ensuring the birth of healthy infants capable of reaching full adult potential unimpaired by physical or mental disabilities.

This study will assess the relation between select environmental factors and human reproduction and development. This research proposes to recruit and retain 800 couples interested in becoming pregnant and willing to participate in a longitudinal study. Couples will be selected from geographic regions that were chosen from peer reviewed competitive proposals. Fecundity will be measured by the time required for the couples to achieve pregnancy, while fertility will be measured by the ability of couples to have a live born infant. Infertility will be recognized for couples unable to conceive within 12 months of trying. The study's primary environmental exposures include: organochlorine pesticides; polychlorinated biphenyls; polybrominated diphenyl ethers; metals; perfluorinated compounds; cotinine; and phytoestrogens. A growing body of literature suggests these compounds may exert adverse effects on human reproduction and development; however, definitive data are lacking especially for sensitive endpoints. Couples will participate in a 25-minute baseline interview and be instructed in the use of home fertility monitors and pregnancy kits for counting the time required for pregnancy and detecting pregnancy. Blood and urine samples will be collected at baseline from both partners of the couple for measurement of the environmental exposures. Two semen samples from male partners and two saliva samples from female partners also will be requested. Semen samples will be used to globally assess male fecundity as measured primarily by sperm concentration and morphology. Saliva samples will be used for the measurement of cortisol levels as a marker of stress among female partners so that the relation between environmental factors, stress and human reproduction can be assessed.

The findings will provide valuable information regarding the effect of environmental contaminants on sensitive markers of human reproduction and development, filling critical data gaps. Moreover, these environmental exposures will be analyzed in the context of other lifestyle exposures such as use of cigarettes and alcohol, consistent with the manner in which human beings are exposed. *Frequency of Response:* Following the baseline interview (25 minutes), couples will each complete a 2-minute daily diary on select lifestyle factors. Women will perform daily fertility testing (7 minutes) approximately 11 days per cycle and pregnancy testing (4 minutes) at day of expected menses using a dipstick test in urine. Approximately 60% of women will become pregnant after 2 to 3 months, at which point they will switch to the less intensive portion of the protocol. Men will provide two semen samples, a month apart, requiring approximately 20 minutes for each collection, and women will collect two saliva samples, a month apart, requiring approximately 6 minutes each. Participating couples will be given a choice to submit their information by mail or to send it electronically to the Data Coordinating Center. This option will be available throughout data collection in the event couples change their minds about how they would like to submit information. Study participants will collect semen and saliva samples and forward them in prepaid delivery packages to the study's laboratories. Research nurses will collect blood and urine samples and return them to the study's laboratories. *Affected Public:* Individuals from participating communities. *Type of Respondents:* Men aged 18+ years and women aged 18–40 years. *Estimated Number of Respondents:* Approximately 1,000 couples enrolling (minimum of 800 completing the study). *Estimated Number of Response Sets Per Respondent:* 7 per woman and 4 per man over approximately two years. *Average Burden Hours Per Response:* (1) 0.17 hours for completing the screening instrument; (2) 0.42 hours for baseline interviews with men and women; (3) 2.5 hours for daily journal while attempting pregnancy for men and women; (4) 0.38 and 0.7 hours for biospecimen collection for women and men, respectively; (5) 2.6 hours for fertility monitors; (6) 0.27 hours for pregnancy testing for women; and (7) 0.29 hours for pregnancy journals for women. *Estimated Total Annual Burden Hours Requested:* 3,280 to 9,900 hours for female participants and 2,100 to 5,480 hours for male participants depending upon the length of time required for pregnancy. There is no cost to respondents. There are no Capital Costs, Operating Costs, and/or Maintenance Costs to report.

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Dr. Germaine M. Buck Louis, Epidemiology Branch, Division of Epidemiology, Statistics and Prevention Research, NICHD, 6100 Executive Boulevard, Room 7B03, Rockville, MD 20852, (301) 496–6155. You may also e-mail your request to *gb156i@nih.gov*.

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

Dated: November 19, 2004.

Paul L. Johnson,

Project Clearance Liaison, NICHD, National Institutes of Health.

[FR Doc. 04–26539 Filed 12–1–04; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

[OMB No. 0925–0454]

Submission for OMB Review; Comment Request; Case-Cohort Study of Cancer and Related Disorders Among Benzene-Exposed Workers in China

SUMMARY: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Cancer Institute (NCI), the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below. This proposed information collection was previously published in the **Federal Register** and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health 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.

Proposed Collection: Title: Case-Cohort Study of Cancer and Related Disorders Among Benzene-Exposed Workers in China. Reinstatement With Change. *Need and Use of Information Collection:* A case-cohort study will be performed to examine the risks of lymphohematopoietic cancers, other lymphohematopoietic disorders, benzene poisoning, and lung cancer among workers exposed to benzene. The study will attempt to determine with greater precision the risks of these disorders at low levels of benzene exposure, and to characterize the dose and time-specific relationship between benzene exposure and disease risk. Cases and controls will be selected from an existing cohort of 75,000 benzene-exposed workers and 36,000 comparison workers in 12 Chinese cities. There are 2 changes to the study from that previously approved by OMB in July 2001: (1) 386 more subjects (including 155 more cases with benzene poisoning, 111 more cases with lung cancer, and 120 more controls) will be evaluated in the currently planned case-cohort study, which is now targeting a total of 2,156 subjects compared with 1,770 subjects as previously estimated; and (2) the questionnaire has been revised somewhat, although the average total time estimated for a subject to complete the questionnaire is unchanged from previously.

Frequency of Response: Single-time study. *Affected Public:* Individuals or households. *Type of Respondents:* Cases with lymphohematopoietic malignancies and related disorders, benzene poisoning and lung cancer among Chinese benzene-exposed and comparison workers; controls consist of a random sample of the Chinese worker cohort. The annual reporting burden is as follows: *Estimated Number of Respondents:* 862; *Estimated Number of Responses per Respondent:* 1; *Average Burden Hours per Response:* 0.3674; and *Estimated Total Annual Burden Hours Requested:* 396. The annualized cost to respondents is estimated at $476. There are no Capital Costs to report. There are also no Operating or Maintenance Costs to report.

ESTIMATES OF HOUR BURDEN: BURDEN REQUESTED

Type of respondents	Estimated number of respondents	Estimated frequency of responses per respondent	Average burden time (in hours) per response	Estimated average annual hour burden
Workers in factories in China using or producing benzene and in comparison factories in which no benzene is used	1,078	1	0.37	396

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments To OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Dr. Richard Hayes, OEB/EBP/DCEG/NCI 6120 Executive Boulevard, EPS Room 8114, Bethesda, MD 20892, or call non-toll-free number (301) 435–3973 or e-mail your request, including your address to: *HayesR@mail.nih.gov.*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

Dated: November 19, 2004.

Rachelle Ragland-Greene,

NCI Project Clearance Liaison, National Institutes of Health.

[FR Doc. 04–26540 Filed 12–1–04; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C.,

as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Therapeutic Developments for Dermatologic and Rheumatologic Diseases Small Business.

Date: November 30, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Daniel F. McDonald, PhD, Chief, Renal and Urological Sciences IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4214, MSC 7814, Bethesda, MD 20892, (301) 435–1215, *mcdonald@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, Visual Motion Processing.

Date: December 6, 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: Michael A. Steinmetz, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5172, MSC 7844, Bethesda, MD 20892, (301) 435–1247, *steinmem@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, Clinical Immunotherapy.

Date: December 10, 2004.

Time: 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone conference call).

Contact Person: Sharon K. Gubanich, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6204, MSC 7804, Bethesda, MD 20892, (301) 435–1767, *guganics@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, Pharmacogenetics.

Date: December 15, 2004.

Time: 11:30 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: Marcia Litwack, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6206, MSC 7804, Bethesda, MD 20892, (301) 435–1719, *litwackm@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: November 23, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–26538 Filed 12–1–04; 8:45 am]

BILLING CODE 4140–01–M

JUDICIAL CONFERENCE OF THE UNITED STATES

Hearings of The Judicial Conference Advisory Committees on Rules of Appellate, Bankruptcy, and Civil Procedure

AGENCY: Judicial Conference of the United States; Advisory Committees on Rules of Appellate, Bankruptcy, and Civil Procedure.

ACTION: Notice of proposed amendments and open hearings.

SUMMARY: The Advisory Committees on Rules of Appellate, Bankruptcy, and Civil Procedure have proposed amendments to the following rules:

Appellate Rule: 25.

Bankruptcy Rule: 5005.

Civil Rule: 5.

The text of the proposed rules amendments and the accompanying Committee Notes can be found at the United States Federal Courts' home page at *http://www.uscourts.gov/rules*.

The Judicial Conference Committee on Rules of Practice and Procedure submits these proposed rules amendments for public comment. All comments and suggestions with respect to them must be placed in the hands of the Secretary as soon as convenient and, in any event, not later than February 15, 2005. All written comments on the proposed rule amendments can be sent by one of the following three ways: by overnight mail to Peter G. McCabe, Secretary, Committee on Rules of Practice and Procedure of the Judicial Conference of the United States, Thurgood Marshall Federal Judiciary Building, Washington, DC 20544; by electronic mail at *http://www.uscourts.gov/rules*; or by facsimile to Peter G. McCabe at (202) 502–1766. In accordance with established procedures all comments submitted on the proposed amendments are available to public inspection.

Public hearings are scheduled to be held on the amendments to:

- Appellate Rules in Washington, DC, on January 25, 2005;
- Bankruptcy Rules in Washington, DC, on February 3, 2005; and in San Francisco, California, on February 7, 2005; and
- Civil Rules in San Francisco, California, on January 12, 2005; in Dallas, Texas, on January 28, 2005; and in Washington, DC, on February 11, 2005.

Those wishing to testify should contact the Secretary at the address above in writing at least 30 days before the hearing.

FOR FURTHER INFORMATION CONTACT: John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

Dated: November 24, 2004.

John K. Rabiej,

Chief, Rules Committee Support Office.

[FR Doc. 04–26578 Filed 12–1–04; 8:45 am]

BILLING CODE 2210–55–M

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Proposed Extension of Information Collection Request Submitted for Public Comment and Recommendations; Alternative Method of Compliance for Certain SEPs Pursuant to 29 CFR 2520.104–49

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection

requirements on respondents can be properly assessed. Currently, the Employee Benefits Security Administration is soliciting comments on the proposed extension of the collection of information included in the alternative method of compliance for certain simplified employee pensions regulation (29 CFR 2520.104–49).

A copy of the information collection request (ICR) can be obtained by contacting the individual shown in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office shown in the **ADDRESSES** section on or before January 31, 2005.

ADDRESSES: Gerald B. Lindrew, Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 693–8410, FAX (202) 693–4745 (these are not toll-free numbers).

SUPPLEMENTARY INFORMATION:

I. Background

Section 110 of the Employment Retirement Income Security Act (ERISA) authorizes the Secretary to prescribe alternative methods of compliance with the reporting and disclosure requirements of Title I of ERISA for pension plans. Simplified employee pensions (SEPs) are established in section 408(k) of the Internal Revenue Code (Code). Although SEPs are primarily a development of the Code and subject to its requirements, SEPs are also pension plans subject to the reporting and disclosure requirements of Title I of ERISA.

The Department previously issued a regulation under the authority of section 110 of ERISA (29 CFR 2520.104–49) that intended to relieve sponsors of certain SEPs from ERISA's Title I reporting and disclosure requirements by prescribing an alternative method of compliance. These SEPs are, for purposes of this Notice, referred to as ''non-model'' SEPs because they exclude (1) those SEPs which are created through use of Internal Revenue Service (IRS) Form 5305–SEP, and (2) those SEPs in which the employer limits or influences the employees' choice to IRAs into which employers' contributions will be made and on which participant withdrawals are prohibited. The disclosure requirements in this regulation were developed in conjunction with the Internal Revenue Service (IRS Notice 81–1). Accordingly, sponsors of ''non-model'' SEPs that satisfy the limited disclosure requirements of the regulation are relieved from otherwise applicable reporting and disclosure requirements under Title I of ERISA, including the requirements to file annual reports (Form 5500 Series) with the Department, and to furnish summary plan descriptions and summary annual reports to participants and beneficiaries.

This ICR includes four separate disclosure requirements. First, at the time an employee becomes eligible to participate in the SEP, the administrator of the SEP must furnish the employee in writing specific and general information concerning the SEP; a statement on rates, transfers and withdrawals; and a statement on tax treatment. Second, the administrator of the SEP must furnish participants with information concerning any amendments. Third, the administrator must notify participants of any employer contributions made to the IRA. Fourth, in the case of a SEP that provides integration with Social Security, the administrator shall provide participants with statement on Social Security taxes and the integration formula used by the employer.

II. Review Focus

The Department of Labor (Department) is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

The Office of Management and Budget's (OMB) approval of this ICR will expire on February 28, 2005. The ICR should be continued because the alternative disclosure arrangement provided through this regulation relieves sponsors of ''non-model'' SEPs of most of the reporting and disclosure requirements under Title I of ERISA. Additionally, the disclosure requirements set forth in this regulation, insure that administrators of ''non-model'' SEPs provide participants with specific written information concerning SEPs. After considering comments received in response to this notice, the Department intends to submit the ICR to OMB for continuing approval. No change to the existing ICR is proposed or made at this time.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Alternative Method of Compliance for Certain SEPs pursuant to 29 CFR 2520.104–49.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210–0034.

Affected Public: Individuals or households; business or other for-profit; not-for-profit institutions.

Respondents: 460.

Responses: 20,700.

Frequency of Response: On occasion.

Average Response Time: 35 minutes.

Estimated Total Burden Hours: 2,000.

Total Burden Cost (operating/maintenance): $7,900.

Dated: November 24, 2004.

Gerald B. Lindrew,

Deputy Director, Office of Policy and Research, Employee Benefits Security Administration.

[FR Doc. 04–26545 Filed 12–1–04; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Proposed Extension of Information Collection Request Submitted for Public Comment and Recommendations; Prohibited Transaction Class Exemption 98–54—Foreign Exchange Transactions Executed Pursuant to Standing Instructions

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized,

collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employee Benefits Security Administration is soliciting comments on the proposed extension of the information collection provisions of Prohibited Transaction Exemption 98–54 (PTE 98–54).

A copy of the information collection request (ICR) can be obtained by contacting the individual shown in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office shown in the **ADDRESSES** section on or before January 31, 2005.

ADDRESSES: Gerald B. Lindrew, Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 693–8410, FAX (202) 693–4745 (these are not toll-free numbers).

SUPPLEMENTARY INFORMATION:

I. Background

PTE 98–54 permits certain foreign exchange transactions between employee benefit plans and certain banks, broker-dealers, and domestic affiliates thereof, which are parties in interest with respect to such plans, pursuant to standing instructions. In the absence of an exemption, foreign exchange transactions pursuant to standing instructions would be prohibited under circumstances where the bank or broker-dealer is a party in interest or disqualified person with respect to the plan under the Employee Retirement Income Securities Act (ERISA) or the Internal Revenue Code (Code).

The class exemption has five basic information collection requirements. The first requires the bank or broker-dealer to maintain written policies and procedures for handling foreign exchange transactions for plans for which it is a party in interest which ensure that the party acting for the bank or broker-dealer knows it is dealing with a plan. The second requires that the transactions are performed in accordance with a written authorization executed in advance by an independent fiduciary of the plan. The third requires that the bank or broker-dealer provides the authorizing fiduciary with a copy of its written policies and procedures for foreign exchange transactions involving income item conversions and *de minimis* purchase and sale transactions prior to the execution of a transaction. The fourth requires the bank or broker-dealer to furnish the authorizing fiduciary a written confirmation statement with respect to each covered transaction within five days of execution. The fifth requires that the bank or broker-dealer maintains records necessary for plan fiduciaries, participants, and the Department and Internal Revenue Service to determine whether the conditions of the exemption are being met for period of six years form the date of execution of a transaction.

By requiring that records pertaining to the exempted transaction be maintained for six years, this ICR insures that the exemption is not abused, the rights of the participants and beneficiaries are protected, and that compliance with the exemption's conditions can be confirmed. The exemption affects participants and beneficiaries of the plans that are involved in such transactions as well as certain banks, broker-dealers, and domestic affiliates thereof .

II. Review Focus

The Department of Labor (Department) is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

The Office of Management and Budget's (OMB) approval of this ICR will expire on February 28, 2005. After considering comments received in response to this notice, the Department intends to submit the ICR to OMB for continuing approval. No change to the existing ICR is proposed or made at this time.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the information collection request; they will also become a matter of public record.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Prohibited Transaction Class Exemption 98–54 relating to Certain Employee Benefit Plan Foreign Exchange Transactions Executed Pursuant to Standing Instructions.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210–0111.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions.

Respondents: 35.

Responses: 8,400.

Average Response Time: 30 minutes.

Estimated Total Burden Hours: 4,200.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Dated: November 24, 2004.

Gerald B. Lindrew,

Deputy Director, Office of Policy and Research, Employee Benefits Security Administration.

[FR Doc. 04–26546 Filed 12–1–04; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Proposed Extension of Information Collection Request Submitted for Public Comment and Recommendations; Delinquent Filer Voluntary Compliance Program

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (Public Law 104–13, 44 U.S.C. Chapter 35). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employee Benefits

Security Administration is soliciting comments concerning the proposed extension of a currently approved collection of information included in the Delinquent Filer Voluntary Compliance Program.

A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the Addresses section below on or before January 31, 2005.

ADDRESSES: Gerald B. Lindrew, Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 693–8410, FAX (202) 693–4745 (these are not toll-free numbers).

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary of Labor has the authority, under section 502(c)(2) of the Employee Retirement Income Security Act of 1974 (ERISA), to assess civil penalties of up to $1,000 a day [1] against plan administrators who fail or refuse to file complete and timely annual reports (Form 5500 Series Annual Return/Reports) as required under section 101(b)(4) of ERISA related regulations. Pursuant to 29 CFR 2560.502c–2 and 2570.60 *et seq.*, EBSA has maintained a program for the assessment of civil penalties for noncompliance with the annual reporting requirements. Under this program, plan administrators filing annual reports after the date on which the report was required to be filed may be assessed $50 per day for each day an annual report is filed after the date on which the annual report(s) was required to be filed, without regard to any extensions for filing.

Plan administrators who fail to file an annual report may be assessed a penalty of $300 per day, up to $30,000 per year, until a complete annual report is filed. Penalties are applicable to each annual report required to be filed under Title I of ERISA. The Department may, in its discretion, waive all or part of a civil penalty assessed under section 502(c)(2) upon a showing by the administrator that there was reasonable cause for the failure to file a complete and timely annual report.

The Department has determined that the possible assessment of these civil penalties may deter certain delinquent filers from voluntarily complying with the annual reporting requirements under Title I of ERISA. In an effort to encourage annual reporting compliance, therefore, the Department implemented the Delinquent Filer Voluntary Compliance (DFVC) Program (the Program) on April 27, 1995 (60 FR 20873). Under the Program, administrators otherwise subject to the assessment of higher civil penalties are permitted to pay reduced civil penalties for voluntarily complying with the annual reporting requirements under Title I of ERISA.

This ICR covers the requirement of providing data necessary to identify the plan along with the penalty payment. This data is the means by which each penalty payment is associated with the appropriate plan. With respect to most pension plans and welfare plans, the requirement is satisfied by sending a photocopy of the delinquent Form 5500 annual report [2] that has been filed, along with the penalty payment.

Under current regulations, apprenticeship and training plans may be exempted from the reporting and disclosure requirements of Part 1 of Title I, and certain pension plans maintained for highly compensated employees, commonly called ''top hat'' plans may comply with these reporting and disclosure requirements by using an alternate method by filing a one-time identifying statement with the Department. The DFVC Program provides that apprenticeship and training plans and top hat plans may, in lieu of filing any past due annual reports and paying otherwise applicable civil penalties, complete and file specific portions of a Form 5500, file the identifying statements that were required to be filed, and pay a one-time penalty.

II. Review Focus

The Department of Labor is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

The Office of Management and Budget's (OMB) approval of this ICR will expire on February 28, 2005. After considering comments received in response to this notice, the Department intends to submit the ICR to OMB for continuing approval. No change to the existing ICR is proposed or made at this time.

Type of Review: Extension of a currently approved collection.

Agency: U.S. Department of Labor, Employee Benefits Security Administration.

Title: Delinquent Filer Voluntary Compliance Program.

OMB Number: 1210–0089.

Affected Public: Business or other for-profit; not-for-profit institutions.

Frequency: On occasion.

Average Burden Hours/Minutes Per Response: 21 minutes.

Number of Respondents: 4,100.

Total Annual Responses: 4,100.

Total Annual Burden Hours: 145.

Total Burden Cost (Operating and Maintenance): $107,300.

Dated: November 24, 2004.

Gerald B. Lindrew,

Deputy Director, Office of Policy and Research, Employee Benefits Security Administration.

[FR Doc. 04–26547 Filed 12–1–04; 8:45 am]

BILLING CODE 4510–29–P

[1] Adjusted to $1,100 per day pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990 and the Debt Collection Improvement Act of 1996. *See* 62 FR 40696, July 29, 1997.

[2] DFVC information collection provisions originally required submission of the first page of the Form 5500 annual report. Because of the recent revisions to the Form 5500, the information needed to process the DFVC filing is no longer confined to the first page of the Form 5500. DFVC filers using a 1999 or later Form 5500 must submit a copy of all pages of the Form 5500 (generally 4), dated with original signature but without any schedules or attachments.

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Proposed Extension of Information Collection Request Submitted for Public Comment and Recommendations; Suspension of Benefits

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation

program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employee Benefits Security Administration (EBSA) is soliciting comments concerning the extension without change of the information collection request (ICR) included in the suspension of pension benefits regulation issued pursuant to the authority of section 203(a)(3)(B) of the Employee Retirement Income Security Act of 1974 (ERISA), which governs the circumstances under which pension plans may suspend pension benefit payments to retirees who return to work, or of participants who continue to work beyond normal retirement age (29 CFR 2530.203–3).

A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addresses section of this notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before January 31, 2005.

ADDRESSES: Interested parties are invited to submit written comments regarding the collection of information. Send comments to Mr. Gerald B. Lindrew, Office of Policy and Research, U.S. Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue, NW., Room N–5647, Washington, DC 20210. Telephone: (202) 693–8410 Fax: (202) 693–4745 (These are not toll-free numbers).

SUPPLEMENTARY INFORMATION:

I. Background

Section 203(a)(3)(B) of ERISA governs the circumstances under which pension plans may suspend pension benefit payments to retirees that return to work or to participants that continue to work beyond normal retirement age. Furthermore, section 203(a)(3)(B) of ERISA authorizes the Secretary to prescribe regulations necessary to carry out the provisions of this section.

In this regard, the Department issued a regulation which describes the circumstances and conditions under which plans may suspend the pension benefits of retirees that return to work, or of participants that continue to work beyond normal retirement age (29 CFR 2530.203–3). In order for a plan to suspend benefits pursuant to the regulation, it must notify affected retirees or participants (by first class mail or personal delivery) during the first calendar month or payroll period in which the plan withholds payment, that benefits are suspended. This notice must include the specific reasons for such suspension, a general description of the plan provisions authorizing the suspension, a copy of the relevant plan provisions, and a statement indicating where the applicable regulations may be found, (*i.e.*, 29 CFR 2530.203–3). In addition, the suspension notification must inform the retiree or participant of the plan's procedure for affording a review of the suspension of benefits.

II. Review Focus

The Department of Labor (Department) is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

The Office of Management and Budget's approval of this ICR will expire on February 28, 2005. This notice requests comments on the extension of the ICR. The Department is not proposing or implementing changes to the existing ICR at this time in connection with this extension. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the information collection request; they will also become a matter of public record.

AGENCY: Department of Labor, Employee Benefits Security Administration.

Title: Suspension of Benefits Regulation pursuant to 29 CFR 2530.203–3.

Type of Review: Extension of a currently approved collection.

OMB Number: 1210–0048.

Affected Public: Individuals or households; business or other for-profit; not-for-profit institutions.

Total Respondents: 74,872.

Total Responses: 74,872.

Frequency of Response: On occasion.

Total Annual Burden: 18,718.

Total Burden Cost (Operating and Maintenance): $63,000.

Dated: November 24, 2004.

Gerald B. Lindrew,

Deputy Director, Office of Policy and Research, Employee Benefits Security Administration.

[FR Doc. 04–26548 Filed 12–1–04; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Proposed Extension of Information Collection Request Submitted for Public Comment and Recommendations; Prohibited Transaction Class Exemption 77–4

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employee Benefits Security Administration (EBSA) is soliciting comments concerning the proposed extension of a currently approved collection of information, Class Exemption 77–4 for certain transactions between investment companies and employee benefit plans.

A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addresses section of this notice.

DATES: Written comments must be submitted to the office listed in the

addresses section below on or before January 31, 2005.

ADDRESSES: Interested parties are invited to submit written comments regarding the collection of information. Send comments to Mr. Gerald B. Lindrew, Office of Policy and Research, U.S. Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue, NW., Room N–5647, Washington, DC 20210. Telephone: (202) 693–8410 Fax: (202) 693–4745 (these are not toll-free numbers).

SUPPLEMENTARY INFORMATION:

I. Background

Without the relief provided by this exemption, an open-end mutual fund would be unable to sell shares to or purchase shares from a plan when the fiduciary with respect to the plan is also the investment advisor for the mutual fund. As a result, plans would be compelled to liquidate their existing investments involving such transactions and to amend their plan documents to establish new investment structures and policies.

In order to insure that the exemption is not abused and that the rights of participants and beneficiaries are protected, the Department has included in the exemption three basic disclosure requirements. The first requires at the time of the purchase or sale of such mutual fund shares that the plan's independent fiduciary receive a copy of the current prospectus issued by the open-end mutual fund and a full and detailed written statement of the investment advisory fees charges to or paid by the plan and the open-end mutual fund to the investment advisor. The second requires that the independent fiduciary approve in writing such purchases and sales. The third requires that the independent fiduciary, once notified of changes in the fees, re-approve in writing the purchase and sale of mutual fund shares.

II. Review Focus

The Department of Labor (Department) is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

The Office of Management and Budget's approval of this ICR will expire on February 28, 2005. This notice requests comments on the extension of the ICR. The Department is not proposing or implementing changes to the existing ICR at this time in connection with this extension. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the information collection request; they will also become a matter of public record.

Agency: Department of Labor, Employee Benefits Security Administration.

Title: Prohibited Transaction Class Exemption 77–4 for Certain Transactions Between Investment Companies and Employee Benefit Plans.

Type of Review: Extension of currently approved collections.

OMB Numbers: 1210–0049.

Affected Public: Individuals or households; business or other for-profit; not-for-profit institutions.

Total Respondents: 431.

Total Responses: 82,000.

Frequency of Response: On occasion.

Average Time per Response: 5 minutes.

Total Annual Burden: 7,000 hour.

Dated: November 24, 2004.

Gerald B. Lindrew,

Deputy Director, Office of Policy and Research, Employee Benefits Security Administration.

[FR Doc. 04–26549 Filed 12–1–04; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Proposed Extension of Information Collection Request Submitted for Public Comment; Prohibited Transaction Exemption 75–1 Broker-Dealers, Reporting Dealers, Banks Engaging in Securities Transactions

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employee Benefits Security Administration is soliciting comments on the proposed extension of the information collection provisions of Prohibited Transaction Class Exemption 75–1.

A copy of the information collection request (ICR) can be obtained by contacting the individual shown in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office shown in the **ADDRESSES** section on or before January 31, 2005.

ADDRESSES: Gerald B. Lindrew, Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 693–8410, fax (202) 693–4745 (these are not toll-free numbers).

SUPPLEMENTARY INFORMATION:

I. Background

Prohibited Transaction Class Exemption 75–1 provides an exemption from prohibited transaction provisions of the Employment Retirement Income Security Act of 1974 (ERISA). The exemption permits, under certain conditions, an employee benefit plan to purchase securities from broker-dealers' personal inventories of stocks, from underwriting syndicates in which a plan fiduciary is a member, from banks, from reporting dealers, and from a market makers even if a market-maker is a plan fiduciary. The exemption also permits, under certain conditions, a plan to accept an extension of credit from a broker-dealer for the purpose of facilitating settlement of a securities transaction.

By requiring that records pertaining to the exempted transaction be maintained for six years, this ICR insures that the exemption is not abused, the rights of the participants and beneficiaries are

protected, and that compliance with the exemption's conditions can be confirmed. The exemption affects participants and beneficiaries of the plans that are involved in such transactions as well as certain broker-dealers, reporting dealers, banks, underwriting syndicates, and market makers.

II. Review Focus

The Department of Labor (Department) is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

The Office of Management and Budget's (OMB) approval of this ICR will expire on January 31, 2005. After considering comments received in response to this notice, the Department intends to submit the ICR to OMB for continuing approval. No change to the existing ICR is proposed or made at this time.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the information collection request; they will also become a matter of public record.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Prohibited Transaction Class Exemption 75–1—Broker-Dealers, Reporting Dealers, Banks Engaging in Securities Transactions.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210–0060.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions.

Respondents: 10,750.

Responses: 10,750.

Average Response Time: 5 minutes.

Estimated Total Burden Hours: 896.

Dated: November 24, 2004.

Gerald B. Lindrew,

Deputy Director, Office of Policy and Research, Employee Benefits Security Administration.

[FR Doc. 04–26550 Filed 12–1–04; 8:45 am]

BILLING CODE 4510–29–P

NEIGHBORHOOD REINVESTMENT CORPORATION

Regular Board of Directors Meeting; Sunshine Act

TIME AND DATE: 2 p.m., Monday, December 6, 2004.

PLACE: Neighborhood Reinvestment Corporation, 1325 G Street, NW., Suite 800, Washington, DC 2005.

STATUS: Open/closed.

FOR FURTHER INFORMATION CONTACT: Jeffrey T. Bryson, General Counsel/Secretary, (202) 220–2372; *jbryson@nw.org.*

AGENDA:

I. Call to Order
II. Approval of Minutes: September 20, 2004 Regular Meeting
III. Audit Committee Report
  A. Tape Recording of Meetings
IV. Treasurer's Report
V. Establishment of a Committee To Review Fundraising Activities
VI. CEO Management Report
VII. Executive Session (Closed)
  a. Corporate Administration Committee Reports
  b. Update on COO Search
VIII. Adjournment

Jeffrey T. Bryson,

General Counsel/Secretary.

[FR Doc. 04–26678 Filed 11–30–04; 3:18 pm]

BILLING CODE 7510–01–M

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:
Form N–8F; SEC File No. 270–136; OMB Control No. 3235–0157.

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 a request for extension of the previously approved information collection of information discussed below.

Form N–8F (17 CFR 274.218) is the form prescribed for use by registered investment companies in certain circumstances to request orders of the Commission declaring that the registration of that investment company cease to be in effect. The form requests, from investment companies seeking a deregistration order, information about (i) the investment company's identity, (ii) the investment company's distributions, (iii) the investment company's assets and liabilities, (iv) the events leading to the request to deregister, and (v) the conclusion of business. The information is needed by the Commission to determine whether an order of deregistration is appropriate.

The Form takes approximately 3 hours on average to complete. It is estimated that approximately 261 investment companies file Form N–8F annually, so that the total annual burden for the form is estimated to be 783 hours. The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act and is not derived from a comprehensive or even a representative survey or study.

The collection of information on Form N–8F is not mandatory. The information provided on N–8F is not kept confidential. 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.

General requirements 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 5th Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

November 22, 2004.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4–3442 Filed 12–1–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon written request, copy available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:
Form S–6; SEC File No. 270–181; OMB Control No. 3235–0184.

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.

Form S–6—For Registration under the Securities Act of 1933 of Securities of Unit Investment Trusts Registered on Form N–8B–2. Unit investment trusts offering their securities to the public are required by two separate statutes to file registration statements with the Commission. They are required to register their securities under the Securities Act of 1933 (''1933 Act''), and to register as investment companies under the Investment Company Act of 1940 (''1940 Act'').

Form S–6 is used for registration under the 1933 Act of the securities of any unit investment trust that is registered under the 1940 Act on Form N–8B–2.[1] A separate registration statement under the 1933 Act must be filed for each series of units issued by the trust. Form S–6 consists of, among other things, a prospectus, certain written consents, an undertaking to file supplementary information, and certain exhibits containing financial and other information required in the registration statement but not required to appear in the prospectus.

Section 10(a)(3) of the 1933 Act (15 U.S.C. 77j(a)(3)) provides that when a prospectus is used more than nine months after the effective date of the registration statement, the information therein shall be as of a date not more than sixteen months prior to such use. As a result, most unit investment trusts that are registered under the 1940 Act on Form N–8B–2 update their registration statements on Form S–6 on an annual basis in order that their sponsors may continue to maintain a secondary market in the units. Unit investment trusts that are registered under the 1940 Act on Form N–8B–2 file post-effective amendments to their registration statements on Form S–6 in order to update their prospectuses.

The purpose of the registration statement on Form S–6 is to provide disclosure of financial and other information that investors may use to make informed decisions regarding the merits of the securities offered for sale. To that end, unit investment trusts that are registered under the 1940 Act on Form N–8B–2 must furnish to investors a prospectus containing pertinent information set forth in the registration statement. Without the registration requirement, this material information would not necessarily be available to investors. The Commission reviews registration statements filed on Form S–6 to ensure adequate disclosure is made to investors.

Each year investment companies file approximately 3,080 Forms S–6. It is estimated that preparing Form S–6 requires a unit investment trust to spend approximately 35 hours so that the total burden of preparing Form S–6 for all affected investment companies is 107,800 hours. Estimates of average burden hours are made solely 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.

The collection of information on Form S–6 is mandatory. The information provided on Form S–6 is not kept confidential. 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.

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 23, 2004.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4–3443 Filed 12–1–04; 8:45 am]

BILLING CODE 8010–01–P

[1] Form N–8B–2 is the form used for registration statements filed by unit investment trusts under the 1940 Act (except for unit investment trusts that are insurance company separate accounts issuing variable annuity or variable life insurance contracts, which instead register on Form N–4 and Form N–6, respectively). The form requires that certain material information about the trust, its sponsor, its trustees, and its operation be disclosed. The registration on Form N–8B–2 is a one-time filing that applies to the first series of the unit investment trust as well as any subsequent series that is issued by the sponsor.

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:
Schedule TO; OMB Control No. 3235–0515; SEC File No. 270–456.

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.

Schedule TO must be filed by a reporting company that makes a tender offer for its own securities. Also, persons other than the reporting company making a tender offer for equity securities registered under Section 12 of the Exchange Act (which offer, if consummated, would cause that person to own over 5% of that class of the securities) must file Schedule TO. The purpose of Schedule TO is to improve communications between public companies and investors before companies file registration statements involving tender offer statements. Approximately 2,500 issuers annually file Schedule TO and it takes 43.5 hours to prepare for a total of 108,750 annual burden hours. It is estimated that 50% of the 108,750 total burden hours (54,375 burden hours) is prepared by the company.

Written comments are invited on: (a) Whether this 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.

November 24, 2004.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4–3444 Filed 12–1–04; 8:45 am]

BILLING CODE 8010–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #P077]

State of Alaska

As a result of the President's major disaster declaration for Public Assistance on November 15, 2004, the U.S. Small Business Administration is activating its disaster loan program only for private non-profit organizations that provide essential services of a governmental nature. I find that the Bering Strait Regional Education Attendance Area and Northwest Arctic Borough in the State of Alaska constitute a disaster area due to damages caused by a severe winter storm, tidal surges and flooding occurring on October 18 through 20, 2004. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on January 14, 2005, at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 4 Office, P.O. Box 419004, Sacramento, CA 95841–9004.

	Percent
For Physical Damage:	
Non-Profit Organizations Without Credit Available Elsewhere	2.900
Non-Profit Organizations With Credit Available Elsewhere	4.875

The number assigned to this disaster for physical damage is P07706.

(Catalog of Federal Domestic Assistance Program Nos. 59008).

Dated: November 19, 2004.

Allan I. Hoberman,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 04–26571 Filed 12–1–04; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #P078]

State of Delaware

As a result of the President's major disaster declaration for Public Assistance on November 15, 2004, the U.S. Small Business Administration is activating its disaster loan program only for private non-profit organizations that provide essential services of a governmental nature. I find that New Castle County in the State of Delaware constitutes a disaster area due to damages caused by severe storms, tornadoes, and flooding from the remnants of Hurricane Jeanne occurring on September 28, 2004 and continuing through October 2, 2004. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on January 14, 2005 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd., South, 3rd Floor, Niagara Falls, NY 14303.

The interest rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations Without Credit Available Elsewhere	2.900
Non-Profit Organizations With Credit Available Elsewhere	4.875

The number assigned to this disaster for physical damage is P07806.

(Catalog of Federal Domestic Assistance Program Nos. 59008).

Dated: November 19, 2004.

Allan I. Hoberman,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 04–26572 Filed 12–1–04; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3615]

State of Florida (Amendment #5)

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency—effective November 3, 2004, the above numbered declaration is hereby amended to extend the deadline for filing applications for physical damages as a result of this disaster to January 3, 2005.

All other information remains the same, *i.e.*, the deadline for filing applications for economic injury is May 13, 2005.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: November 18, 2004.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 04–26566 Filed 12–1–04; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3620]

State of Florida (Amendment #8)

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency—effective November 3, 2004, the above numbered declaration is hereby amended to extend the deadline for filing applications for physical damages as a result of this disaster to January 3, 2005.

All other information remains the same, *i.e.*, the deadline for filing applications for economic injury is June 6, 2005.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: November 18, 2004.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 04–26567 Filed 12–1–04; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3635]

State of Florida; Amendment # 3

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency—effective November 3, 2004, the above numbered declaration is hereby amended to extend the deadline for filing applications for physical damages as a result of this disaster to January 3, 2005.

All other information remains the same, *i.e.*, the deadline for filing applications for economic injury is June 27, 2005.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: November 18, 2004.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 04–26568 Filed 12–1–04; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3627]

State of Florida; Amendment # 3

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency—effective November 3, 2004, the above numbered declaration is hereby amended to extend the deadline for filing applications for physical damages as a result of this disaster to January 3, 2005.

All other information remains the same, *i.e.*, the deadline for filing applications for economic injury is June 16, 2005.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: November 18, 2004.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 04–26569 Filed 12–1–04; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3632]

Commonwealth of Pennsylvania; Amendment #5

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency–effective November 18, 2004, the above numbered declaration is hereby amended to extend the deadline for filing applications for physical damages as a result of this disaster to December 18, 2004.

All other information remains the same, *i.e.*, the deadline for filing applications for economic injury is June 20, 2005.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: November 19, 2004.

Allan I. Hoberman,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 04–26570 Filed 12–1–04; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 4864]

FY 2004 Funding Under the Research and Training for Eastern Europe and the Independent States of the Former Soviet Union Act of 1983 (Title VIII Program)

Deputy Secretary of State Richard L. Armitage approved on July 14, 2004, the FY 2004 funding recommendations of the Advisory Committee for the Study of Eastern Europe and the Independent States of the Former Soviet Union. The Title VIII Program, administered by the U.S. Department of State, seeks to build expertise on the countries of Eurasia and Central and East Europe through support to national organizations in the U.S. for advanced research, language and graduate training, and other activities conducted domestically and overseas. The FY 2004 grant recipients are listed below.

American Council of Learned Societies

Grant: $500,000 ($500,000–Southeast Europe).

Purpose: To support institutional language training in the U.S.; individual language training fellowships; dissertation fellowships; Junior Scholars' Training Seminar; and post-doctoral research fellowships.

Contact: Andrzej W. Tymowski, Director of International Programs American Council of Learned Societies, 633 Third Avenue, 8C, New York, NY 10017–6795, e-mail: *atymowski@acls.org*, tel: (212) 697–1505, ext. 145, Fax: (212) 949–8058.

American Councils for International Education

Grant: $525,000 ($425,000–Eurasia, $100,000–Southeast Europe).

Purpose: To support Research Scholar fellowships; Combined Research and Language Training fellowships on Eurasia; Special Initiatives Research fellowships on Central Asia and the Caucasus; individual language training fellowships for advanced Russian, regional Eurasian, and Southeast European languages.

Contact: Graham Hettlinger, Program Manager, American Councils for International Education, 1776 Massachusetts Avenue, NW., Suite 700, Washington, DC 20036, e-mail: *hettlinger@actr.org*, tel: (202) 833–7522, ext. 168, Fax: (202) 833–7523.

The William Davidson Institute of the University of Michigan Business School

Grant: $245,000 ($145,000–Eurasia; $100,000–Southeast Europe).

Purpose: To support grants for post-doctoral research projects on business development and public policy, and links between economic development and social, ethnic and religious conflict in Eurasia and Southeast Europe.

Contact: Kelly Janiga, Administrative Director, The William Davidson Institute, University of Michigan Business School, 724 East University Avenue, Ann Arbor, MI 48109–1234, e-mail: *janigak@bus.umich.edu*, tel: (734) 615–4562, Fax: (734) 763–5850.

University of Illinois at Urbana-Champaign

Grant: $137,000 ($99,000–Eurasia; $38,000–Southeast Europe).

Purpose: To support the Slavic Reference Service, which locates materials unavailable through regular interlibrary loan; and the Summer Research Laboratory, which provides dormitory housing and access to the University's library for advanced research.

Contact: Merrily Shaw, Assistant to the Director of the Russian and East European Center, Russian and East European Center, University of Illinois at Urbana-Champaign, 104 International Studies Building, 910 South Fifth Street, Champaign, IL 61820, e-mail: *reec@uiuc.edu*, tel: (217) 244–4721 or (217) 333–1244, Fax: (217) 333–1582.

George Mason University Institute for Conflict Analysis and Resolution

Grant: $60,000 ($60,000–Eurasia).

Purpose: To provide seed money in support of bringing together experts on conflict resolution with Eurasian area specialists for policy relevant workshops and a Conflict Resolution Conference, with a focus on Central Asia.

Contact: Karyna Korostelina, Ph.D., Research Professor, Institute for Conflict Analysis and Resolution, George Mason University, Institute for Conflict Analysis and Resolution, 4400 University Drive, MS 4D3, Fairfax, VA, 22030, e-mail: *ckoroste@gmu.edu*, tel: (703) 993–1304, Fax: (703) 993–1302.

International Research and Exchanges Board

Grant: $800,000 ($525,000—Eurasia; $275,000—Southeast Europe).

Purpose: To support Individual Advanced Research Opportunities providing pre- and post-doctoral research fellowships in Policy R&D; short-term travel grants, including fellowships with U.S. embassies; and the Regional Policy Symposium on Greater Asia, in conjunction with the Woodrow Wilson Center.

Contact: Joyce Warner, Director, Academic Exchanges and Research Division, International Research and Exchanges Board, 2121 K Street, NW., Suite 700, Washington, DC 20037, e-mail: *jwarner@irex.org,* tel: (202) 628–8188, Fax: (202) 628–8189.

National Council for Eurasian and East European Research

Grant: $1,140,000 ($846,000—Eurasia; $294,000—Southeast Europe).

Purpose: To support the research contracts and fellowship grants of the National Research Program, the Policy Research Fellowships, the Ed A. Hewett Fellowship Program, and the Short-term Research Fellowships.

Contact: Robert Huber, President, National Council for Eurasian and East European Research, 910 17th Street, NW., Suite 300, Washington, DC 20006, e-mail: *dc@nceeer.org,* tel: (202) 822–6950, Fax: (202) 822–6955.

Social Science Research Council

Grant: $795,000 ($795,000—Eurasia).

Purpose: To support pre-doctoral fellowships, including advanced graduate and dissertation fellowships; post-doctoral fellowships; one dissertation workshop; the Policy Training Seminar; and the institutional language programs for advanced Russian and other Eurasian languages.

Contact: Anthony Koliha, Assistant Director, Eurasia Program, Social Science Research Council, 810 7th Avenue, 31st Floor, New York, NY 10019, e-mail: *koliha@ssrc.org,* tel: (212) 377–2700, Fax: (212) 377–2727.

The Woodrow Wilson Center for International Scholars

Grant: $783,000 ($495,000—Eurasia; $288,000—AEEB).

Purpose: To support the residential programs for post-doctoral Research Scholars, Short-term Scholars and Interns; the Meetings Program for both the Kennan Institute and East European Studies Program; the Kennan Institute's Workshop on Religion in Post-Soviet Societies; and the East European Studies Program's Junior Scholars' Training Seminar with the American Council of Learned Societies.

Contact: Martin Sletzinger, Director, East European Studies, e-mail: *sletzinm@wwic.si.edu,* tel: (202) 691–4263 and Maggie Paxson, Senior Associate, Kennan Institute, e-mail: *mpaxsonm@wwic.si.edu,* tel: (202) 691–4100, The Woodrow Wilson Center, 1300 Pennsylvania Avenue, NW., Washington, DC 20004–3027, Fax: (202) 691–4247.

Dated: October 14, 2004.

Kenneth E. Roberts,

Executive Director, Advisory Committee for Study of Eastern Europe and the Independent States of the Former Soviet Union, Department of State.

[FR Doc. 04–26560 Filed 12–1–04; 8:45 am]

BILLING CODE 4710–32–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Change Notice for RTCA Program Management Committee

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Program Management Committee meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the RTCA Program Management Committee.

DATES: The meeting will be held December 9, 2004 starting at 9 a.m.

ADDRESSES: The meeting will be held at RTCA, Inc., 1828 L Street, NW., Suite 805, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Suite 850, 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 Program Management Committee meeting. The revised agenda will include:

- December 9:
  - Opening Session (Welcome and Introductory Remarks, Review/Approve Summary of Previous Meeting).
- Publication Consideration/Approval:
  - Final Draft, Revised DO–245, Minimum Aviation System Performance Standards for Local Area Augmentation System (LAAS) RTCA Paper No. 198–04/PMC–370, prepared by SC–159.
  - Final Draft, Revised DO–160D, Environmental Conditions and Test Procedures for Airborne Equipment, RTCA Paper No. 200–04/PMC–371, prepared by SC–135.
- Discussion:
  - Special Committee Chairman's Reports.
- Action Item Review:
  - Possible New SC–189 Activity-Interoperability Requirements for Mixed Data Communications.
  - Review/Status.
  - Requirements Focus Group (RFG).
  - Review/Status.
  - 406 MHz Emergency Locator Transmitter (ELTs).
  - Review/Status.
  - Flight Information Services (FIS)/Aeronautical Information Services (AIS) Data Link.
  - Review/Status.
  - Software Considerations in Aviation Systems.
  - Review/Status.
  - Review/Approve SC–205 Terms of Reference.
- Closing Session (Other Business, Document Production, Date and Place of Next Meeting, Adjourn).

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 November 12, 2004.

Natalie Ogletree,

FAA General Engineer, RTCA Advisory Committee.

[FR Doc. 04–26525 Filed 12–01–04; 8:45 am]

BILLING CODE 4910—13—M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Policy Statement; Installation of Electronic Engine Control for Reciprocating Engine; PS–ACE100–2004–10024

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of issuance of policy statement.

SUMMARY: This notice announces the issuance of policy statement PS–ACE100–2004–10024 on the installation of electronic engine control for reciprocating engines. This policy statement sets forth guidance on appropriate certification requirements for installation of an Electronic Engine Control (EEC) into a small airplane with a reciprocating engine. It includes guidance related to methods of compliance as well as potential Equivalent Level of Safety findings (ELOS) and special conditions.

DATES: Policy statement PS–ACE100–2004–10024 was issued by the Acting Manager of the Small Airplane Directorate, ACE–100, on November 18, 2004.

How To Obtain Copies: The policy statement will be available on the Internet at *http://www.airweb.faa.gov/policy*. You may obtain a paper copy of PS–ACE100–2004–10024 either by writing to the Small Airplane Directorate, Standards Office, ACE–111, 901 Locust, Kansas City, MO 64106; by calling the office at telephone 816–329–4135; or by faxing your request to Mr. Pete Rouse at 816–329–4090.

FOR FURTHER INFORMATION CONTACT: Mr. Pete Rouse, Federal Aviation Administration, Small Airplane Directorate, Regulations & Policy, ACE–111, 901 Locust Street, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4135; fax: 816–329–4090; e-mail: *peter.rouse@faa.gov*.

SUPPLEMENTARY INFORMATION:

Background

We announced the availability of the policy statement on July 23, 2004 (69 FR 44075). Several comments were received, and the policy has been revised where necessary to respond to those comments.

Issued in Kansas City, Missouri on November 18, 2004.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–26523 Filed 12–1–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Requirements (ICRs) abstracted below have been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICRs describes the nature of the information collections and their expected burdens. The **Federal Register** notice with a 60-day comment period soliciting comments on the following collection of information was published on September 22, 2004 (69 FR 56819).

DATES: Comments must be submitted on or before January 3, 2005.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Office of Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 17, Washington, DC 20590 (telephone: (202) 493–6292), or Debra Steward, Office of Information Technology and Productivity Improvement, RAD–20, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 35, Washington, DC 20590 (telephone: (202) 493–6139). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Pub. L. 104–13, § 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR part 1320, require Federal agencies to issue two notices seeking public comment on information collection activities before OMB may approve paperwork packages. 44 U.S.C. 3506, 3507; 5 CFR 1320.5, 1320.8(d)(1), 1320.12. On September 22, 2004, FRA published a 60-day notice in the **Federal Register** soliciting comment on ICRs that the agency was seeking OMB approval. 69 FR 56819. FRA received two comments after issuing this notice.

The first comment (letter) came from the Brotherhood of Locomotive Engineers and Trainmen (BLET), which represents both locomotive engineers and trainmen. BLET expressed its wholehearted support for the proposed study. In his letter, Don M. Hahs, the President of BLET, observed:

> BLET, and others, believe the collection of this data will provide greater insight into the probability of safety related injury associated with these [critical incident] events. Given the fact that the frequency of these events may result in locomotive engineers experiencing several of them in their careers, the FRA and industry can be benefited in understanding the scope of this concern. The proposed data collection and purpose for which it is being collected can provide non-regulatory and preemptive approaches that may mitigate the negative effects to safety and health associated with Post-Traumatic Stress.

Mr. M. Hahs further remarked:

> The identification of ''best practices'' for Critical Incident Stress Debriefing programs, as proposed in the study, will allow the transportation community to learn a great deal. The eventual publication of the study has the potential to add to the body of research of this recognized problem and will add value for the scientific community with no burden to the society at large. Therefore, the BLET encourages FRA to move forward with the proposed study and seek approval from the Office of Management and Budget as soon as possible.

BLET did address the paperwork burden for this proposed collection of information. Mr. Hahs noted: ''BLET considers the estimates of the burden of information collection activities, its methodologies, and assumptions to be valid.''

The Union Pacific Railroad also expressed its support for the project. In his comment (letter), Dr. Dennis W. Holland, Director, Occupational Health Psychology, Union Pacific Safety Department, stated the following:

> The study is timely and of significant interest to the rail industry. UPRR is a pioneer in the development and implementation of Peer Support programs for employees involved in critical incidents. We believe the proposed study will benefit both the railroads and railroad labor by providing information on how best to respond to critical incidents. In addition, the information provided by the proposed study will enable railroad professionals to best use resources to assist employees dealing with tragic events.

There is no cost for materials to study participants, and the total burden hours are minimal. It should be also be noted that FRA and its contractor, University of Denver, have been in contact with representatives of the Association of American Railroads (AAR), the BLET, and the United Transportation Union (UTU) from the beginning concerning the need for this study and the proposed procedures. These representatives have made several useful suggestions, which have been incorporated into the design of this study. Several useful suggestions were also provided, and used, by members of the CISD resource group—an entity established to assist in the development of this study. This resource group consists of representatives from the AAR, BLE, UTU, and several Class 1 and short line carriers. Finally, a team of epidemiologists and statisticians from reputable universities and establishments, including Yale University, the University of California at San Francisco, Colorado State University (Fort Collins), the University of Denver, the Denver VA Medical Center, the Centers for Disease Control and Prevention, and individuals from the U.S. Department of Transportation's Volpe National Transportation Systems Center, reviewed the sampling plan of the proposed study and offered useful recommendations and feedback.

Before OMB decides whether to approve this proposed collection of information, it must provide 30 days for public comment. 44 U.S.C. 3507(b); 5 CFR 1320.12(d). Federal law requires OMB to approve or disapprove paperwork packages between 30 and 60 days after the 30 day notice is published. 44 U.S.C. 3507 (b)–(c); 5 CFR 1320.12(d); *see also* 60 FR 44978, 44983, Aug. 29, 1995. OMB believes that the 30

day notice informs the regulated community to file relevant comments and affords the agency adequate time to digest public comments before it renders a decision. 60 FR 44983, Aug. 29, 1995. Therefore, respondents should submit their respective comments to OMB within 30 days of publication to best ensure having their full effect. 5 CFR 1320.12(c); *see also* 60 FR 44983, Aug. 29, 1995.

The summary below describe the nature of the information collection requirements (ICRs) and the expected burden. These requirements are being submitted for clearance by OMB as required by the PRA.

Title: Post-Traumatic Stress in Train Crew Members After a Critical Incident.

OMB Control Number: 2130-NEW.

Type of Request: Approval of a new collection of information.

Affected Public: Train crew members (locomotive engineers, firers, and conductors).

Form(s): FRA F 6180.120; FRA F 6180.121; FRA F 6180.122.

Abstract: Nearly 1,000 fatalities occur every year in this country from trains striking motor vehicles at grade crossings and individual trespassers along the track. These events can be very traumatic to train crew members, who invariably are powerless to prevent such collisions. Exposure of train crews to such work-related traumas can cause extreme stress and result in safety-impairing behaviors, such as are seen in Post-Traumatic Stress Disorder or Acute Stress Disorder. Most railroads have Critical Incident Stress Debriefing (CISD) intervention programs designed to mitigate problems caused by exposure to these traumas. However, they are quite varied in their approach, and it is not certain which components of these programs are most effective. The purpose of this collection of information is to identify ''best practices'' for CISD programs in the railroad industry. By means of written and subsequent oral interviews with train crew members that will each take approximately 45 minutes, the proposed study aims to accomplish the following: (1) Benchmark rail industry best practices of CISD programs; (2) Establish the extent of traumatic stress disorders due to grade crossing and trespasser incidents in the rail industry (not by region or railroad) and identify at-risk populations; and (3) Evaluate the effectiveness of individual components of CISD programs. It should be noted that only the components of CISD programs will be evaluated, not an individual railroad's overall intervention program.

Annual Estimated Burden Hours: 2,043 hours.

Addressee: Send comments regarding these information collections to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 Seventeenth Street, NW., Washington, DC 20503, Attention: FRA Desk Officer.

Comments Are Invited on the Following: 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 estimates 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 best assured of having its full effect if OMB receives it within 30 days of publication of this notice in the **Federal Register.**

Authority: 44 U.S.C. 3501–3520.

Issued in Washington, DC on November 24, 2004.

David Wissman,

Acting Director, Office of Information Technology and Support Systems, Federal Railroad Administration.

[FR Doc. 04–26526 Filed 12–1–04; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Reports, Forms and Recordkeeping 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 30, 2004 (69 FR 39359–39540). No comments were received.

DATES: Comments must be submitted on or before January 3, 2005.

FOR FURTHER INFORMATION CONTACT: Lori Summers at the National Highway Traffic Safety Administration, Office of Rulemaking (NVS–112), 202–366–4917, 400 Seventh Street, SW., Room 5307, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

National Highway Traffic Safety Administration

Title: Consolidated Labeling Requirements for Motor Vehicles (Except the VIN).

OMB Number: 2127–0512.

Type of Request: Extension of a currently approved collection.

Abstract: In order to ensure that manufacturers are complying with the FMVSS and regulations, NHTSA requires a number of specific labeling requirements. FMVSS No. 105, ''Hydraulic and electric brake systems'' and FMVSS No. 135, ''Passenger car brake systems,'' require that each vehicle shall have a brake fluid warning statement in letters at least one-eighth of an inch high on the master cylinder reservoirs and located so as to be visible by direct view. FMVSS No. 205, ''Glazing materials,'' requires that manufacturers mark their automotive glazing with certain label information. In addition, for certain specialty glazing items, manufacturers are required to affix a removable label to each item. FMVSS No. 209, ''Seat belt assemblies,'' requires safety belts to be labeled with the year of manufacture, the model, and the name or trademark of the manufacturer. Additionally, replacement safety belts that are for use only in specifically stated motor vehicles must have labels or accompanying instruction sheets to specify the applicable vehicle models and seating positions. All other replacement belts are required to be accompanied by an installation instruction sheet. Part 567, ''Certification,'' requires each manufacturer or distributor of motor vehicles to furnish to the dealer, or distributor of the vehicle, a certification that the vehicle meets all applicable FMVSS. This certification is required to be in the form of a label permanently affixed to the vehicle.

Affected Public: Manufacturers are required to place these labels on each master cylinder reservoir, each piece of motor vehicle glazing, each safety belt and every motor vehicle intended for retail sale in the United States.

Estimated Total Annual Burden: 73,071 hours.

ADDRESSES: Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of

Management and Budget, 725–17th 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 15, 2004.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 04–26527 Filed 12–1–04; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–512X and STB Docket No. AB–880X]

Sierra Pacific Industries–Abandonment Exemption Sierra Pine—Discontinuance Exemption—in Amador County, CA

On November 12, 2004, Sierra Pacific Industries (SPI) and SierraPine (collectively, petitioners) jointly filed with the Surface Transportation Board a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903. SPI seeks to abandon and SierraPine seeks to discontinue service over a line of railroad extending from milepost 0.0 at Ione, CA, to the end of the line at milepost 12.0 at Martell, CA. The line traverses United States Postal Service ZIP Codes 95640 and 95654 in Amador County, CA, and includes stations at Ione and Martell.

The line does not contain federally granted rights-of-way. Any documentation in SPI's or SierraPine's possession will be made available promptly to those requesting it.

The line to be abandoned and discontinued constitutes the entire line of railroad of SierraPine and the entire line of railroad of SPI operated pursuant to Board authority.[1] When issuing discontinuance or abandonment authority for railroad lines that constitute the carrier's entire system, the Board does not impose labor protections, except under the circumstances listed in *Northampton and Bath R. Co.—Abandonment,* 354 I.C.C. 784, 785–86 (1978) *(Northampton).*[2] Therefore, if the Board grants the petition for exemption, in the absence of a showing that one or more of the exceptions articulated in *Northampton* are present, no labor protective conditions will be imposed.

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by March 2, 2005.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the exemption. Each OFA must be accompanied by a $1,200 filing fee. *See* 49 CFR 1002.2(f)(27).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than December 22, 2004. Each trail use request must be accompanied by a $200 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket Nos. AB–512X and AB–880X and must be sent to: (1) Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001; and (2) Scott M. Zimmerman, Zuckert Scoutt & Rasenberger, 888 Seventeenth Street, NW., Suite 700, Washington, DC 20006. Replies to the petition are due on or before December 22, 2004.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning the environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1539. (Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.)

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary), prepared by SEA, will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: November 23, 2004.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 04–26453 Filed 12–1–04; 8:45 am]

BILLING CODE 4915–01–P

[1] The petitioners state that SPI operates two other lines of railroad, both in California, as a private and contract carrier, not as a common carrier: a 3-mile line in Plumas County, CA, serving an SPI lumber mill in Quincy, CA, and a 25-mile line between Susanville and Wendel in Lassen County, CA, leased from the Union Pacific Railroad Company, which provides private carriage to an SPI mill in Susanville and contract carriage to a millwork plant in Susanville operated by Jeld-Wen.

[2] *See New York and Eastern Railway, LLC—Discontinuance Exemption—in Poughkeepsie, Dutchess County, NY,* STB Docket No. 873X, *et al.* (STB served July 19, 2004), and *A & R Line, Inc.-Abandonment Exemption-in Cass and Pulaski Counties, IN,* STB Docket No. AB–855 (Sub-No. 1X), *et al.* (STB served Aug. 20, 2003).

DEPARTMENT OF THE TREASURY

Open Meeting of the Financial Literacy and Education Commission

AGENCY: Departmental Offices, Treasury.

ACTION: Notice of open meeting.

SUMMARY: This notice announces the fourth meeting of the Financial Literacy and Education Commission, established by the Financial Literacy and Education Improvement Act (Title V of the Fair and Accurate Credit Transactions Act of 2003).

DATES: The fourth meeting of the Financial Literacy and Education Commission will be held on Thursday, January 13, 2005, beginning at 10:30 a.m.

ADDRESSES: The Financial Literacy and Education Commission meeting will be held in the Cash Room at the U.S. Department of the Treasury, located at 1500 Pennsylvania Avenue, NW., Washington, DC. To be admitted to the Treasury building, an attendee must RSVP by providing his or her name, organization, phone number, date of birth, Social Security number and country of citizenship to the Department of the Treasury by e-mail at: *FLECrsvp@do.treas.gov,* or by telephone at: (202) 622–1783 (not a toll-free

number) not later than 5 p.m. on Thursday, January 6, 2005.

FOR FURTHER INFORMATION CONTACT: For additional information regarding admittance to the Treasury building, contact Samantha Benton by e-mail at: *samantha.benton@do.treas.gov* or by telephone at (202) 622–5770 (not a toll-free number).

Additional information regarding the Financial Literacy and Education Commission and the Department of the Treasury's Office of Financial Education may be obtained through the Office of Financial Education's Web site at: *http://www.treas.gov/financialeducation*.

SUPPLEMENTARY INFORMATION: The Financial Literacy and Education Improvement Act, which is Title V of the Fair and Accurate Credit Transactions Act of 2003 (the ''FACT Act'') (Public Law 108–159), established the Financial Literacy and Education Commission (the ''Commission'') to improve financial literacy and education of persons in the United States. The Commission is composed of the Secretary of the Treasury and the head of the Office of the Comptroller of the Currency; the Office of Thrift Supervision; the Federal Reserve; the Federal Deposit Insurance Corporation; the National Credit Union Administration; the Securities and Exchange Commission; the Departments of Education, Agriculture, Defense, Health and Human Services, Housing and Urban Development, Labor, and Veterans Affairs; the Federal Trade Commission; the General Services Administration; the Small Business Administration; the Social Security Administration; the Commodity Futures Trading Commission; and the Office of Personnel Management. The Commission is required to hold meetings that are open to the public every four months, with its first meeting occurring within 60 days of the enactment of the FACT Act. The FACT Act was enacted on December 4, 2003.

The fourth meeting of the Commission, which will be open to the public, will be held in the Cash Room at the Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC. The room will accommodate 80 members of the public. Seating is available on a first-come basis. Participation in the discussion at the meeting will be limited to Commission members, their staffs, and/or special guest presenters.

Dated: November 23, 2004.

Dan Iannicola, Jr.,

Deputy Assistant Secretary for Financial Education.

[FR Doc. 04–26542 Filed 12–1–04; 8:45 am]

BILLING CODE 4810–25–P

Federal Register

Thursday,
December 2, 2004

Part II

The President

Executive Order 13362—Designation of Additional Officers for the Department of Homeland Security Order of Succession

Executive Order 13363—Establishing the Afghanistan and Iraq Campaign Medals

Executive Order 13364—Modifying the Protection Granted to the Development Fund for Iraq and Certain Property in Which Iraq Has an Interest and Protecting the Central Bank of Iraq

Federal Register
Vol. 69, No. 231
Thursday, December 2, 2004

Presidential Documents

Title 3—

The President

Executive Order 13362 of November 29, 2004

Designation of Additional Officers for the Department of Homeland Security Order of Succession

By the authority vested in me as President by the Constitution and the laws of the United States of America and pursuant to the Federal Vacancies Reform Act of 1998, 5 U.S.C. 3345 *et seq.*, it is hereby ordered that:

Section 1. During any period when the Secretary of Homeland Security (Secretary), the Deputy Secretary of Homeland Security, and the officers designated to perform the functions and duties of the office of Secretary by section 88 of Executive Order 13286 of February 28, 2003 (''Amendment of Executive Orders, and Other Actions, in Connection With the Transfer of Certain Functions to the Secretary of Homeland Security''), have died, resigned, or otherwise become unable to perform the functions and duties of the office of Secretary, the following officers of the Department of Homeland Security, in the order listed, shall perform the functions and duties of the office of Secretary, if they are eligible to act as Secretary under the provisions of the Federal Vacancies Reform Act of 1998, until such time as at least one of the officers mentioned above is able to perform the functions and duties of the office of Secretary:

Director, Region V, Federal Emergency Management Agency;

Director, Region VI, Federal Emergency Management Agency;

Director, Region VII, Federal Emergency Management Agency;

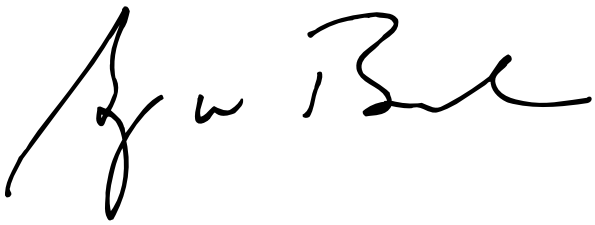
Director, Region VIII, Federal Emergency Management Agency; and

Director, Region X, Federal Emergency Management Agency.

Sec. 2. Exceptions.

(a) No individual who is serving in an office listed in section 1 in an acting capacity, by virtue of so serving, shall act as Secretary pursuant to this order.

(b) Notwithstanding the provisions of this order, the President retains discretion, to the extent permitted by law, to depart from this order in designating an acting Secretary.



THE WHITE HOUSE,
November 29, 2004.

[FR Doc. 04–26684
Filed 12–1–04; 9:47 am]
Billing code 3195–01–P

Presidential Documents

Executive Order 13363 of November 29, 2004

Establishing the Afghanistan and Iraq Campaign Medals

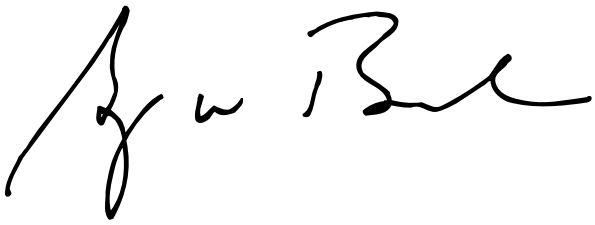
By the authority vested in me as President by the Constitution and the laws of the United States of America, including my authority as Commander in Chief of the Armed Forces of the United States and Public Law 108–234, it is hereby ordered as follows:

Section 1. Afghanistan Campaign Medal. There is hereby established the Afghanistan Campaign Medal with suitable appurtenances. Except as limited in section 3 of this order, and under uniform regulations to be prescribed by the Secretaries of the military departments and approved by the Secretary of Defense, or under regulations to be prescribed by the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy, the Afghanistan Campaign Medal shall be awarded to members of the uniformed services of the United States who serve or have served in Afghanistan or contiguous air space, as defined by such regulations, on or after October 24, 2001, and before a terminal date to be prescribed by the Secretary of Defense.

Sec. 2. Iraq Campaign Medal. There is hereby established the Iraq Campaign Medal with suitable appurtenances. Except as limited in section 3 of this order, and under uniform regulations to be prescribed by the Secretaries of the military departments and approved by the Secretary of Defense, or under regulations to be prescribed by the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy, the Iraq Campaign Medal shall be awarded to members of the uniformed services of the United States who serve or have served in Iraq or contiguous waters or air space, as defined by such regulations, on or after March 19, 2003, and before a terminal date to be prescribed by the Secretary of Defense.

Sec. 3. Relationship to Other Awards. Notwithstanding section 1 of Executive Order 13289 of March 12, 2003, establishing the Global War on Terrorism Expeditionary Medal, any member who qualified for that medal by reason of service in Afghanistan between October 24, 2001, and a terminal date to be determined by the Secretary of Defense, or in Iraq between March 19, 2003, and a terminal date to be determined by the Secretary of Defense, shall remain qualified for that medal. Upon application, a member by reason of service may be awarded either the Afghanistan Campaign Medal or the Iraq Campaign Medal in lieu of the Global War on Terrorism Expeditionary Medal. A member may be awarded either the Afghanistan Campaign Medal or the Global War on Terrorism Expeditionary Medal by reason of service in Afghanistan. A member may be awarded either the Iraq Campaign Medal or the Global War on Terrorism Expeditionary Medal by reason of service in Iraq. No member shall be entitled to the award of more than one of these three medals for the same period of service.

Sec. 4. Posthumous Award. The Afghanistan Campaign Medal and Iraq Campaign Medal may be awarded posthumously to any person covered by and under regulations prescribed in accordance with this order.



THE WHITE HOUSE,
November 29, 2004.

[FR Doc. 04–26685
Filed 12–1–04; 9:47 am]
Billing code 3195–01–P

Presidential Documents

Executive Order 13364 of November 29, 2004

Modifying the Protection Granted to the Development Fund for Iraq and Certain Property in Which Iraq Has an Interest and Protecting the Central Bank of Iraq

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act, as amended (50 U.S.C. 1701 *et seq.*) (IEEPA), the National Emergencies Act (50 U.S.C. 1601 *et seq.*), section 5 of the United Nations Participation Act, as amended (22 U.S.C. 287c) (UNPA), and section 301 of title 3, United States Code,

I, GEORGE W. BUSH, President of the United States of America, hereby modify the scope of the national emergency declared in Executive Order 13303 of May 22, 2003, and expanded in Executive Order 13315 of August 28, 2003, and further modified in Executive Order 13350 of July 29, 2004, to address the unusual and extraordinary threat to the national security and foreign policy of the United States posed by obstacles to the orderly reconstruction of Iraq, the restoration and maintenance of peace and security in that country, and the development of political, administrative, and economic institutions in Iraq. I find that the threat of attachment or other judicial process against the Central Bank of Iraq constitutes one of these obstacles. I further determine that, consistent with United Nations Security Council Resolutions 1483 of May 22, 2003, and 1546 of June 8, 2004, the steps taken in Executive Order 13303 to deal with the national emergency declared therein need to be limited so that such steps do not apply with respect to any final judgment arising out of a contractual obligation entered into by the Government of Iraq, including any agency or instrumentality thereof, after June 30, 2004, and so that, with respect to Iraqi petroleum and petroleum products and interests therein, such steps shall apply only until title passes to the initial purchaser.

I hereby order:

Section 1. Section 1 of Executive Order 13303 is hereby amended to read as follows:

> ''**Section 1.** (a) Except as provided in section 1(b) of this order, and unless licensed or otherwise authorized pursuant to this order, any attachment, judgment, decree, lien, execution, garnishment, or other judicial process is prohibited and shall be deemed null and void with respect to the following:
>
> (i) the Development Fund for Iraq;
>
> (ii) all Iraqi petroleum and petroleum products, and interests therein, but only until title passes to the initial purchaser, and proceeds, obligations, or any financial instruments of any nature whatsoever arising from or related to the sale or marketing thereof, and interests therein, in which any foreign country or a national thereof has any interest, that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of United States persons; and

(iii) any accounts, assets, investments, or any other property of any kind owned by, belonging to, or held by the Central Bank of Iraq, or held, maintained, or otherwise controlled by any financial institution of any kind in the name of, on behalf of, or otherwise for the Central Bank of Iraq.

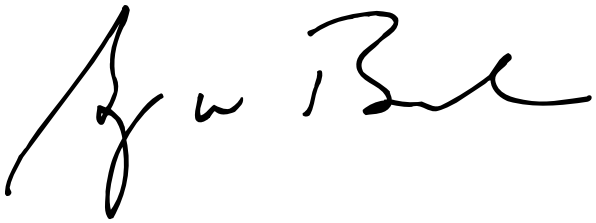
(b) The prohibition in section 1(a) of this order shall not apply with respect to any final judgment arising out of a contractual obligation entered into by the Government of Iraq, including any agency or instrumentality thereof, after June 30, 2004.''

Sec. 2. (a) The Secretary of the Treasury, in consultation with the Secretary of State, is hereby authorized to take such actions, including the promulgation of rules and regulations, and to employ all powers granted to the President by IEEPA and the UNPA as may be necessary to carry out the purposes of this order. The Secretary of the Treasury may redelegate any of these functions to other officers and agencies of the United States Government consistent with applicable law. All agencies of the United States Government are hereby directed to take all appropriate measures within their authority to carry out the provisions of this order.

(b) Nothing contained in this order shall relieve a person from any requirement to obtain a license or other authorization in compliance with applicable laws and regulations.

Sec. 3. This order is not intended to, and does not, create any right, benefit, or privilege, substantive or procedural, enforceable at law or in equity by a party against the United States, its departments, agencies, entities, officers, employees, or agents, or any other person.

Sec. 4. This order shall be transmitted to the Congress and published in the **Federal Register**.



THE WHITE HOUSE,
November 29, 2004.

[FR Doc. 04–26686
Filed 12–1–04; 9:47 am]
Billing code 3195–01–P

Reader Aids

Federal Register

Vol. 69, No. 231

Thursday, December 2, 2004

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	**202–741–6000**
Laws	**741–6000**
Presidential Documents	
Executive orders and proclamations	**741–6000**
The United States Government Manual	**741–6000**
Other Services	
Electronic and on-line services (voice)	**741–6020**
Privacy Act Compilation	**741–6064**
Public Laws Update Service (numbers, dates, etc.)	**741–6043**
TTY for the deaf-and-hard-of-hearing	**741–6086**

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **http://www.gpoaccess.gov/nara/index.html**

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access are located at: **http://www.archives.gov/federal__register/**

E-mail

FEDREGTOC-L (Federal Register Table of Contents LISTSERV) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **http://listserv.access.gpo.gov** and select *Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings);* then follow the instructions.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://listserv.gsa.gov/archives/publaws-l.html** and select *Join or leave the list (or change settings);* then follow the instructions.

FEDREGTOC-L and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: **fedreg.info@nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATE, DECEMBER

69805–70050 1
70051–70178 2

CFR PARTS AFFECTED DURING DECEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Executive Orders:
13286 (See EO 13362) 70173
13289 (See EO 13363) 70175
13303 (Amended by EO 13364) 70177
13315 (See EO 13364) 70177
13350 (See EO 13364) 70177
13362 70173
13363 70175
13364 70177

5 CFR

841 69805
842 69805
843 69805

7 CFR

Proposed Rules:
929 69996

9 CFR

430 70051

14 CFR

39 ..... 69807, 69810
71 70053
Proposed Rules:
39 ..... 69829, 69832, 69834, 69836, 69838, 69842, 69844

15 CFR

750 69814

18 CFR

Proposed Rules:
Ch. 1 70077

21 CFR

510 70053
520 70053
522 ..... 70054, 70055
558 70056
Proposed Rules:
165 70082

23 CFR

655 69815

24 CFR

Proposed Rules:
3280 70016

25 CFR

Proposed Rules:
542 69847

26 CFR

31 69819

29 CFR

4011 69820
4022 69820
4044 69821

33 CFR

117 ..... 70057, 70059
Proposed Rules:
117 70091

36 CFR

13 70061
242 70074

37 CFR

253 69822

40 CFR

52 69823
Proposed Rules:
52 69863
60 69864
63 69864

50 CFR

100 70074
222 69826
223 69826
679 69828
Proposed Rules:
17 69878
229 70094

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT DECEMBER 2, 2004

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Animal drugs, feeds, and related products:

Coumaphos; published 12-2-04

Progesterone and estradiol benzoate; published 12-2-04

Sulfadiazine/pyrimethamine suspension; published 12-2-04

Trenbalone acetate; published 12-2-04

HOMELAND SECURITY DEPARTMENT

Customs and Border Protection Bureau

Articles conditionally free, subject to a reduced rate, etc.:

Prototypes used solely for product development, testing, evaluation, or quality control purposes; published 11-2-04

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Boeing; published 10-28-04

Bombardier; published 10-28-04

Dornier; published 10-28-04

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Cotton classing, testing and standards:

Classification services to growers; 2004 user fees; Open for comments until further notice; published 5-28-04 [FR 04-12138]

AGRICULTURE DEPARTMENT

Farm Service Agency

Special programs:

Farm Security and Rural Investment Act of 2002; implementation—

Business and industry loans; comments due by 12-9-04; published 11-9-04 [FR 04-24886]

AGRICULTURE DEPARTMENT

Food Safety and Inspection Service

Meat and poultry inspection:

Ready-to-eat meat and poultry products; listeria monocytogenes control; comments due by 12-8-04; published 6-6-03 [FR 03-14173]

AGRICULTURE DEPARTMENT

Rural Business-Cooperative Service

Special programs:

Farm Security and Rural Investment Act of 2002; implementation—

Business and industry loans; comments due by 12-9-04; published 11-9-04 [FR 04-24886]

AGRICULTURE DEPARTMENT

Rural Housing Service

Special programs:

Farm Security and Rural Investment Act of 2002; implementation—

Business and industry loans; comments due by 12-9-04; published 11-9-04 [FR 04-24886]

AGRICULTURE DEPARTMENT

Rural Utilities Service

Special programs:

Farm Security and Rural Investment Act of 2002; implementation—

Business and industry loans; comments due by 12-9-04; published 11-9-04 [FR 04-24886]

COMMODITY FUTURES TRADING COMMISSION

Commodity Exchange Act:

Futures commission merchants and introducing brokers; risk disclosure statement distribution; comments due by 12-9-04; published 11-9-04 [FR 04-24949]

COURT SERVICES AND OFFENDER SUPERVISION AGENCY FOR THE DISTRICT OF COLUMBIA

Semi-annual agenda; Open for comments until further notice; published 12-22-03 [FR 03-25121]

DEFENSE DEPARTMENT

Federal Acquisition Regulation (FAR):

Section 508 micropurchase exemption; comments due by 12-6-04; published 10-5-04 [FR 04-22247]

Telecommuting for Federal contractors; comments due by 12-6-04; published 10-5-04 [FR 04-22246]

ENERGY DEPARTMENT

Meetings:

Environmental Management Site-Specific Advisory Board—

Oak Ridge Reservation, TN; Open for comments until further notice; published 11-19-04 [FR 04-25693]

ENERGY DEPARTMENT

Energy Efficiency and Renewable Energy Office

Commercial and industrial equipment; energy efficiency program:

Test procedures and efficiency standards—

Commercial packaged boilers; Open for comments until further notice; published 10-21-04 [FR 04-17730]

ENERGY DEPARTMENT

Federal Energy Regulatory Commission

Electric rate and corporate regulation filings:

Virginia Electric & Power Co. et al.; Open for comments until further notice; published 10-1-03 [FR 03-24818]

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:

Indiana; comments due by 12-8-04; published 11-8-04 [FR 04-24821]

Wisconsin; comments due by 12-10-04; published 11-10-04 [FR 04-24914]

Environmental statements; availability, etc.:

Coastal nonpoint pollution control program—

Minnesota and Texas; Open for comments until further notice; published 10-16-03 [FR 03-26087]

Hazardous waste program authorizations:

Maine; comments due by 12-9-04; published 11-9-04 [FR 04-24920]

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:

Generic pesticide chemical tolerance regulations; update; comments due by 12-7-04; published 10-8-04 [FR 04-22584]

Radiation protection programs:

Transuranic radioactive waste for disposal at Waste Isolation Pilot Plant; waste characterization program documents availability,

Savannah River Site, SC; comments due by 12-6-04; published 11-5-04 [FR 04-24820]

Water pollution; effluent guidelines for point source categories:

Meat and poultry products processing facilities; Open for comments until further notice; published 9-8-04 [FR 04-12017]

FEDERAL COMMUNICATIONS COMMISSION

Common carrier services:

Wireless telecommunications services—

Advanced wireless services; service rules; comments due by 12-8-04; published 11-30-04 [FR 04-26384]

GENERAL SERVICES ADMINISTRATION

Federal Acquisition Regulation (FAR):

Section 508 micropurchase exemption; comments due by 12-6-04; published 10-5-04 [FR 04-22247]

Telecommuting for Federal contractors; comments due by 12-6-04; published 10-5-04 [FR 04-22246]

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Reports and guidance documents; availability, etc.:

Evaluating safety of antimicrobial new animal drugs with regard to their microbiological effects on bacteria of human health concern; Open for comments until further notice; published 10-27-03 [FR 03-27113]

Medical devices—

Dental noble metal alloys and base metal alloys; Class II special controls; Open for comments until further

notice; published 8-23-04 [FR 04-19179]

HOMELAND SECURITY DEPARTMENT
Coast Guard
Anchorage regulations:
Maryland; Open for comments until further notice; published 1-14-04 [FR 04-00749]
Drawbridge operations:
Iowa; comments due by 12-9-04; published 11-9-04 [FR 04-24972]
Minnesota; comments due by 12-6-04; published 11-5-04 [FR 04-24688]

INTERIOR DEPARTMENT
Fish and Wildlife Service
Endangered and threatened species permit applications
Recovery plans—
Paiute cutthroat trout; Open for comments until further notice; published 9-10-04 [FR 04-20517]
Endangered and threatened species:
Critical habitat designations—
San Jacinto Valley crownscale; comments due by 12-6-04; published 10-6-04 [FR 04-22395]
San Miguel Island fox, etc.; comments due by 12-6-04; published 10-7-04 [FR 04-22542]
Spreading navarretia; comments due by 12-6-04; published 10-7-04 [FR 04-22541]

INTERIOR DEPARTMENT
Surface Mining Reclamation and Enforcement Office
Permanent program and abandoned mine land reclamation plan submissions:
Pennsylvania; comments due by 12-9-04; published 11-24-04 [FR 04-25971]

LABOR DEPARTMENT
Mine Safety and Health Administration
Coal mine safety and health:
Underground mines—
High-voltage continuous mining machines; electrical safety standards; low- and medium-voltage diesel-powered electrical generators; hearings; comments due by 12-10-04; published 8-23-04 [FR 04-19190]

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
Federal Acquisition Regulation (FAR):
Section 508 micropurchase exemption; comments due by 12-6-04; published 10-5-04 [FR 04-22247]
Telecommuting for Federal contractors; comments due by 12-5-04 [FR 04-22246]

NUCLEAR REGULATORY COMMISSION
Environmental statements; availability, etc.:
Fort Wayne State Developmental Center; Open for comments until further notice; published 5-10-04 [FR 04-10516]

PERSONNEL MANAGEMENT OFFICE
Pay administration:
Biweekly pay periods; pay computation; comments due by 12-6-04; published 10-7-04 [FR 04-22530]

POSTAL RATE COMMISSION
Practice and procedure:
Periodic reporting rules; comments due by 12-6-04; published 11-15-04 [FR 04-25298]

POSTAL SERVICE
Domestic Mail Manual:
Address sequencing services; comments due by 12-9-04; published 11-9-04 [FR 04-24887]

SMALL BUSINESS ADMINISTRATION
Disaster loan areas:
Maine; Open for comments until further notice; published 2-17-04 [FR 04-03374]

OFFICE OF UNITED STATES TRADE REPRESENTATIVE
Trade Representative, Office of United States
Generalized System of Preferences:
2003 Annual Product Review, 2002 Annual Country Practices Review, and previously deferred product decisions; petitions disposition; Open for comments until further notice; published 7-6-04 [FR 04-15361]

TRANSPORTATION DEPARTMENT
Workplace drug and alcohol testing programs:
Adulterated, substituted, and diluted specimen results; instructions to laboratories and medical review officers; comments due by 12-9-04; published 11-9-04 [FR 04-25025]

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Aerospatiale; comments due by 12-10-04; published 11-10-04 [FR 04-25032]
Airbus; comments due by 12-6-04; published 11-4-04 [FR 04-24633]
Boeing; comments due by 12-10-04; published 10-26-04 [FR 04-23931]
Bombardier; comments due by 12-6-04; published 10-6-04 [FR 04-22266]
Empresa Brasileira de Aeronautica S.A. (EMBRAER); comments due by 12-6-04; published 11-4-04 [FR 04-24632]
Gulfstream Aerospace; comments due by 12-10-04; published 11-10-04 [FR 04-25029]
Gulfstream Aerospace LP; comments due by 12-10-04; published 11-10-04 [FR 04-25034]
McDonnell Douglas; comments due by 12-10-04; published 10-26-04 [FR 04-23930]
MD Helicopters, Inc.; comments due by 12-6-04; published 10-6-04 [FR 04-22264]
Raytheon; comments due by 12-7-04; published 10-22-04 [FR 04-23728]

TRANSPORTATION DEPARTMENT
Federal Motor Carrier Safety Administration
Motor carrier safety standards:
Motor carrier, broker, freight forwarder, and hazardous materials proceedings; practice rules; comments due by 12-6-04; published 10-20-04 [FR 04-23393]

TRANSPORTATION DEPARTMENT
Research and Special Programs Administration
Pipeline safety:
Gas and hazardous liquid pipelines direct assessment standards; comments due by 12-6-04; published 10-21-04 [FR 04-23551]

TREASURY DEPARTMENT
Internal Revenue Service
Income taxes and procedure and administration:
Stapled foreign corporation; definition and tax treatment; comments due by 12-6-04; published 9-7-04 [FR 04-20244]

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal_register/public_laws/public_laws.html*.

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.

H.R. 1113/P.L. 108–417
To authorize an exchange of land at Fort Frederica National Monument, and for other purposes. (Nov. 30, 2004; 118 Stat. 2339)

H.R. 1284/P.L. 108–418
To amend the Reclamation Projects Authorization and Adjustment Act of 1992 to increase the Federal share of the costs of the San Gabriel Basin demonstration project. (Nov. 30, 2004; 118 Stat. 2340)

H.R. 1417/P.L. 108–419
Copyright Royalty and Distribution Reform Act of 2004 (Nov. 30, 2004; 118 Stat. 2341)

H.R. 1446/P.L. 108–420
California Missions Preservation Act (Nov. 30, 2004; 118 Stat. 2372)

H.R. 1964/P.L. 108–421
Highlands Conservation Act (Nov. 30, 2004; 118 Stat. 2375)

H.R. 3936/P.L. 108–422
Veterans Health Programs Improvement Act of 2004 (Nov. 30, 2004; 118 Stat. 2379)

H.R. 4516/P.L. 108–423
Department of Energy High-End Computing Revitalization Act of 2004 (Nov. 30, 2004; 118 Stat. 2400)

H.R. 4593/P.L. 108–424
Lincoln County Conservation, Recreation, and Development Act of 2004 (Nov. 30, 2004; 118 Stat. 2403)

H.R. 4794/P.L. 108–425
To amend the Tijuana River Valley Estuary and Beach

Sewage Cleanup Act of 2000 to extend the authorization of appropriations, and for other purposes. (Nov. 30, 2004; 118 Stat. 2420)

H.R. 5163/P.L. 108–426

Norman Y. Mineta Research and Special Programs Improvement Act (Nov. 30, 2004; 118 Stat. 2423)

H.R. 5213/P.L. 108–427

Research Review Act of 2004 (Nov. 30, 2004; 118 Stat. 2430)

H.R. 5245/P.L. 108–428

To extend the liability indemnification regime for the commercial space transportation industry. (Nov. 30, 2004; 118 Stat. 2432)

Last List November 26, 2004

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, go to *http://listserv.gsa.gov/archives/publaws-l.html*

Note: This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.