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Federal Register

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Tuesday, October 26, 2004

NUCLEAR REGULATORY COMMISSION

10 CFR Part 2

RIN 3150–AH55

Adjustment of Civil Penalties for Inflation

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to adjust the maximum Civil Monetary Penalties (CMPs) it can assess under statutes within the jurisdiction of the NRC. These changes are mandated by Congress in the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996. The NRC's Rules of Practice are amended by adjusting the maximum CMP for a violation of the Atomic Energy Act of 1954, as amended, (AEA) or any regulation or order issued under the AEA from $120,000 to $130,000 per violation per day.

EFFECTIVE DATE: November 26, 2004.

FOR FURTHER INFORMATION CONTACT: Shelly D. Cole, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–2549; e-mail *SDC1@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended, requires that the head of each agency adjust by regulation the CMPs within the jurisdiction of the agency for inflation at least once every four years. The NRC's last adjustment to the CMPs within its jurisdiction occurred on November 3, 2000 (*See* 65 FR 59270; October 4, 2000). Thus, another inflation adjustment must be made by November 3, 2004.

The inflation adjustment is to be determined by increasing the maximum CMPs by the percentage that the Consumer Price Index (CPI) for the month of June of the calendar year preceding the adjustment exceeds the CPI for the month of June of the last calendar year in which the amount of such penalty was last adjusted. For the purposes of this adjustment, applying this formula results in a seven percent increase to the maximum CMPs. In the case of penalties greater than $1,000, but less than or equal to $10,000, inflation adjustment increases are to be rounded to the nearest multiple of $1,000. Increases are to be rounded to the nearest multiple of $10,000 in the case of penalties greater than $100,000 but less than or equal to $200,000.

II. Discussion

Section 234 of the AEA limits civil penalties for violations of the Atomic Energy Act to $100,000 per day per violation. In 1996, under the Debt Collection Improvement Act (DCIA), the NRC adjusted this figure to $110,000. The DCIA also amended the Federal Civil Penalties Inflation Adjustment Act of 1990 to require that the head of each agency adjust the CMPs within the jurisdiction of the agency for inflation at least once every four years. Therefore, in 2000, the NRC adjusted the maximum CMPs to $120,000 per day per violation. The NRC is required to adjust the CMPs within its jurisdiction again this year. After this mandatory adjustment for inflation, the adjusted maximum CMP for a violation of the AEA or any regulation or order issued under the AEA will be $130,000 per day per violation (rounding the amount of the inflation adjustment increase to the nearest multiple of $10,000). Thus, the NRC is amending Title 10 of the Code of Federal Regulations (10 CFR) 2.205 to reflect a new maximum CMP under the AEA in the amount of $130,000 per day per violation. The amended maximum CMP applies only to violations that occur after the effective date of this regulation.

Monetary penalties under the Program Fraud Civil Remedies Act, 31 United States Code (U.S.C.) 3801, 3802, and the NRC's implementing regulations at 10 CFR 13.3(a)(1) and (b)(1), are currently limited to $6,000.

A seven percent increase, when rounded to the nearest multiple of $1000, as required by section 5 of the Federal Civil Penalties Inflation Adjustment Act of 1990, does not result in an adjustment to the maximum CMP. Thus, the maximum CMP will remain at $6,000 for each false statement or claim under the Program Fraud Civil Remedies Act.

The Commission has no discretion to set alternative levels of adjusted civil penalties because the amount of inflation adjustment must be calculated by a formula established by statute. Conforming changes to the NRC Enforcement Policy (NUREG–1600) published in the **Federal Register** on May 1, 2000 (65 FR 25368), will be made and published in a notice accompanying this rule.

III. Procedural Background

This final rule has been issued without prior public notice or opportunity for public comment. The Administrative Procedure Act (5 U.S.C. 553(b)(B)) does not require an agency to use the public notice and comment process ''when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' In this instance, the NRC finds, for good cause, that solicitation of public comment on this final rule is unnecessary and impractical. Congress has required the NRC to adjust the CMPs within NRC jurisdiction for inflation at least once every four years, and provided no discretion regarding the substance of the amendments. The NRC is required only to perform ministerial computations to determine the inflation adjustment to the CMPs.

IV. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Pub. L. 104–113, requires that Federal agencies use technical standards developed by or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. There are no consensus standards that apply to the inflation adjustment requirements in this final rule. Thus, the provisions of the Act do not apply to this rulemaking.

V. Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described as a categorical exclusion in 10 CFR 51.22(c)(1) and (2). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this regulation. This action involves no policy determinations. It merely adjusts monetary civil penalties for inflation as required by statute.

VI. Paperwork Reduction Act Statement

This final rule does not contain new or amended information collection requirements subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

VII. Regulatory Analysis

This final rule adjusts for inflation the maximum civil penalties under the AEA. The adjustments and the formula for determining the amount of the adjustment are mandated by Congress in the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410, 104 Stat. 890), as amended by the Debt Collection Improvement Act of 1996, as amended (Pub. L. 104–134, 110 Stat. 1321–358, 373, codified at 28 U.S.C. 2461 note). Congress passed that legislation on the basis of its findings that the power to impose monetary civil penalties is important to deterring violations of Federal law and furthering the policy goals of Federal laws and regulations. Congress has also found that inflation has diminished the impact of these penalties and their effect. The principal purposes of this legislation are to provide for adjustment of civil monetary penalties for inflation, maintain the deterrent effect of civil monetary penalties, and promote compliance with the law. Thus, these are anticipated impacts of implementation of the mandatory provisions of the legislation. Direct monetary impacts fall only upon licensees or other persons subjected to NRC enforcement.

VIII. Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of OMB.

IX. Backfit Analysis

The NRC has determined that these amendments do not involve any provisions which would impose backfits as defined in 10 CFR Chapter 1; therefore, a backfit analysis need not be prepared.

List of Subjects in 10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalties, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

■ For the reasons set out above and under the authority of the AEA; the Energy Reorganization Act of 1974, as amended; the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended; and 5 U.S.C. 552 and 553; the NRC is adopting the following amendments to 10 CFR part 2.

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS AND ISSUANCES OF ORDERS

■ 1. The authority citation for Part 2 continues to read as follows:

Authority: Secs. 161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 87–615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); 5 U.S.C. 552; sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

Section 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 105, 68 Stat. 930, 932, 933. 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); sec. 114(f); Pub. L. 97–425, 96 Stat. 2213, as amended (42 U.S.C. 10143(0); sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871). Section 2.102, 2.103, 2.104, 2.105, 2.321 also issued under secs. 102, 163, 104, 105, 183i, 189, 68 Stat. 936, 937, 938, 954, 955, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Section 2.105 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Sections 2.200–2.206 also issued under secs. 161 b. i, o, 182, 186, 234, 68 Stat. 948–951, 955, 83 Stat. 444, as amended (42 U.S.C. 2201(b), (i), (o), 2236, 2282); sec. 206, 88 Stat. 1246 (42 U.S.C. 5846). Section 2.205(j) also issued under Pub. L. 101–410, 104 Stat. 90, as amended by section 3100(s), Pub. L. 104–134, 110 Stat. 1321–373 (28 U.S.C. 2461 note). Subpart C also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Sections 2.600–2.606 also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332). Section 2.700a also issued under 5 U.S.C. 554. Sections 2.343, 2.346, 2.754, 2.712, also issued under 5 U.S.C. 557. Section 2.764 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 2.790 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133) and 5 U.S.C. 552. Sections 2.800 and 2.808 also issued under 5 U.S.C. 553, Section 2.809 also issued under 5 U.S.C. 553, and sec. 29, Pub, L. 85–256, 71 Stat. 579, as amended (42 U.S.C. 2039). Subpart K also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Subpart L also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Subpart M also issued under sec. 184 (42. U.S.C. 2234) and sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Subpart N also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Appendix A also issued under sec. 6, Pub. L. 91–550, 84 Stat. 1473 (42 U.S.C. 2135).

■ 2. In § 2.205 paragraph (j) is revised to read as follows:

§ 2.205 Civil Penalties.

* * * * *

(j) *Amount.* A civil monetary penalty imposed under Section 234 of the Atomic Energy Act of 1954, as amended, or any other statute within the jurisdiction of the Commission that provides for the imposition of a civil penalty in an amount equal to the amount set forth in Section 234, may not exceed $130,000 for each violation. If any violation is a continuing one, each day of such violation shall constitute a separate violation for the purpose of computing the applicable civil penalty.

Dated in Rockville, Maryland, this 12th day of October, 2004.

For the Nuclear Regulatory Commission.

Luis A. Reyes,

Executive Director for Operations.

[FR Doc. 04–23899 Filed 10–25–04; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM293, Special Conditions No. 25–276–SC]

Special Conditions: Gulfstream Aerospace Corporation Model G–1159, G–1159A, and G–1159B Series Airplanes; High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Gulfstream Aerospace Corporation Model G–1159, G–1159A, and G–1159B series airplanes modified by Business Jet Technologies. These airplanes will have novel and unusual design features when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. The applicable airworthiness regulations do not contain

adequate or appropriate safety standards for the protection of these systems from the effects of high-intensity radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that provided by the existing airworthiness standards.

DATES: The effective date of these special conditions is October 18, 2004. Comments must be received on or before November 26, 2004.

ADDRESSES: Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attn: Rules Docket (ANM–113), Docket No. NM293, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. All comments must be marked: Docket No. NM293.

FOR FURTHER INFORMATION CONTACT: Connie Beane, FAA, Standardization Branch, ANM–113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; telephone (425) 227–2796; facsimile (425) 227–1232.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA has determined that notice and opportunity for prior public comment is impracticable because these procedures would significantly delay certification of and delivery of the affected airplanes. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making these special conditions effective upon issuance. However, the FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning these special conditions. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 7:30 a.m., and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these special conditions based on the comments we receive.

If you want the FAA to acknowledge receipt of your comments on these special conditions, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

Background

On December 19, 2003, Business Jet Technologies, Tulsa, Oklahoma, applied to the FAA, Fort Worth Special Certification Office, for a supplemental type certificate (STC) to modify certain Gulfstream Aerospace Corporation Model G–1159, G–1159A, and G–1159B series airplanes to include the installation of two Shadin ADC–7000 RVSM capable air data computers. The avionics/electronics and electrical systems installed in these airplanes have the potential to be vulnerable to high-intensity radiated fields (HIRF) external to the airplane. The subject Gulfstream Aerospace Corporation airplanes are T-tail, low swept-wing, small transport category airplanes. This series of airplanes operates with a 2-pilot crew and can hold up to 19 passengers.

Type Certification Basis

Under the provisions of 14 CFR 21.101, Business Jet Technologies must show that the Gulfstream Aerospace Corporation Model G–1159, G–1159A, and G–1159B series airplanes, as changed, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A12EA, or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type certification basis.''

The certification basis for the modified Gulfstream Aerospace Corporation Model G–1159 airplanes include:

Civil Air Regulations (CAR) 4b, dated December 31, 1953, including Amendments 4b–1 thru 4b–14.

Special Regulation SR450A.

Special Conditions in ''Attachment A'' of FAA letter to Grumman dated September 27, 1965.

14 CFR (Code of Federal Regulations) 25.1325 (effective February 1, 1965).

Section 25.175 (effective March 1, 1965), in lieu of CAR 4b.155(b).

Section 36.7(d)(3)(ii).

CAR 4b.450, cooling systems.

Part 25, dated February 1, 1965, as amended by Amendments No. 25–2 through 25–8, 25–10, 25–12, 25–16 thru 25–22, 25–24, and 25–26.

If the Administrator finds that the applicable airworthiness regulations (part 25, as amended) do not contain adequate or appropriate safety standards for the Gulfstream Aerospace Corporation Model G–1159, G–1159A, and G–1159B series airplanes, modified by Business Jet Technologies, because of a novel or unusual design feature, special conditions are prescribed under the provisions of 21.16.

In addition to the applicable airworthiness regulations and special conditions, these Gulfstream Aerospace Corporation Model G–1159, G–1159A, and G–1159B series airplanes must comply with the fuel vent and exhaust emission requirements of part 34 and the noise certification requirements of part 36.

Special conditions, as defined in 14 CFR 11.19, are issued in accordance with § 11.38, and become part of the airplane's type certification basis in accordance with § 21.101.

Special conditions are initially applicable to the model for which they are issued. Should Business Jet Technologies apply at a later date for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same or similar novel or unusual design feature, these special conditions would also apply to the other model under the provisions of § 21.101.

Novel or Unusual Design Features

The modified Gulfstream Aerospace Corporation Model G–1159, G–1159A, and G–1159B series airplanes will incorporate brand new avionics/electronics and electrical systems that will perform critical functions. These systems may be vulnerable to HIRF external to the airplane. The current airworthiness standards of part 25 do not contain adequate or appropriate safety standards for the protection of this equipment from the adverse effects of HIRF. Accordingly, this system is considered to be a novel or unusual design feature.

Discussion

There is no specific regulation that addresses protection requirements for electrical and electronic systems from HIRF. Increased power levels from ground-based radio transmitters and the growing use of sensitive avionics/

electronics and electrical systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, special conditions are needed for the Gulfstream Aerospace Corporation Model G–1159, G–1159A, and G–1159B series airplanes. These special conditions require that new avionics/electronics and electrical systems that perform critical functions be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of HIRF.

High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground-based transmitters, and the advent of space and satellite communications coupled with electronic command and control of the airplane, the immunity of critical digital avionics/electronics and electrical systems to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling of electromagnetic energy to cockpit-installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraph 1 or 2 below:

1. A minimum threat of 100 volts rms (root-mean-square) per meter electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the field strengths identified in the table below for the frequency ranges indicated. Both peak and average field strength components from the table are to be demonstrated.

Frequency	Field strength (volts per meter)	
	Peak	Average
10 kHz–100 kHz	50	50
100 kHz–500 kHz	50	50
500 kHz–2 MHz	50	50
2 MHz–30 MHz	100	100
30 MHz–70 MHz	50	50
70 MHz–100 MHz	50	50
100 MHz–200 MHz	100	100
200 MHz–400 MHz	100	100
400 MHz–700 MHz	700	50
700 MHz–1 GHz	700	100
1 GHz–2 GHz	2000	200
2GHz–4 GHz	3000	200
4 GHz–6 GHz	3000	200
6 GHz–8 GHz	1000	200
8 GHz–12 GHz	3000	300
12 GHz–18 GHz	2000	200
18 GHz–40 GHz	600	200

The field strengths are expressed in terms of peak of the root-mean-square (rms) over the complete modulation period.

The threat levels identified above are the result of an FAA review of existing studies on the subject of HIRF, in light of the ongoing work of the Electromagnetic Effects Harmonization Working Group of the Aviation Rulemaking Advisory Committee.

Applicability: As discussed above, these special conditions are applicable to the Gulfstream Aerospace Corporation Model G–1159, G–1159A, and G–1159B series airplanes. Should Business Jet Technologies apply at a later date for a supplemental type certificate to modify any other model included on Type Certificate No. A12EA to incorporate the same or similar novel or unusual design feature, these special conditions would apply to that model as well as under the provisions of § 21.101.

Conclusion

This action affects only certain novel or unusual design features on the Gulfstream Aerospace Corporation Model G–1159, G–1159A, and G–1159B series airplanes. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

The substance of the special conditions for these airplanes has been subjected to the notice and comment procedure in several prior instances and has been derived without substantive change from those previously issued. Because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions immediately. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

■ The authority citation for these special conditions is as follows:

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

The Special Conditions

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the supplemental type certification basis for the Gulfstream Aerospace Corporation Model G–1159, G–1159A, and G–1159B series airplanes modified by Business Jet Technologies:

1. *Protection From Unwanted Effects of High-Intensity Radiated Fields (HIRF).* Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high intensity radiated fields.

2. For the purpose of these special conditions, the following definition applies:

Critical Functions: Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Renton, Washington, on October 18, 2004.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–23861 Filed 10–25–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–18033; Directorate Identifier 2004–CE–16–AD; Amendment 39–13828; AD 2004–21–08]

RIN 2120–AA64

Airworthiness Directives; Cessna Aircraft Company Models 190, 195 (L–126A,B,C), 195A, and 195B Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA adopts a new airworthiness directive (AD) for all Cessna Aircraft Company (Cessna) Models 190, 195 (L–126A,B,C), 195A,

and 195B airplanes that are equipped with certain inboard aileron hinge brackets. This AD requires you to repetitively inspect the affected inboard aileron hinge brackets for cracks or corrosion and replace them if found cracked or corroded. Replacement with aluminum brackets would terminate the need for the repetitive inspections. This AD results from several reports of cracks and corrosion found on the magnesium aileron hinge brackets. Magnesium is known to be susceptible to corrosion. We are issuing this AD to detect and correct corrosion damage to the inboard aileron hinge brackets. Such damage could result in the brackets cracking across the bearing boss and could lead to the aileron separating from the airplane with consequent reduced or loss of control of the airplane.

DATES: This AD becomes effective on November 30, 2004.

As of November 30, 2004, the Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulation.

ADDRESSES: To get the service information identified in this AD, contact Cessna Aircraft Company, Product Support P.O. Box 7706, Wichita, Kansas 67277; telephone: (316) 517–5800; facsimile: (316) 942–9006. To review this service information, go to the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html* or call (202) 741–6030.

To view the AD docket, go to the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001 or on the Internet at *http://dms.dot.gov.* The docket number is FAA–2004–18033; Directorate Identifier 2004–CE–16–AD.

FOR FURTHER INFORMATION CONTACT: Gary D. Park, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4123; facsimile: (316) 946–4107.

SUPPLEMENTARY INFORMATION:

Discussion

What events have caused this AD? The FAA has received several reports of cracks and corrosion on part number (P/N) 0322709 and P/N 0322709–1 inboard aileron hinge brackets on Cessna Models 190, 195 (L–126A,B,C), 195A, and 195B airplanes. These inboard aileron hinge brackets are constructed of magnesium, which is highly susceptible to corrosion.

When corrosion starts to develop, the inboard aileron hinge brackets could crack across the bearing boss.

What is the potential impact if FAA took no action? Cracked or corroded inboard aileron hinge brackets, if not detected and corrected, could result in the ailerons separating from the airplane with consequent reduced or loss of control of the airplane.

Has FAA taken any action to this point? We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all Cessna Models 190, 195 (L–126A,B,C), 195A, and 195B airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on July 15, 2004 (69 FR 42358). The NPRM proposed to require you to repetitively inspect the affected inboard aileron hinge brackets for cracks or corrosion and replace them if found cracked or corroded. Replacement with aluminum brackets would terminate the need for the repetitive inspections.

Accomplishment of the proposed inspections would be following Cessna Single Engine Service Bulletin SEB04–1, dated April 26, 2004.

Comments

Was the public invited to comment? We provided the public the opportunity to participate in developing this AD. The following presents the comments received on the proposal and FAA's response to each comment:

Comment Issue No. 1: Allow for Replacement of Inboard Aileron Hinge Brackets Other Than Cessna Inboard Aileron Hinge Brackets

What is the commenter's concern? Several commenters point out that the NPRM is confusing. They state that the NPRM preamble states that you must replace any inboard aileron hinge bracket made from magnesium with one made from aluminum. However, the actual AD portion of the NPRM refers to replacing with inboard aileron hinge brackets as specified in Cessna Single Engine Service Bulletin SEB04–1, dated April 26, 2004. The commenters believe that this could be confusing in the field as to whether you can install non-Cessna parts.

Some of these commenters wanted FAA to list the parts that were approved for installation, including Cessna parts, supplemental type certificate (STC) parts, and parts manufacturer approval (PMA) parts.

What is FAA's response to the concern? The FAA agrees that the NPRM is confusing. The intent was to allow installation of any FAA-approved inboard aileron hinge bracket that is made from aluminum as terminating action for the repetitive inspections. We will rewrite this portion of the AD to ensure that the intent is communicated correctly.

However, listing all approved replacement inboard aileron hinge brackets in the AD is a tedious task and one that could become burdensome if others wanted the list updated at a later time. Therefore, we are not including a list of FAA-approved replacement parts. We will include information that states that FAA-approved replacement parts may be Cessna parts, STC parts, or PMA parts, etc.

The final rule reflects the change in wording to ensure the understanding that you may install non-Cessna parts.

Comment Issue No. 2: Refer to the Model 195 Airplanes as Model 195 (L–126A,B,C) Airplanes

What is the commenter's concern? One commenter recommends that FAA change reference to the Model 195 airplanes in the applicability to Model 195 (L–126A,B,C) airplanes. This would coincide with Type Certificate Data Sheet A–790, Revision 36, dated March 31, 2003.

What is FAA's response to the concern? The FAA agrees and will change the final rule AD accordingly.

Conclusion

What is FAA's final determination on this issue? We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed except for the changes discussed above and minor editorial corrections. We have determined that these changes and minor corrections:

—Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and
—Do not add any additional burden upon the public than was already proposed in the NPRM.

Docket Information

Where can I go to view the docket information? You may view the AD docket that contains information relating to this subject in person at the DMS Docket Offices between 9 a.m. and 5 p.m. (eastern standard time), Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5227) is located on the plaza level of the Department of Transportation NASSIF Building at the street address stated in **ADDRESSES.** You may also view the AD docket on the Internet at *http://dms.dot.gov.*

Changes to 14 CFR Part 39—Effect on the AD

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

Costs of Compliance

How many airplanes does this AD impact? We estimate that this AD affects 1,180 airplanes in the U.S. registry.

What is the cost impact of this AD on owners/operators of the affected airplanes? We estimate the following costs to do this proposed inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
1 workhour × $65 per hour = $65	No special parts necessary for inspection.	$65	1,180 airplanes × $65 = $76,700.

We estimate the following costs to do any necessary replacements that would be required based on the results of this proposed inspection. We have no way of determining the number of airplanes that may need this replacement:

Labor cost	Parts cost	Total cost per airplane
6 workhours × $65 per hour = $390	$2,954	$3,344

Regulatory Findings

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

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

1. Is not a ''significant regulatory action'' under Executive Order 12866;
2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include ''Docket No. FAA–2004–18033; Directorate Identifier 2004–CE–16–AD'' in your request.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. FAA amends § 39.13 by adding a new AD to read as follows:

2004–21–08 Cessna Aircraft Company: Amendment 39–13828; Docket No. FAA–2004–18033; Directorate Identifier 2004–CE–16–AD.

When Does This AD Become Effective?

(a) This AD becomes effective on November 30, 2004.

What Other ADs Are Affected by This Action?

(b) None.

What Airplanes Are Affected by This AD?

(c) This AD affects Models 190, 195 (L–126A, B, C), 195A, and 195B airplanes, all serial numbers, that are:

(1) certificated in any category; and

(2) equipped with at least one part number (P/N) 0322709 or P/N 0322709–1 inboard aileron hinge bracket.

What Is the Unsafe Condition Presented in This AD?

(d) This AD is the result of several reports of cracks and corrosion found on the magnesium aileron hinge brackets. Magnesium is known to be susceptible to corrosion. We are issuing this AD to detect and correct corrosion damage to the inboard aileron hinge brackets. Such damage could result in the brackets cracking across the bearing boss and could lead to the aileron separating from the airplane with consequent reduced or loss of control of the airplane.

What Must I Do To Address This Problem?

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

Actions	Compliance	Procedures
(1) Inspect each P/N 0322709 and P/N 0322709–1 inboard aileron hinge bracket or any other bracket made from magnesium for cracks or corrosion.	Initially inspect within the next 100 hours time-in-service (TIS) after November 30, 2004 (the effective date of this AD), unless already done. Repetitively inspect thereafter at intervals not to exceed 100 hours TIS until each bracket is replaced with an FAA-approved bracket that is made with aluminum.	Follow the procedures in Cessna Single Engine Service Bulletin SEB04–1, dated April 26, 2004.

Actions	Compliance	Procedures
(2) Replace any cracked or corroded inboard aileron hinge bracket. (i) If replacement is with a bracket made from magnesium, do the 100-hour TIS interval repetitive inspections as required in paragraph (e)(1) of this AD. (ii) If replacement is with an FAA-approved bracket that is made from aluminum, then no further inspections are necessary. These can be Cessna parts or non-Cessna parts.	Prior to further flight after any inspection where any cracked or corroded bracket is found. You may terminate the repetitive inspections required by this AD when all brackets are replaced with FAA-approved brackets that are made with aluminum, as specified in the service information.	Use the procedures included with the FAA-approved replacement and the FAA-approved maintenance manual. This could include Cessna parts, supplemental type certificate (STC) parts, or parts manufacturer approval (PMA) parts, etc.
(3) As terminating action for the repetitive inspections, you may replace all inboard aileron hinge brackets with FAA-approved brackets that are made from aluminum (as specified in paragraph (e)(2)(ii) of this AD) regardless if any corrosion or crack is found.	You may do this replacement at any time, but you must replace any corroded or cracked bracket prior to further flight after the applicable inspection where any corrosion or crack is found.	Use the procedures included with the approved replacement and the FAA-approved maintenance manual. This could include Cessna parts, STC parts, or PMA parts, etc.

May I Request an Alternative Method of Compliance?

(f) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.19. Unless FAA authorizes otherwise, send your request to your principal inspector. The principal inspector may add comments and will send your request to the Manager, Wichita Aircraft Certification Office, FAA. For information on any already approved alternative methods of compliance, contact Gary D. Park, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4123; facsimile: (316) 946–4107.

Does This AD Incorporate Any Material by Reference?

(g) You must do the inspections required by this AD following the instructions in Cessna Single Engine Service Bulletin SEB04–1, dated April 26, 2004. The Director of the Federal Register approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To get a copy of this service information, contact Cessna Aircraft Company, Product Support P.O. Box 7706, Wichita, Kansas 67277; telephone: (316) 517–5800; facsimile: (316) 942–9006. To review copies of this service information, go to the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html* or call (202) 741–6030. To view the AD docket, go to the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001 or on the Internet at *http://dms.dot.gov*. The docket number is FAA–2004–18033.

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

William J. Timberlake,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–23729 Filed 10–25–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–90–AD; Amendment 39–13804; AD 2004–19–10]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–100, –200, –200C, –300, –400, and –500 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document corrects a typographical error that appeared in airworthiness directive (AD) 2004–19–10 that was published in the **Federal Register** on September 27, 2004 (69 FR 57632). The typographical error resulted in the omission of the AD number in one location of the document. This AD is applicable to certain Boeing Model 737–100, –200, –200C, –300, –400, and –500 series airplanes. This AD requires repetitive inspections for corrosion and cracking of the pivot hinge pins of the horizontal stabilizer, certain follow-on inspections, and replacement of the hinge pins with new or serviceable pins if necessary.

DATES: Effective November 1, 2004.

FOR FURTHER INFORMATION CONTACT: Nancy Marsh, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6440; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION: Airworthiness Directive (AD) 2004–19–10, amendment 39–13804, applicable to certain Boeing Model 737–100, –200, –200C, –300, –400, and –500 series airplanes, was published in the **Federal Register** on September 27, 2004 (69 FR 57632). That AD requires repetitive inspections for corrosion and cracking of the pivot hinge pins of the horizontal stabilizer, certain follow-on inspections, and replacement of the hinge pins with new or serviceable pins if necessary.

As published, the AD number is missing in the Product Identification line in the regulatory text of the AD. The correct AD number is 2004–19–10. The AD number is referenced correctly throughout the remainder of the AD.

Since no other part of the regulatory information has been changed, the final rule is not being republished in the **Federal Register**.

The effective date of this AD remains November 1, 2004.

§ 39.13 [Corrected]

■ On page 57634, in the third column, the Product Identification line of AD 2004–19–10 is corrected to read as follows:

* * * * *

2004–19–10 Boeing: Amendment 39–13804. Docket 2003–NM–90–AD.

* * * * *

Issued in Renton, Washington, on October 18, 2004.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–23928 Filed 10–25–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–18993; Directorate Identifier 2004–NM–125–AD; Amendment 39–13781; AD 2004–18–03]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–2C10 (Regional Jet Series 700 & 701), and CL–600–2D24 (Regional Jet Series 900) Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: The FAA is correcting an error in an existing airworthiness directive (AD) that was published in the **Federal Register** on September 2, 2004 (69 FR 53609). The error resulted in inadvertent reference to inappropriate service information. We are also clarifying reference to a compliance threshold. This AD applies to certain Bombardier Model CL–600–2C10 (Regional Jet Series 700 & 701), and CL–600–2D24 (Regional Jet Series 900) series airplanes. This AD requires revising the airplane flight manual to advise the flightcrew to monitor the fuel quantity in the center fuel tank throughout the flight. This AD also requires repetitive tests to detect a fuel leak between the wing fuel tanks and the center fuel tank; and further related investigative and corrective actions, if necessary. For certain airplanes, this AD also requires installation of flexible hoses and brackets in the fuel feed system. This AD also reduces the compliance times for the repetitive checks, requires replacement of primary fuel feed ejectors with new ejectors, and provides an optional center fuel tank empty procedure.

DATES: Effective September 17, 2004.

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

FOR FURTHER INFORMATION CONTACT:

Technical information: James Delisio, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7321; fax (516) 794–5531.

Plain language information: Marcia Walters, *marcia.walters@faa.gov.*

Docket Management System (DMS)

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

Examining the Docket

You can examine the AD docket on the Internet at *http://dms.dot.gov,* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: On August 25, 2004, the FAA issued AD 2004–18–03, amendment 39–13781 (69 FR 53609, September 2, 2004), for certain Bombardier Model CL–600–2C10 (Regional Jet Series 700 & 701), and CL–600–2D24 (Regional Jet Series 900) series airplanes. The AD requires revising the airplane flight manual to advise the flightcrew to monitor the fuel quantity in the center fuel tank throughout the flight. This AD also requires repetitive tests to detect a fuel leak between the wing fuel tanks and the center fuel tank; and further related investigative and corrective actions, if necessary. For certain airplanes, this AD also requires installation of flexible hoses and brackets in the fuel feed system. This AD also reduces the compliance times for the repetitive checks, requires replacement of primary fuel feed ejectors with new ejectors, and provides an optional center fuel tank empty procedure.

As published, the requirements of paragraph (j) of the AD specify that ''Within three days after the effective date of this AD, determine the number of total flight hours on each of the two primary fuel feed ejectors having part number (P/N) T99A38–603.'' Paragraph (j) is not clear with respect to the action required for an airplane on which fuel feed ejectors having part number T99A38–603 are not installed. Paragraph (j) has been clarified to state that if there are no fuel feed ejectors installed having P/N T99A38–603, no further action is required by the AD.

As published, the compliance time for the requirements of paragraph (k) of the AD specifies a compliance time of ''before accumulating 2,000 total flight hours or within 14 days after the effective date of this AD, whichever occurs later, * * *.'' To clarify that the threshold compliance time is for the fuel feed ejectors, we have added the words ''on the fuel feed ejectors'' after the words ''before accumulating 2,000 total flight hours.''

As published, the requirements of paragraph (m) of the AD inadvertently specify performing certain requirements in accordance with Part A of the Accomplishment Instructions of CRJ 700/900 Regional Jet (Bombardier) ASB 670BA–28–025, Revision A, dated December 15, 2003. Reference to that service information in paragraph (m) of the AD is incorrect and has been removed. As discussed in the ''Differences'' section of the AD, the Canadian airworthiness directive specifies that the pilots receive a briefing on the procedure in use for the leak check. The AD does not require a pilot briefing, since the pre-flight procedures associated with performing the leak check should be accomplished by appropriate maintenance personnel. We have received reports that the intent of paragraph (m) of the AD is not clear. To provide clarification of paragraph (m) of the AD, a statement has been added to specify that the requirements of paragraph (m) must be performed by appropriate maintenance personnel.

No other part of the regulatory information has been changed; therefore, the final rule is not republished in the **Federal Register**.

The effective date of this AD remains September 17, 2004.

§ 39.13 [Corrected]

■ On page 53612, in the third column, paragraph (j) of AD 2004–18–03 is corrected to read as follows:

* * * * *

(j) Within three days after the effective date of this AD, determine the number of total flight hours on each of the two primary fuel feed ejectors having part number (P/N) T99A38–603. If no primary fuel feed ejector having P/N T99A38–603 is installed, no further action is required by this AD.

* * * * *

■ On page 53613, in the first column, paragraph (k) of AD 2004–18–03 is corrected to read as follows:

* * * * *

(k) Except as stated in paragraph (l) of this AD, before accumulating 2,000 total flight hours on the fuel feed ejector, or within 14 days after the effective date of this AD, whichever occurs later, begin doing the actions specified in paragraph

(m) or (p) of this AD. Accomplishing the actions specified in paragraph (m) or (p) of this AD ends the leak test (check) requirements of paragraph (h) of this AD.

* * * * *

■ On page 53613 in the first column, paragraph (m) of AD 2004–18–03 is corrected to read as follows:

* * * * *

(m) Once a day, before the first flight of the day: With both engines operating at ground idle or taxi thrust, open both L&R XFER SOV circuit breakers, 1N9 and 2P8, and monitor the fuel quantity of the center fuel tank for five minutes. For the daily check, the fuel quantity in the center fuel tank must be 4,000 pounds or less. This daily check must be performed by appropriate maintenance personnel.

* * * * *

Issued in Renton, Washington, on October 15, 2004.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–23927 Filed 10–25–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–19327; Airspace Docket No. 04–ACE–56]

Modification of Class E Airspace; Scribner, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends title 14 Code of Federal Regulations, part 71 (14 CFR part 71) by revising Class E airspace at Scribner, NE. A review of the Class E airspace area extending upward from 700 feet above the surface at Scribner, NE revealed it does not reflect the current Scribner State Airport airport reference point (ARP) and its legal description is not in compliance with established airspace criteria. This airspace area is modified to conform to FAA Orders.

DATES: This direct final rule is effective on 0901 UTC, January 20, 2005. Comments for inclusion in the Rules Docket must be received on or before November 30, 2004.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2004–19327/ Airspace Docket No. 04–ACE–56, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

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

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR part 71 modifies the Class E airspace area extending upward from 700 feet above the surface at Scribner, NE. An examination of controlled airspace for Scribner, NE revealed that the Scribner State Airport ARP used in the legal description for this Class E airspace area is incorrect. The examination also identified that the format of the legal description does not comply with FAA Order 7400.2E, Procedures for Handling Airspace Matters.

This action corrects the Scribner State Airport ARP in the legal description, eliminates reference to Freemont, NE in the legal and brings the legal description of the Scribner, NE Class E airspace area into compliance with FAA Order 7400.2E. This area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9M, Airspace Designations and Reporting Points, dated August 30, 2004, and effective September 16, 2004, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

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

Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2004–19327/Airspace Docket No. 04–ACE–56.'' The postcard will be date/time stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

* * * * *

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

* * * * *

ACE NE E5 Scribner, NE

Scribner State Airport, NE

(Lat. 41°36′37″ N., long. 96°37′48″ W.)

That airspace extending upward from 700 feet above the surface within a 7.1-mile radius of Scribner State Airport.

* * * * *

Issued in Kansas City, MO, on October 13, 2004.

Paul J. Sheridan,

Area Director, Western Flight Services Operations.

[FR Doc. 04–23865 Filed 10–25–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–19329; Airspace Docket No. 04–ACE–58]

Modification of Class E Airspace; Imperial, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends title 14 Code of Federal Regulations, part 71 (14 CFR part 71) by revising Class E airspace at Imperial, NE. A review of the Class E airspace area extending upward from 700 feet above the surface at Imperial, NE revealed it is not in compliance with established airspace criteria and does not reflect the current Imperial Municipal Airport airport reference point (ARP). This airspace area is modified to conform to FAA Orders. The intended effect of this rule is to provide controlled airspace of appropriate dimensions to protect aircraft departing from and executing Standard Instrument Approach Procedures (SIAPs) to Imperial Municipal Airport.

DATES: This direct final rule is effective on 0901 UTC, January 20, 2005. Comments for inclusion in the Rules Docket must be received on or before November 30, 2004.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2004–19329/ Airspace Docket No. 04–ACE–58, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

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

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR part 71 modifies the Class E airspace area extending upward from 700 feet above the surface at Imperial, NE. An examination of controlled airspace for Imperial, NE revealed the Class E airspace area does not comply with airspace requirements for diverse departures from Imperial Municipal Airport as set forth in FAA Order 7400.2E, Procedures for Handling Airspace Matters. The legal description of the Class E airspace area does not reflect the correct Imperial Municipal Airport ARP. The examination also revealed compliance with airspace requirements for diverse departures eliminates the need for an extension to the airspace area.

This action enlarges the Imperial, NE Class E airspace area extending upward from 700 feet above the surface from a 6.5-mile radius to a 7.5-mile radius of Imperial Municipal Airport. It eliminates the southeast extension, deletes reference to the Imperial NDB in the legal description and corrects the Imperial Regional Airport ARP in the legal description. These modifications provide controlled airspace of appropriate dimensions to protect aircraft departing from and executing SIAPs to Imperial Regional Airport and bring the legal description of the Imperial, NE Class E airspace area into compliance with FAA Order 7400.2E. This area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9M, Airspace Designations and Reporting Points, dated August 30, 2004, and effective September 16, 2004, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

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

Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2004–19329/Airspace Docket No. 04–ACE–58.'' The postcard will be date/time stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

* * * * *

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

* * * * *

ACE NE E5 Imperial, NE

Imperial Municipal Airport, NE
(Lat. 40°30′37″ N., long. 101°37′12″ W.)

That airspace extending upward from 700 feet above the surface within a 7.5-mile radius of Imperial Municipal Airport.

* * * * *

Issued in Kansas City, MO, on October 14, 2004.

Paul J. Sheridan,

Area Director, Western Flight Services Operations.

[FR Doc. 04–23866 Filed 10–25–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No.FAA–2004–19328; Airspace Docket No. 04–ACE–57]

Modification of Class E Airspace; Nebraska City, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends Title 14 Code of Federal Regulations, part 71 (14 CFR part 71) by revising class E airspace at Nebraska City, NE. A review of the Class E airspace area extending upward from 700 feet above the surface at Nebraska City, NE revealed it is not in compliance with established airspace criteria and does not reflect the current Nebraska City Municipal Airport airport reference point (ARP). This airspace area is modified to conform to FAA Orders. The intended effect of this rule is to provide controlled airspace of appropriate dimensions to protect aircraft departing from and executing Standard Instrument Approach Procedures (SIAPs) to Nebraska City Municipal Airport.

DATES: This direct final rule is effective on 0901 UTC, January 20, 2005. Comments for inclusion in the Rules Docket must be received on or before November 26, 2004.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2004–19328/ Airspace Docket No. 04–ACE–57, at the beginning of your comments. You may also submit comments on the Internet at *htpp://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

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

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR part 71 modifies the Class E airspace area extending upward from 700 feet above the surface at Nebraska City, NE. An examination of controlled airspace for Nebraska City, NE revealed the Class E airspace area does not comply with airspace requirements for diverse departures from Nebraska City Municipal airport as set forth in FAA Order 7400.2E, Procedures for Handling Airspace Matters. The legal description of the Class E airspace area does not reflect the correct Nebraska City Municipal Airport ARP. The examination also revealed the lack of an extension to the airspace area necessary to protect aircraft executing SIAPs to Nebraska City Municipal Airport.

This action modifies the Nebraska City, NE Class E airspace area extending upward from 700 feet above the surface from a 7-mile radius to a 6.9-mile radius of Nebraska City Municipal Airport. It adds a southeast extension that is 2.5 miles each side of the 169° bearing from the Nebraska City nondirectional radio beacon (NDB) extending to 7 miles southeast of the NDB. The Nebraska City NDB and the airspace extension are added to the legal description for the Class E airspace area. Additionally, the Nebraska City Regional Airport ARP is corrected in the legal description.

These modifications provide controlled airspace of appropriate dimensions to protect aircraft departing from and executing SIAPs to Nebraska City Regional Airport and bring the legal descriptions of the Nebraska City, NE Class E airspace areas into compliance with FAA Order 7400.2E. This area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9M, Airspace Designations and Reporting Points, dated August 30, 2004, and effective September 16, 2004, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

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

Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2004–19328/Airspace Docket No. 04–ACE–57.'' The postcard will be date/time stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

* * * * *

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

* * * * *

ACE NE E5 Nebraska City, NE

Nebraska City Municipal Airport, NE
(Lat. 40°36′25″ N., long. 95°51′57″ W.)
Nebraska City NDB
(Lat. 40°36′20″ N., long. 95°51′39″ W.)

That airspace extending upward from 700 feet above the surface within a 6.9-mile radius of Nebraska City Municipal Airport and within 2.5 miles each side of the 169° bearing from the Nebraska City NDB extending from the 6.9-mile radius of the airport to 7 miles southeast of the NDB.

* * * * *

Issued in Kansas City, MO, on October 14, 2004.

Paul J. Sheridan,
Area Director, Western Flight Services Operations.

[FR Doc. 04–23867 Filed 10–25–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–19326; Airspace Docket No. 04–ACE–55]

Modification of Class E Airspace; Oberlin, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends Title 14 Code of Federal Regulations, part 71 (14 CFR part 71) by revising Class E airspace at Oberlin, KS. A review of controlled airspace for Oberlin Municipal Airport revealed it does not comply with the criteria for 700 feet above ground level (AGL) airspace required for diverse departures. The area is modified and enlarged to conform to the criteria in FAA Orders.

DATES: This direct final rule is effective on 0901 UTC, January 20, 2005. Comments for inclusion in the Rules

Docket must be received on or before November 26, 2004.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2004–19326/ Airspace docket No. 04–ACE–55, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR part 71 modifies the Class E airspace area extending upward from 700 feet above the surface at Oberlin, KS. An examination of controlled airspace for Oberlin Municipal Airport revealed it does not meet the criteria for 700 feet AGL airspace required for diverse departures as specified in FAA Order 7400.2E, Procedures for Handling Airspace Matters. The criteria in FAA Order 7400.2E for an aircraft to reach 1200 feet AGL, taking into consideration rising terrain, is based on a standard climb gradient of 200 feet per mile plus the distance from the airport reference point to the end of the outermost runway. Any fractional part of a mile is converted to the next higher tenth of a mile. The examination also revealed that the expansion of airspace for diverse departures eliminated the need for an extension to the airspace area.

This amendment expands the Class E airspace area from a 6-mile radius to a 7.4-mile radius of Oberlin Municipal Airport, eliminates the extension to the airspace area, removes reverence to the Oberlin nondirectional radio beacon in the airspace legal description and brings the legal description of the Oberlin, KS Class E airspace area into compliance with FAA Orders 7400.2E. This area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9M, Airspace Designations and Reporting Points, dated August 30, 2004, and effective September 16, 2004, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

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

Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2004–19326/Airspace Docket No. 04–ACE–55.'' The postcard will be date/time stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

* * * * *

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

* * * * *

ACE KS E5 Oberlin, KS

Oberlin Municipal Airport, KS

(Lat. 39°50′02″ N., long. 100°32′22″ W.)

That airspace extending upward from 700 feet above the surface within a 7.4-mile radius of Oberlin Municipal Airport.

* * * * *

Issued in Kansas City, MO, on October 13, 2004.

Paul J. Sheridan,

Area Director, Western Flight Services Operations.

[FR Doc. 04–23868 Filed 10–25–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510, 520, 522, and 558

New Animal Drugs; Correction of Sponsor's Drug Labeler Codes

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a correction of sponsor's drug labeler code for Pennfield Oil Co.

DATES: This rule is effective October 26, 2004.

FOR FURTHER INFORMATION CONTACT: David R. Newkirk, Center for Veterinary Medicine (HFV–100), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–6967, e-mail: *david.newkirk@fda.gov*.

SUPPLEMENTARY INFORMATION: FDA has found that the animal drug regulations do not reflect the correct sponsor's drug labeler code for Pennfield Oil Co. Accordingly, the agency is amending the regulations in 21 CFR 510.600, 520.445b, 520.1660d, 522.1660a, 558.76, 558.78, 558.128, 558.140, 558.145, 558.195, 558.355, 558.450, 558.550, 558.600, 558.625, and 558.630 to correct this error.

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 Parts 520 and 522

Animal drugs.

21 CFR Part 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 parts 510, 520, 522, and 558 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) in the entry for ''Pennfield Oil Co.'' by removing ''053389'' and by adding in its place ''048164''; and in the table in paragraph (c)(2) by removing the entry for ''053389'' and by adding in numerical sequence an entry for ''048164'' 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
* * *	* *
Pennfield Oil Co., 14040 Industrial Rd., Omaha, NE 68144	048164
* * *	* *

(2) * * *

Drug labeler code	Firm name and address
* *	* * *
048164	Pennfield Oil Co., 14040 Industrial Rd., Omaha, NE 68144
* *	* * *

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.

§ 520.445b [Amended]

■ 4. Section 520.445b is amended in paragraph (b) by removing ''053389'' and by adding in its place ''048164''.

§ 520.1660d [Amended]

■ 5. Section 520.1660d is amended in paragraph (b)(6) by removing ''053389'' and by adding in its place ''048164''.

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

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

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

§ 522.1660a [Amended]

■ 7. Section 522.1660a is amended in paragraph (b) by removing ''053389'' and by adding in its place ''048164''.

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

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

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

§ 558.76 [Amended]

■ 9. Section 558.76 is amended in the table in paragraph (d)(1)(iv) in the ''Limitations'' and ''Sponsor'' columns by removing ''053389'' and by adding in its place ''048164''.

■ 10. Section 558.78 is amended by revising paragraphs (a) and (b); in the table in paragraph (d)(1) by redesignating paragraphs (d)(1)(ii) through (d)(1)(vi) as paragraphs (d)(1)(iii) through (d)(1)(vii); and by revising paragraph (d)(1)(i); and by adding new paragraph (d)(1)(ii) to read as follows:

§ 558.78 Bacitracin zinc.

(a) *Specifications*. Type A medicated articles containing bacitracin zinc equivalent to 5, 10, 25, 40, or 50 grams per pound bacitracin.

(b) *Approvals*. See sponsors in § 510.600(c) of this chapter for uses as follows:

(1) No. 046573: 10, 25, 40, and 50 grams per pound for uses as in paragraph (d) of this section.

(2) No. 048164: 5 and 50 grams per pound for use as in as in paragraph (d)(1)(i) of this section.

* * * * *

(d) * * *

(1) * * *

Bacitracin zinc in grams per ton	Combinations in grams per ton	Indications for use	Limitations	Sponsor
(i) 4 to 50	....	Chickens: for increased rate of weight gain and improved feed efficiency	Growing chickens	046573 048164
(ii) 4 to 50	....	Turkeys and pheasants: for increased rate of weight gain and improved feed efficiency	Growing turkeys and pheasants	046573

* * * * * * *

* * * * *

§ 558.128 [Amended]

■ 11. Section 558.128 is amended in paragraph (b)(1) by removing ''053389'' and by adding in its place ''048164''; and in the tables in paragraphs (e)(1), (e)(2), (e)(3), (e)(4), and (e)(5) in the ''Sponsor'' column by removing ''053389'' wherever it appears and by adding in its place ''048164''.

§ 558.140 [Amended]

■ 12. Section 558.140 is amended in paragraph (a) by removing ''053389'' and by adding in its place ''048164''.

§ 558.145 [Amended]

■ 13. Section 558.145 is amended in paragraph (a)(2) by removing ''053389'' and by adding in its place ''048164''.

§ 558.195 [Amended]

■ 14. Section 558.195 is amended in the table in paragraph (e)(2)(iii) in the ''Limitations'' and ''Sponsor'' columns by removing ''053389'' and by adding in its place ''048164''.

§ 558.355 [Amended]

■ 15. Section 558.355 is amended in paragraph (f)(1)(xiv)(b) by removing ''053389'' and by adding in its place ''048164''.

§ 558.450 [Amended]

■ 16. Section 558.450 is amended in paragraph (a)(2) by removing ''053389'' and by adding in its place ''048164''; in the table in paragraphs (d)(1)(i), (d)(1)(v), (d)(1)(vii), and (d)(1)(viii) in the ''Sponsor'' column by removing ''053389'' wherever it appears and by adding in its place ''048164''; and in the table in paragraph (d)(1)(ix) in the ''Limitations'' column by removing ''053389'' wherever it appears and by adding in its place ''048164''.

■ 17. Section 558.550 is amended in paragraphs (d)(1)(xv)(*c*) and (d)(1)(xvi)(*c*) by removing ''053389'' and by adding in its place ''048164''; and by revising paragraph (a) and adding paragraph (b) to read as follows:

§ 558.550 Salinomycin.

(a) *Specifications.* Type A medicated articles containing 30 or 60 grams of salinomycin activity per pound (as salinomycin sodium biomass).

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

(1) No. 046573 for use as in paragraph (d) of this section.

(2) No. 057926 for use as in paragraphs (d)(1)(i), (d)(1)(iii) through (d)(1)(xvi), (d)(2)(i), and (d)(3)(i) of this section.

(3) No. 048164 for use as in paragraphs (d)(1)(xv) and (d)(1)(xvi) of this section.

* * * * *

§ 558.600 [Amended]

■ 18. Section 558.600 is amended in the table in paragraph (e)(1)(iii) in the ''Limitations'' and ''Sponsor'' columns by removing ''053389'' and by adding in its place ''048164''.

§ 558.625 [Amended]

■ 19. Section 558.625 is amended in paragraph (b)(89) by removing ''053389'' and by adding in its place ''048164''.

§ 558.630 [Amended]

■ 20. Section 558.630 is amended in paragraph (b)(10) by removing ''053389'' and by adding in numerical sequence ''048164''.

Dated: October 14, 2004.

Steven D. Vaughn,

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

[FR Doc. 04–23854 Filed 10–25–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF DEFENSE

National Security Agency/Central Security Services

32 CFR Part 322

[NSA Regulation 10–35]

Privacy Act; Implementation

AGENCY: National Security Agency/Central Security Services.

ACTION: Final rule.

SUMMARY: The National Security Agency; Central Security Services (NSA/CSS) is adding an exemption rule for the system of records GNSA 20, entitled 'NSA Police Operational Files'. The exemptions increase the value of the system of records for law enforcement purposes.

The proposed rule was published on August 9, 2004, at 69 FR 48183. No comments were received; therefore, the National Security Agency/Central Security Services is adopting the rule as published below.

EFFECTIVE DATE: October 12, 2004.

FOR FURTHER INFORMATION CONTACT: Ms. Anne Hill at (301) 688–6527.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

It has been determined that this Privacy Act rule for the Department of Defense does not constitute 'significant regulatory action'. Analysis of the rule indicates that it does not have an annual effect on the economy of $100 million or more; does not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; does not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; does not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866 (1993).

Regulatory Flexibility Act

It has been determined that this Privacy Act rule for the Department of Defense does not have significant economic impact on a substantial number of small entities because it is concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Paperwork Reduction Act

It has been determined that this Privacy Act rule for the Department of Defense imposes no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974.

Section 202, Public Law 104–4, ''Unfunded Mandates Reform Act''

It has been determined that this Privacy Act rulemaking for the Department of Defense does not involve 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 or more and that such rulemaking will not significantly or uniquely affect small governments.

Executive Order 13132, ''Federalism''

It has been determined that this Privacy Act rule for the Department of Defense does not have federalism implications. The rule does not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

The National Security Agency/Central Security Services (NSA/CSS) is adding an exemption rule for the system of records GNSA 20, entitled 'NSA Police Operational Files'. The proposed rule was published on august 9, 2004, at 69 FR 48183. No comments were received; therefore, the National Security Agency/Central Security Services is adopting the rule as published below.

List of Subjects in 32 CFR Part 322

Privacy.

PART 32—[AMENDED]

■ 1. The authority citation for 32 CFR part 322 continues to read as follows:

Authority: Pub. L. 93–579, 88 Stat. 1896 (5 U.S.C. 552a).

■ 2. Amend § 322.7, by adding a new paragraph (q) as follows:

§ 322.7 Exempt systems of records.

* * * * *

(q) GNSA 20.

(1) *System name:* NSA Police Operational Files.

(2) *Exemption:* (i) Investigatory material compiled for law enforcement purposes, other than material within the scope of subsection 5 U.S.C. 552a(j)(2), may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of the information, the individual will be provided access to the information exempt to the extent that disclosure would reveal the identity of a confidential source. **Note:** When claimed, this exemption allows limited protection of investigative reports maintained in a system of records used in personnel or administrative actions.

(ii) Records maintained solely for statistical research or program evaluation purposes and which are not used to make decisions on the rights, benefits, or entitlement of an individual except for census records which may be disclosed under 13 U.S.C. 8, may be exempt pursuant to 5 U.S.C. 552a(k)(4).

(iii) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(iv) All portions of this system of records which fall within the scope of 5 U.S.C. 552a(k)(2), (k)(4), and (k)(5) may be exempt from the provisions of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I) and (f).

(3) *Authority:* 5 U.S.C. 552a(k)(2), (k)(4), and (k)(5).

(4) *Reasons:* (i) From subsection (c)(3) because the release of the disclosure accounting would place the subject of an investigation on notice that they are under investigation and provide them with significant information concerning the nature of the investigation, thus resulting in a serious impediment to law enforcement investigations.

(ii) From subsections (d) and (f) because providing access to records of a civil or administrative investigation and the right to contest the contents of those records and force changes to be made to the information contained therein would seriously interfere with and thwart the orderly and unbiased conduct of the investigation and impede case preparation. Providing access rights normally afforded under the Privacy Act would provide the subject with valuable information that would allow interference with or compromise of witnesses or render witnesses reluctant to cooperate; lead to suppression, alteration, or destruction of evidence; enable individuals to conceal their wrongdoing or mislead the course of the investigation; and result in the secreting of or other disposition of assets that would make them difficult or impossible to reach in order to satisfy any Government claim growing out of the investigation or proceeding.

(iii) From subsection (e)(1) because it is not always possible to detect the relevance or necessity of each piece of information in the early stages of an investigation. In some cases, it is only after the information is evaluated in light of other evidence that its relevance and necessity will be clear.

(iv) From subsections (e)(4)(G) and (H) because this system of records is compiled for investigative purposes and is exempt from the access provisions of subsections (d) and (f).

(v) From subsection (e)(4)(I) because to the extent that this provision is construed to require more detailed disclosure than the broad, generic information currently published in the system notice, an exemption from this provision is necessary to protect the confidentiality of sources of information and to protect privacy and physical safety of witnesses and informants.

Dated: October 20, 2004.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 04–23887 Filed 10–25–04; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD01–04–078]

RIN 1625–AA00

Safety Zone; Wantagh Parkway 3 Bridge Over the Sloop Channel, Town of Hempstead, NY

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone in the waters surrounding the Wantagh Parkway Number 3 Bridge across the Sloop Channel in the Town of Hempstead, New York. This zone is

necessary to protect vessels transiting in the area from hazards imposed by construction barges and equipment. The barges and equipment are being utilized to construct a new bascule bridge over the Sloop Channel. Entry into this zone is prohibited unless authorized by the Captain of the Port Long Island Sound, New Haven, Connecticut.

DATES: This rule is effective from 12:01 a.m. on October 9, 2004, until 11:59 p.m. on December 31, 2004.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket CGD01–04–078 and will be available for inspection or copying at Group/MSO Long Island Sound, New Haven, CT, between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant A. Logman, Waterways Management Officer, Coast Guard Group/Marine Safety Office Long Island Sound at (203) 468–4429.

SUPPLEMENTARY INFORMATION:

Regulatory History

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Good cause exists for not publishing an NPRM and for making this regulation effective less than 30 days after **Federal Register** publication. Immediate action is needed to restrict and control maritime traffic transiting in the vicinity of the Sloop Channel under the Wantagh Parkway Number 3 Bridge in the Town of Hempstead, Nassau County, Long Island, New York. In 2003, the Coast Guard approved bridge construction and issued a permit for bridge construction for the Wantagh Parkway Number 3 Bridge over the Sloop Channel. Contractors began work constructing the two bascule piers for the new bridge in early June. A safety zone was not deemed necessary at the inception of the construction, as this channel is primarily used by smaller recreational vessels, which could maneuver outside of the channel. However, bridge construction equipment, now remaining under the Wantagh Parkway Number 3 Bridge poses a potential hazard wherein a safety zone is immediately required.

The delay inherent in the NPRM process is contrary to the public interest and impracticable, as immediate action is needed to prevent accident by vessels transiting the area with the construction equipment.

Background and Purpose

Currently, there is a fixed bridge over the Wantagh Parkway Number 3 Bridge over the Sloop Channel in the Town of Hempstead, New York. New York Department of Transportation determined that a moveable bridge would benefit the boating community. In 2003, the Coast Guard approved bridge construction and issued a permit for bridge construction for the Wantagh Parkway Number 3 Bridge over the Sloop Channel. Contractors began work constructing the two-bascule piers for the new bridge in early June 2004. Construction is expected to take until at least December 31, 2004. The equipment necessary for the construction of the bridge occupies the entire navigable channel. While there are side channels which can be navigated, the equipment in the channel is extensive and poses a hazard to recreational vessels attempting to transit the waterway via the side channels under the bridge.

To ensure the safety of the boating community, the Coast Guard is establishing a safety zone in all waters of the Sloop Channel within 300 yards of the bridge. This safety zone is necessary to protect the safety of the boating community who wish to utilize the Sloop Channel.

Discussion of Rule

This regulation establishes a temporary safety zone on the waters of the Sloop Channel within 300-yards of the Wantagh Parkway Bridge. This action is intended to prohibit vessel traffic in a portion of the Sloop Channel in the Town of Hempstead, New York to provide for the safety of the boating community due to the hazards posed by significant construction equipment located in the waterway for the construction of a new bascule bridge. The safety zone is in effect from 12:01 a.m. on October 8, 2004, until 11:59 p.m. on December 31, 2004. Marine traffic may transit safely outside of the safety zone during the effective dates of the safety zone, allowing navigation in the Sloop Channel, except the portion delineated by this rule. Vessels may utilize the Goose Neck Channel in order to transit to those areas accessible by Sloop Channel. Entry into this zone is prohibited unless authorized by the Captain of the Port, Long Island Sound.

Any violation of the safety zone described herein is punishable by, among others, civil and criminal penalties, in rem liability against the offending vessel, and license sanctions.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS). We expect the economic impact of this rule will be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. This regulation may have some impact on the public, but the potential impact will be minimized for the following reasons: vessels may transit in all areas of the Sloop Channel other than the area of the safety zone, and may utilize other routes with minimal increased transit time.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule may affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit or anchor in those portions of the Sloop Channel in the Town of Hempstead, New York covered by the safety zone. For the reasons outlined in the Regulatory Evaluation section above, this rule will not have a significant impact on a substantial number of small entities.

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 subsection 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 [Pub. L. 104–121], the Coast Guard wants to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. If this rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call Lieutenant A. Logman, Waterways

Management Officer, Group/Marine Safety Office Long Island Sound, at (203) 468–4429.

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

This rule will not 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 will not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

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

To help the Coast Guard establish regular and meaningful consultation and collaboration with Indian and Alaskan Native tribes, we published a notice in the **Federal Register** (66 FR 36361, July 11, 2001) requesting comments on how to best carry out the Order. We invite your comments on how this rule might impact tribal governments, even if that impact may not constitute a ''tribal implication'' under the Order.

Energy Effects

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

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

The Coast Guard considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. From 12:01 a.m. October 9, 2004 to 11:59 p.m. on December 31, 2004 add temporary § 165.T01–078 to read as follows:

§ 165.T01–078 Safety Zone: Wantagh Parkway Number 3 Bridge over the Sloop Channel, Town of Hempstead, NY.

(a) *Location.* The following area is a safety zone: All waters of the Sloop Channel in Hempstead, NY within 300-yards of the Wantagh Parkway Number 3 Bridge over the Sloop Channel.

(b) *Effective date.* This rule is effective from 12:01 a.m. on October 9, 2004 until 11:59 p.m. on December 31, 2004.

(c) *Regulations.* (1) In accordance with the general regulations in 165.33 of this part, entry into or movement within this zone is prohibited unless authorized by the Captain of the Port (COTP), Long Island Sound.

(2) All persons and vessels must comply with the instructions of the COTP, or the designated on-scene U.S. Coast Guard representative. On-scene Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, and local, state, and federal law enforcement vessels.

Dated: October 8, 2004.

Peter J. Boynton,

Captain, U.S. Coast Guard, Captain of the Port, Long Island Sound.

[FR Doc. 04–23962 Filed 10–25–04; 8:45 am]

BILLING CODE 4910–15–P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 202

[Docket No. RM 2004–3A]

Acquisition and Deposit of Unpublished Audio and Audiovisual Transmission Programs

AGENCY: Copyright Office, Library of Congress.

ACTION: Final rule.

SUMMARY: This final rule amends the regulations of the Copyright Office to extend the Library of Congress' recording of unpublished transmission programs that have been fixed in a tangible medium of expression, which currently involves the recording of unpublished television programs, to include the recording of unpublished radio and other audio and audiovisual transmission programs.

EFFECTIVE DATE: November 26, 2004.

FOR FURTHER INFORMATION CONTACT: David Carson, General Counsel, or Charlotte Douglass, Principal Legal Advisor, Office of the Copyright General Counsel, Copyright GC/I&R, PO Box 70400, Southwest Station, Washington, DC 20024–0400. Telephone: (202) 707–8380; Fax: (202) 707–8366.

SUPPLEMENTARY INFORMATION: On August 5, 2004, the Copyright Office published a notice of proposed rulemaking seeking comment on a proposed amendment to its regulation codified at 37 CFR 202.22. Section 407(e)(1) of the Copyright Act provides that the Librarian of Congress may record unpublished transmission programs that have been fixed and transmitted to the public in accordance with regulations established by the Register of Copyrights. Up until now, those regulations have provided for the fixation only of unpublished television transmission programs. However, the Library now wishes to record other audio and audiovisual transmission programs as authorized by section 407(e)(1), and the proposed amendment would provide for such recording.

Specifically, the amendment would permit the Library of Congress to record fixed and unpublished audio and audiovisual transmission programs. As with the present rule for television, this regulation would enable the Library to record or demand unpublished radio transmission programs. Based on empirical and survey information, the Copyright Office's presumption is that commercial and noncommercial radio transmission programs are unpublished. In consideration of the significance of these widely disseminated forms of public communication, the regulation would also extend the Library's acquisition authority to cable, satellite and Internet transmission programs.

Copyright owners may use the recordings made or demanded by the Library of Congress under this regulation to satisfy the deposit requirements for registration of copyright claims. 17 U.S.C. 408.

In response to the notice of proposed rulemaking, the Copyright Office received two comments. The California Association of Library Trustees and Commissioners supported the Library's proposed rule, stating that increasing the Library's holdings in this way benefits the archive and research community. The National Association of Broadcasters (NAB) did not oppose the regulation, but asserted that the notice of proposed rulemaking provided no basis for presuming that all radio transmission programs have been fixed. NAB pointed out that the Library's existing practice with respect to television programs is to provide notice to commercial television stations of its intention to record specific programs, or that it has recorded such programs, at which point the station may confirm or dispute the Library's belief with respect to the fixed or unpublished status of the program. Moreover, NAB asserted that in order meaningfully to exercise the time limited option of using the Library's recording as a deposit when registering claims to copyright, its members need to receive notice of the particular programs that the Library has recorded.

In response to both of NAB's concerns, the final rule announced herein includes a new provision requiring the Library to maintain on its Web site, at *http://www.loc.gov/rr/record*, for audio recordings, or *http://www.loc.gov/rr/mopic,* for audiovisual recordings, a list of the transmission programs that it has recorded under this authority. A radio, cable, satellite, or Internet transmission program that has been recorded by the Library shall be included on the list within fourteen days of the recording by the Library.[1] Making this information publicly available on the Web site gives the copyright owner the opportunity to challenge the Library's presumption that a particular transmission program had been fixed and unpublished, and it also gives the copyright owner notice that a recording has been made by the Library that the owner may use as a deposit in connection with registration of a copyright claim in the transmission program.

[1] Because of the administrative burden, the Library cannot undertake to send separate notifications to each transmitting organization whenever the Library has recorded a radio transmission program.

List of Subjects

Copyright, Sound recordings.

Final Regulation

■ In consideration of the foregoing, the Copyright Office amends part 202 of 37 CFR to read as follows:

PART 202—REGISTRATION OF CLAIMS TO COPYRIGHT

■ 1. The authority citation for part 202 continues to read as follows:

Authority: 17 U.S.C. 702, 407 and 408.

■ 2. Section 202.22 is amended as follows:

■ a. by revising the section heading;
■ b. by revising paragraph (a);
■ c. by revising paragraph (b)(1);
■ d. in paragraph (b)(2), by removing ''by Pub. L. 94–553'';
■ e. by revising the heading of paragraph (c);
■ f. by revising paragraph (c)(1);
■ g. in paragraph (c)(2), by removing ''copied off-the-air'' and adding ''recorded'' in its place;
■ h. in paragraph (c)(3), by removing ''copy off-the-air'' and adding ''record'' in its place, by removing ''television'', and by removing ''copying'' and adding ''recording'' in its place;
■ i. by revising paragraph (c)(4);
■ j. in paragraph (c)(5) introductory text, by removing ''off-the-air copying'' and adding ''recording'' in its place;
■ k. in paragraph (c)(5)(iii), by removing ''with notice of copyright'';
■ l. in paragraph (c)(6) introductory text, by removing ''off-the-air'' and by adding ''or phonorecord'' after ''copy'';
■ m. in paragraph (c)(7), by adding ''or phonorecord'' after ''copy'';
■ n. by revising (c)(8) introductory text;
■ o. in the heading for paragraph (d), by removing ''television'';
■ p. in paragraph (d)(1), by adding ''or phonorecord'' after ''copy'';
■ q. in paragraph (d)(3)(ii), by adding ''or phonorecord'' after ''copy'' each place it appears;
■ r. in paragraph (d)(3)(iv), by removing ''copies''' and adding ''of the copies or phonorecords'' after ''use'';
■ s. in paragraph (d)(3)(v), by removing ''(a) and (c)'';

■ t. in paragraph (d)(3)(vi), by adding '', or in the case of an audio transmission program, a compliance phonorecord,'' after ''copy'';

■ u. in paragraph (d)(4), by adding ''or phonorecord'' after ''copy'' each place it appears;

■ v. in paragraph (d)(5), by adding ''and phonorecords'' after ''Copies'';

■ w. in paragraph (d)(6)(iii), by removing ''shall be granted'' and adding ''should be granted'' in its place;

■ x. in the heading of paragraph (e) and paragraph (e)(1), by adding ''and phonorecords'' after ''copies'' each place it appears, and by adding ''or phonorecord'' after ''copy'';

■ y. by revising paragraph (e)(2);

■ z. in paragraph (f)(1), by adding ''and phonorecords'' after ''Copies'';

■ aa. in paragraph (f)(1)(ii), by adding ''or phonorecord'' after ''copy'';

■ bb. in paragraph (f)(2), by adding ''and phonorecords'' after ''Copies'', and by adding ''or phonorecord'' after ''copy'' each place it appears; and

■ cc. in paragraph (g)(1), by adding ''or phonorecords'' after ''copies'', and by removing ''television'' and by adding ''audio or audiovisual'' in its place.

The additions and revisions to § 202.22 read as follows:

§ 202.22 Acquisition and deposit of unpublished audio and audiovisual transmission programs.

(a) *General.* This section prescribes rules pertaining to the acquisition of phonorecords and copies of unpublished audio and audiovisual transmission programs by the Library of Congress under section 407(e) of title 17 of the United States Code, as amended. It also prescribes rules pertaining to the use of such phonorecords and copies in the registration of claims to copyright, under section 408(b).

(b) * * *

(1) The terms copies, fixed, phonorecords, publication, and transmission program and their variant forms, have the meanings given to them in section 101 of title 17. The term network station has the meaning given it in section 111(f) of title 17. For the purpose of this section, the term transmission includes transmission via the Internet, cable, broadcasting, and satellite systems, and via any other existing or future devices or processes for the communication of a performance or display whereby images or sounds are received beyond the place from which they are sent.

* * * * *

(c) *Recording of transmission programs.* (1) Library of Congress employees, including Library of Congress contractors, acting under the general authority of the Librarian of Congress, may make a fixation of an unpublished audio or audiovisual transmission program directly from a transmission to the public in the United States, in accordance with subsections 407(e)(1) and (4) of title 17 of the United States Code. The choice of programs selected for fixation shall be based on the Library of Congress's acquisition policies in effect at the time of fixation. Specific notice of an intent to record a transmission program will ordinarily not be given. In general, the Library of Congress will seek to record a substantial portion of the television programming transmitted by noncommercial educational broadcast stations as defined in section 397 of title 47 of the United States Code, and will record selected programming transmitted by commercial television broadcast stations, both network and independent. The Library will also record a selected portion of the radio programming transmitted by commercial and noncommercial broadcast stations. Additionally, the Library will record a selected portion of unpublished Internet, cable and satellite programming transmitted to the public in the United States.

* * * * *

(4) The Library of Congress is entitled under this paragraph (c) to presume that a radio program transmitted to the public in the United States has been fixed but not published at the time of transmission, and that a television program transmitted to the public in the United States by a noncommercial educational broadcast station as defined in section 397 of title 47 of the United States Code has been fixed but not published.

* * * * *

(8) The Library of Congress shall maintain a list of the radio, cable, Internet and satellite transmission programs that the Library has recorded on the Motion Picture, Broadcasting and Recorded Sound Division Web site at *http://www.loc.gov/rr/record/* for audio transmission programs, or *http://www.loc.gov/rr/mopic/* for audiovisual transmission programs, and, in making fixations of such unpublished transmission programs, shall identify a program that the Library has recorded by including that transmission program on the list no later than fourteen days after such fixation has occurred. The Library of Congress in making fixations of unpublished television transmission programs transmitted by commercial broadcast stations shall not do so without notifying the transmitting organization or its agent that such activity is taking place. In the case of television network stations, the notification will be sent to the particular network. In the case of any other commercial television broadcasting station, the notification will be sent to the particular broadcast station that has transmitted, or will transmit, the program. Such notice shall, if possible, be given by the Library of Congress prior to the time of broadcast. In every case, the Library of Congress shall transmit such notice no later than fourteen days after such fixation has occurred. Such notice shall contain:

(e) * * *

* * * * *

(2) All copies and phonorecords acquired or made under this section, except copies and phonorecords of transmission programs consisting of a regularly scheduled newscast or on-the-spot coverage of news events, shall be subject to the following restrictions concerning copying and access: in the case of television or other audiovisual transmission programs, copying and access are governed by Library of Congress Regulation 818–17, Policies Governing the Use and Availability of Motion Pictures and Other Audiovisual Works in the Collections of the Library of Congress, or its successors; in the case of audio transmission programs, copying and access are governed by Library of Congress Regulation 818–18.1, Recorded Sound Listening and Duplication Services, or its successors. Transmission programs consisting of regularly scheduled newscasts or on-the-spot coverage of news events are subject to the provisions of the ''American Television and Radio Archives Act,'' 2 U.S.C. 170, and such regulations as the Librarian of Congress shall prescribe.

* * * * *

Dated: October 13, 2004.

Marybeth Peters,

Register of Copyrights.

Approved by:

James H. Billington,

Librarian of Congress.

[FR Doc. 04–23934 Filed 10–25–04; 8:45 am]

BILLING CODE 1410–30–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Part 303

RIN 0970–AC09

Child Support Enforcement Program Federal Tax Refund Offset

AGENCY: Administration for Children and Families, Department of Health and Human Services (HHS).

ACTION: Final rule.

SUMMARY: This final rule responds to comments received on the interim final rule with comment period, published on June 26, 2003, that amended regulations on collecting child support arrears through the Federal Tax Refund Offset process. The interim final rule reflected changes in OCSE's data processing protocols with the Department of the Treasury and incorporated current business practices and requests from State Child Support Enforcement agencies.

DATES: These regulations are effective October 26, 2004.

FOR FURTHER INFORMATION CONTACT: Yvette Hilderson Riddick, Division of Policy, OCSE, 202–401–4885, e-mail: *yriddick@acf.hhs.gov.* Deaf and hearing-impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 between 8 a.m. and 7 p.m. eastern time.

SUPPLEMENTARY INFORMATION:

Statutory Authority

This regulation is issued under the authority granted to the Secretary of Health and Human Services (the Secretary) by section 1102 of the Social Security Act (the Act), 42 U.S.C. 1302. Section 1102 of the Act authorizes the Secretary to publish regulations that may be necessary for the efficient administration of the functions for which he is responsible under the Act.

Interim Final Regulatory Provisions

The interim final rule amending 45 CFR 303.72, Requests for collection of past-due support by Federal tax refund offset, did not impose new requirements or burdens on States, but rather removed administrative requirements and burdens, principally the requirement that the support be three months delinquent before the debt is referred for Federal tax refund offset. The rule also removed the requirement for States to submit written notices to OCSE; *i.e.*, to transmit paper responses or to submit referrals by magnetic tape. Under the new procedures, notices and referrals are sent to OCSE electronically, which is much simpler for the States. Finally, the rule incorporated several policies that were already in effect in order to have all the information pertaining to the submission of Federal tax refund offset cases in one place.

Response to Comments and Changes to the Interim Final Rule

We received comments from four State IV–D agencies about the changes proposed in the interim final rule. The comments and our responses are discussed below.

1. Comment: One commenter said that, in the interim final rule, OCSE's use of the term ''non-IV–A cases'' is misleading or inaccurate. For example, a person may have been on assistance, but is currently not on assistance, yet has assigned arrears. Is this a IV–A case or not? The commenter suggested we use the terms ''cases with support assigned to the State'' and ''cases with no support assigned to the State''.

Response: The term ''non-IV–A cases'' was not added or changed in the interim final rule. The reference to ''non-IV–A cases'' covers any cases that have unassigned past-due support which is being submitted for offset. ''IV–A cases'' cover any cases that have assigned past-due support which is being submitted for offset, such as the example in the comment. The language that the commenter suggests changing is longstanding language that was not added or changed by the interim final regulation and thus, is not a proper subject for modification in the final rule. The regulatory language at § 303.72(a) lays out the rules for how support is submitted for offset. It differentiates past-due support qualifying for offset according to whether it is past-due support assigned to the State or past-due support that is not assigned to the State, but owed to the family. Assigned support and support owed to the family must meet different criteria for submittal, as outlined in paragraph (a). Thus, in a former assistance case with arrears assigned to the State and arrears owed to the family, the State will specify two separate amounts of past-due support for offset. Additionally, this distinction is required under the Internal Revenue Code, 26 U.S.C. 6402(c), the section of the Code pertaining to tax refund offset for child support. Under this subsection, first priority is given to ''any past-due support which has been assigned to the State.'' Next priority is other Federal debts, followed by unassigned past-due support.

2. Comment: One commenter asked: If Federal tax refund offset is a mandatory tool, as stated in the preamble to the interim final rule, are States required to certify all cases with assigned arrears of $150 or more and, if so, by when? The commenter expressed concern that States may need to change laws, policies and procedures to meet this ''new'' requirement. One commenter agreed with the regulatory changes, but pointed out that her State will need to make some programming changes that will take a few months to complete.

Response: The requirement to certify all cases that meet the criteria for submittal for Federal tax refund offset under 45 CFR 303.72 appears at § 303.6(c)(3) and has not been changed. The timeframe for that submittal is ''according to the timeframes and in the manner specified by the Office in instructions'' (§ 303.72(b)(1)). These instructions will be forthcoming in new guidance from the Federal Office of Child Support Enforcement. Currently, HHS requires States to update on at least a monthly basis, and recommends sending weekly updates if possible. OCSE will work closely with States before considering any changes to the timeframes and issuing instructions. OCSE does not contemplate instructions that will require changes to State law. The State may also use discretion to exclude a particular case as warranted, on a case-by-case basis.

3. Comment: One commenter noted that OCSE mentioned, in the preamble to the interim final rule, that it amended § 303.72(d)(2),(f)(3) and (g)(4) to recognize that the amount to be offset may increase as well as decrease after the submittal, due to the transition from annual updates to a continuous data processing schedule or due to an administrative review. However, in the first two instances cited, the regulation was not changed.

Response: We have corrected the regulation by replacing ''decrease'' with ''change'' in paragraphs (d)(2) and (f)(3).

4. Comment: Paragraph § 303.72(g) sets forth procedures for contesting an offset in interstate cases. The amended § 303.72(g)(4) requires the State with the order to report changes resulting from an administrative review to the submitting State and the submitting State to notify OCSE. One commenter said that we should define ''State with the order'', because the State with the order may not be involved in the case if the order is not in the initiating or responding State.

Response: The commenter is correct in noting that the State with the order may be neither the initiating nor the responding State involved in a IV–D case. The State with the order refers to the State with the order ''upon which the referral for offset is based''. We have added this language to paragraph (g)(4) for clarification. The provision allowing ''the State with the order'' to conduct an administrative review is not a change to the regulation.

5. Comment: Paragraph § 303.72(h)(6) was amended to specify that collections from offset may only be applied ''to cases'' that were being enforced by the IV–D agency at the time the advance notice described in paragraph (e)(1) of this section was sent. The prior paragraph (h)(6) had provided that collections from offset could be applied only against the ''past-due support amount'' that was specified in the advance notice to the obligor. One commenter asked: If a collection came in during a transitional period before an update was processed by OCSE to make the case a non-IV–D case, could the money be kept and applied to the arrears on that case?

Response: Regulations at 45 CFR 303.11 contain case closure requirements. If the State closes a case before the date of offset, consistent with case closure requirements, the offset amount would have to be returned to the Treasury, since past-due support that qualifies for offset must be past-due support owed in a IV–D case.

6. Comment: The change to paragraph (h)(6) narrows the past-due support to which collections from Federal income tax refund offsets may be applied. Under the regulations, the State, or OCSE at the State's request, sends the obligor a pre-offset notice specifying the obligor's right to contest that past-due support is owed and the right to an administrative review. The notice specifies that further arrears may be added to the obligor's debt without further notice. This past-due support could have already included debt from more than one case involving that obligor. States may also offer an opportunity for a due process hearing at the point of offset. States that provide that additional due process protection at offset, and not just at the pre-offset stage, should have flexibility in applying collections to past-due support owed by an obligor. If a State's due process has met State constitutional and due process requirements, the Federal regulation should continue to allow application of collections to all cases, similar to the handling of income withholding collections.

Response: We have not changed this provision for the following reasons. Section 464 of the Act authorizes the collection of past-due support from Federal tax refunds only if certain conditions are met. First, the individual due the tax refund must owe past-due support which has been assigned to the State or which the State has agreed to collect for a child on whose behalf an application for services has been submitted. The statute defines ''past-due support'' as ''the amount of a delinquency, determined under a court order, or an order of an administrative process established under State law, for support and maintenance of a child, or of a child and the parent with whom the child is living.'' Second, the State must notify the Secretary of the Treasury that the individual owes past-due support in accordance with the procedures established by the Secretary of the Treasury. Third, prior to notifying the Secretary of the Treasury that the individual owes past-due support, the State must send a notice to the individual informing him or her that amounts will be withheld from any refund payable. The notice must also inform the individual of the steps that may be taken to contest the State's determination that past-due support is owed or the amount of such past-due support and must comply with the regulations established by the Secretary of HHS. The regulation governing the advance notice that must be provided appears at § 303.72(e). Under this regulation, the required advance notice must inform the individual of four things, including the right to a review by the submitting State or the State with the order upon which the referral is based and the procedures and timeframe for contacting the IV–D agency of the submitting State to request a review.

The purpose of the advance notice provisions is to inform the individual of the IV–D agency's determination that he or she owes an amount of past-due support and to afford the individual an opportunity to contest the IV–D agency's determination that such past-due support is owed before the case is submitted for tax refund offset. In order to accomplish the purpose of the advance notice provisions and to comply with the statutory and regulatory provisions, an individual must be provided sufficient information concerning the past-due support claimed to be owed so as to enable a decision whether or not to request a review. An individual cannot contest a determination of past-due support about which he or she has not been notified.

7. Comment: The OCSE automated system for Federal tax refund offset cannot send a second advance notice that would include a second family's past-due support without first decertifying the first family's past-due support, which creates a burden on families whose support has already been submitted by the State.

Response: OCSE is programming a new transaction that will allow States to generate new pre-offset notices on an ad hoe basis without decertifying a case. It is expected to be available very soon.

8. Comment: The obligor's debt is offset at the amount that is certified as of the date of offset. Define ''date of offset.''

Response: The ''date of offset'' is the date that Treasury's Financial Management Services actually offsets the tax refund. This date is sent to the State with the payment file.

9. Comment: One commenter mentioned a missing reference to paragraph (f)(3) in the amendatory language in the interim final rule.

Response: We have corrected that omission in this final rule. In addition, we have identified several other typographical and technical errors in the text of the interim final rule that we have corrected in this final document. These corrections appear in paragraph (b)(1), where we corrected the placement of the parentheses; in paragraph (b)(2), where we added the word ''delinquency'' which had been left out in error; in paragraph (d)(1), where we changed ''of' to ''for'' in the phrase ''referring past-due support of offset''; and in paragraph (i)(1), where we added ''U.S.'' to the term ''Department of Treasury'' and we added the words ''of the'' between ''amount'' and ''offset''.

Paperwork Reduction Act of 1995

No new information collection requirements are imposed by these regulations, nor are any existing requirements changed as a result of their promulgation. Therefore, the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), regarding reporting and record keeping, do not apply.

Regulatory Flexibility Analysis

The Secretary certifies, under 5 U.S.C. 605(b), as enacted by the Regulatory Flexibility Act (Pub. L. 96–354), that this rule will not result in a significant impact on a substantial number of small entities. The primary impact is on State governments. State governments are not considered small entities under the Act.

Regulatory Impact Analysis

This final rule responds to comments on amended regulations on collecting child support arrears through the Federal Tax Refund Offset process. The changes make it easier for States to determine which cases are eligible for referral by eliminating certain requirements. Executive Order 12866 requires that regulations be reviewed to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department has determined that this rule is consistent with these priorities and principles. This rule is considered a ''significant regulatory action'' under the Executive Order and therefore has been reviewed by the Office of Management and Budget.

Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that a covered agency prepare a budgetary impact statement before promulgating a rule that includes any Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year.

The Department has determined that this rule would not impose a mandate that will result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of more than $100 million in any one year.

Congressional Review

This regulation is not a major rule as defined in 5 U.S.C. chapter 8.

Assessment of Federal Regulations and Policies on Families

Section 654 of the Treasury and General Government Appropriations Act of 1999 requires Federal agencies to determine whether a proposed policy or regulation may affect family well-being. If the agency's determination is affirmative, then the agency must prepare an impact assessment addressing seven criteria specified in the law. These regulations will not have an impact on family well-being as defined in the legislation.

Executive Order 13132

Executive Order 13132 on federalism applies to policies that have federalism implications, defined as ''regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on the States, or on the distributions of power and responsibilities among the various levels of government''. This rule does not have federalism implications for State or local governments as defined in the Executive Order.

List of Subjects in 45 CFR Part 303

Child support, Grant programs/social programs.

(Catalog of Federal Domestic Assistance Programs No. 93.563, Child Support Enforcement Program)

Dated: June 28, 2004.

Wade F. Horn,

Assistant Secretary for Children and Families,

Date Approved: August 6, 2004.

Tommy G. Thompson,

Secretary of Health and Human Services.

■ For the reasons discussed above, title 45 CFR chapter III is amended as follows:

PART 303—STANDARDS FOR PROGRAM OPERATIONS

■ 1. The authority citation for part 303 continues to read as follows:

Authority: 42 U.S.C. 651 through 658, 660, 663, 664, 666, 667, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p) and 1396(k).

■ 2. Amend § 303.72 by revising paragraphs (b)(1), (b)(2) introductory text, (d)(1), (d)(2), (f)(3), (g)(4), and (i)(1) to read as follows:

§ 303.72 Requests for collection of past-due support by Federal tax refund offset.

* * * * *

(b) * * *

(1) A State IV–D agency shall submit a notification (or notifications) of liability for past-due support to the Office according to the timeframes and in the manner specified by the Office in instructions.

(2) To the extent specified by the Office in instructions, the notification of liability for past-due support shall contain with respect to each delinquency:

* * * * *

(d) * * *

(1) The State referring past-due support for offset must, in interstate situations, notify any other State involved in enforcing the support order when it submits an interstate case for offset and when it receives the offset amount from the Secretary of the U.S. Treasury.

(2) The State IV–D agency shall, within timeframes established by the Office in instructions, notify the Deputy Director of any deletion of, or any change in, the arrears balance, if the change is significant according to the guidelines developed by the State. The notification shall contain the information specified in paragraph (b) of this section.

* * * * *

(f) * * *

(3) If the administrative review results in a deletion of, or change in, the arrears balance, the IV–D agency must notify OCSE within timeframes established by the Office and include the information specified in paragraph (b) of this section.

* * * * *

(g) * * *

(4) If the administrative review results in a deletion of, or change in, the arrears balance, the State with the order upon which the referral for offset is based must notify the submitting State within timeframes established by the Office and include the information specified in paragraph (b) of this section. The submitting State must then notify the Office within timeframes established by the Office and include the information specified in paragraph (b) of this section.

* * * * *

(i) * * *

(1) A refund offset fee, in such amount as the Secretary of the U.S. Treasury and the Secretary of Health and Human Services have agreed to be sufficient to reimburse the U.S. Department of Treasury for the full cost of the offset procedure, shall be deducted from the offset amount and credited to the U.S. Department of Treasury appropriations which bore all or part of the costs involved in making the collection. The full amount of the offset must be credited against the obligor's payment record. The fee which the Secretary of the U.S. Treasury may impose with respect to non-IV–A submittals shall not exceed $25 per submittal.

* * * * *

[FR Doc. 04–23953 Filed 10–25–04; 8:45 am]
BILLING CODE 4184–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AU02

Endangered and Threatened Wildlife and Plants; Interim Rule for the Beluga Sturgeon (*Huso huso*)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Interim rule.

SUMMARY: We, the U.S. Fish and Wildlife Service, will allow the trade in beluga sturgeon (*Huso huso*) and its by-products, provided that specimens are accompanied by valid permits issued under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). This interim rule will be effective until the publication of a final rule under Section 4(d) of the Endangered Species Act of

1973, as amended (Act), pertaining to trade in beluga sturgeon and its by-products. This interim rule allows the take, import, export, re-export, and interstate and foreign commerce in beluga sturgeon, without the issuance of a threatened species permit under the Act for those specimens that are traded in accordance with the requirements of CITES. This rule will benefit entities which trade in these products and help further conservation of this threatened species.

DATES: This rule is effective immediately October 21, 2004. The reasons for this accelerated implementation for making this rule effective less than 30 days after publication in the **Federal Register** are described below in the section titled, ''Need for Interim Rule.''

FOR FURTHER INFORMATION CONTACT: Robert R. Gabel, Chief, Division of Scientific Authority, U.S. Fish and Wildlife Service, at 4401 N. Fairfax Drive, Room 700, Arlington, Virginia 22203 (phone: 703) 358–1708). For permitting information contact: Peter Thomas, Chief, Division of Management Authority, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Room 700, Arlington, Virginia 22203 (phone: 703–358–2104, or toll free, 1–800–358–2104).

SUPPLEMENTARY INFORMATION:

Background

Upon petition from the public, the Service promulgated a rule (69 FR 21425, April 21, 2004) to list beluga sturgeon (*Huso huso*) as threatened throughout its range under Section 4(d) of the Endangered Species Act of 1973, as amended (Act). That listing in 50 CFR 17.11 prohibits all trade (foreign, international, and interstate) in beluga sturgeon, except as allowed by permit in 50 CFR 17.32. We delayed the effective date of the listing until October 21, 2004, in order to promulgate a special rule under Section 4(d) of the Act. The proposed 4(d) rule, published on June 29, 2004 (69 FR 38863), included specific exemptions from the regulatory requirements of the Act for the trade in caviar and meat of threatened beluga sturgeon. Contingent upon whether Black and Caspian Sea countries meet the requirements set forth in the proposed 4(d) rule, it allows the continued trade in beluga sturgeon species while continuing to provide the protection under CITES.

The proposed 4(d) rule links U.S. import requirements for beluga sturgeon trade under the Act to Resolutions and Decisions on sturgeon trade under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). However, given the specific criteria of the Act, the proposed 4(d) rule would improve on the status quo of beluga sturgeon under CITES, since the proposed rule aims to improve transparency of range country actions and requires more specific information than the CITES process. The proposed 4(d) rule sets quantitative goals for the species' recovery, with specific targets for range countries to meet in order for U.S. entities to continue to import beluga sturgeon products into the United States without ESA permits.

Under the proposed 4(d) rule, range countries in the Caspian Sea and Black Sea basins would have 6 months from the proposed 4(d) rule's effective date to submit their beluga sturgeon conservation and management plans to the Service for review. During this time, imports, exports, re-exports, and interstate and foreign commerce in certain beluga sturgeon products would not require threatened species permits, but must have legal documentation under CITES. The proposed 4(d) rule exempts the transfer of beluga caviar and meat into and out of the United States from additional threatened species regulatory requirements of the Act when the specimens are obtained from fish that are wild-caught or hatchery-reared from range countries that have complied with the rule. The proposed 4(d) rule also exempts interstate and foreign commerce in these products from the threatened species regulatory requirements of the Act, if that trade occurs in the United States or involves U.S. citizens.

In the proposed 4(d) rule, aquacultured specimens (*i.e.*, from commercial captive-breeding operations) from non-range countries, including the United States, and live specimens are not exempted from threatened species' permits. The Service lacked information on how aquaculture in non-range countries would benefit the conservation of wild populations, and, instead had an indication that the expansion of aquaculture in non-range countries could actually diminish the importance of beluga sturgeon conservation by reducing incentives to protect the species in the wild. We were concerned that any additional aquaculture of foreign sturgeon species in the United States might pose a risk to domestic recovery efforts for several native sturgeon species listed under the Act or under interstate recovery plans. The Service believed that countries without native beluga populations, if exempted from the provisions of the Act under the proposed 4(d) rule, might use broodstock from countries with native wild populations to generate products for export to the U.S. marketplace, and would not afford any conservation benefit to the wild populations. The proposed 4(d) rule did not include an exemption for live specimens because of concerns about potential disease risks to native sturgeon and invasive species concerns associated with possible accidental introductions that may result with exotic sturgeons.

The proposed 4(d) rule has not been completed and is under review in order to fully address the public comments received on the rule. Therefore, absent a 4(d) rule, the Service is issuing this interim rule to allow the continued trade in beluga sturgeon products, provided that shipments are accompanied by valid CITES permits or are subject to a CITES exemption. This interim rule will be effective until the publication of the final 4(d) rule. This interim special rule allows the take, import, export, re-export, and interstate and foreign commerce of beluga sturgeon and its by-products, without the issuance of additional threatened species permits.

Need for Interim Rule

This interim special rule is necessary to allow the CITES-consistent trade in beluga sturgeon and its by-products without a threatened species permit until a final 4(d) rule is completed and published. The Service's intent was to publish the final 4(d) rule to coincide with the effective date of the beluga sturgeon threatened listing on October 21, 2004. However, the process to finalize the 4(d) rule required more time than anticipated because the Service received comments on the proposed rule on a number of complex issues. We also received new information, which the Service lacked, related to:

- The development of aquaculture for beluga sturgeon within the United States,
- How aquaculture in non-range countries could benefit the conservation of wild populations, and
- On the scope of aquaculture activities with this species in the United States, including information on cooperative activities between U.S. entities and range countries.

The Service did not anticipate the extent of the public response from aquaculturists, scientists, and State offices related to this issue. It is the Service's responsibility to carefully review all public comments on this issue and to consider whether some adjustments should be made, and if so, to determine what measures are necessary to regulate the trade in aquacultured beluga sturgeon from non-range countries, including the United States. This interim rule will provide the Service additional time to carefully and appropriately respond to all the comments received, including those related to the role of aquaculture in the conservation of and trade in sturgeon species and their products without disrupting the trade and current conservation efforts for beluga sturgeon. The Service is actively working to complete the final special 4(d) rule and to publish it by the end of January. Without this interim rule, commercial activities involving beluga sturgeon and its by-products would be prohibited by the general threatened species regulations under the Act, thereby disrupting CITES-consistent, sustainable trade in beluga sturgeon.

Under these circumstances, the Service has determined that prior notice and opportunity for public comment are contrary to the public interest and there is good cause under 5 U.S.C. 553 for making this rule effective less than 30 days after publication in the **Federal Register**. If necessary, we will amend the Code of Federal Regulations to remove this rule when the final 4(d) rule is effective.

Required Determinations

Executive Order 12866 (Regulatory Planning and Review)

This interim rule has not been reviewed by the Office of Management and Budget (OMB) under Executive Order 12866. Under the criteria in Executive Order 12866, this interim rule is not a significant regulatory action.

a. This interim rule will not have an annual economic effect of $100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. A cost-benefit and economic analysis is not required.

b. This interim rule will not create inconsistencies with other agencies' actions. We are the lead agency regulating international wildlife trade, domestic wildlife trade, the issuance of permits to conduct activities affecting wildlife and their habitats, and carrying out U.S. obligations under CITES. Therefore, this interim rule has no effect on other agencies' responsibilities and will not create inconsistencies with other agencies' actions.

c. This interim rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

d. This interim rule will not raise novel legal or policy issues. This rule is basically a special 4(d) rule under the ESA. The Service has issued numerous 4(d) rules in the past to ensure the conservation of endangered and threatened species.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

We have determined that this rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). An initial regulatory flexibility analysis is not required, and a Small Entity Compliance Guide is not required. To assess the effects of the rule on small entities, the Service focused on the caviar import, export, and aquaculture industries in the United States because these are the entities most likely to be affected by the rule, particularly those engaged in beluga caviar importation, production, and distribution in the United States. In 2002, the most recent year for which we have import data, 15 businesses accounted for all of the foreign-source sturgeon caviar legally imported into the United States. It is possible that some of these businesses did not trade in beluga sturgeon. In those 15, the 10 largest importers accounted for 94 percent of all imported caviar (by weight), whereas the top 6 importers accounted for 85 percent of the U.S. trade (by weight). Illegal imports are not readily quantifiable, and were not addressed further in our analysis.

According to the information available to us, only two U.S. entities are involved in the commercial aquaculture of pure (i.e., non-hybridized) *H. huso* to obtain products such as caviar and meat, and neither is generating these products yet. At least one U.S. institution is conducting feasibility studies on the commercial aquaculture of hybrid ''bester'' sturgeon products. This type of aquaculture utilizes live beluga sturgeon and live sterlet (*Acipenser ruthenus*) to produce caviar in controlled, *ex situ* environments. Neither the threatened listing for beluga sturgeon nor the special rule affects trade in bester sturgeon products directly. However, there may be certain amounts of live beluga sturgeon required by these entities from Black and Caspian Sea countries. Given the apparently limited aquaculture use of beluga sturgeon, this rule should have no significant economic impact on U.S. markets.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule will not have an annual effect on the economy of $100 million or more; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises.

This rule will have little or no economic effect on the import, export, interstate commerce, and foreign commerce. In foreign countries, this exemption will allow individuals and businesses subject to U.S. jurisdiction to engage in commerce involving beluga sturgeon products without the need for threatened species permits. We are not aware of such commerce currently, and therefore this exemption will create minimal benefits.

This rule will not have significant economic effects in regard to scientific samples or personal effects moving in and out of the United States, given our recorded low volume of such transactions. However, this rule will provide significant benefits to beluga sturgeon traders commercially importing, exporting, and selling across State lines beluga sturgeon caviar and meat. Without the rule, Section 9 of the Act would prevent all current import, export, and interstate commerce, and traders would receive no income from lucrative U.S. markets for beluga sturgeon and its by-products. With the rule, this international trade and interstate commerce can continue without interruption, a beneficial effect of the rule.

We are unable to quantify the U.S. economic impact of the exemption from permits granted for aquaculture facilities outside of the Caspian and Black countries (including U.S. operations). This is primarily because (1) U.S. aquaculture facilities are not yet producing beluga sturgeon caviar and meat; and (2) the global extent of aquacultured beluga sturgeon production is largely unquantified. Given the information available on the species' long reproductive cycle and the high cost of starting beluga sturgeon aquaculture, we expect the economic impact to be relatively small.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

Under the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), this interim rule will not ''significantly or uniquely'' affect small governments.

a. This interim rule will not significantly or uniquely affect small governments. A Small Government

Agency Plan is not required. We are the lead agency regulating wildlife trade through the declaration process, the issuance of permits to conduct activities affecting wildlife and their habitats, and carrying out the United States obligations under CITES. No small government assistance or impact is expected as a result of this interim rule.

b. This interim rule will not produce a Federal requirement that may result in the combined expenditure by State, local, or tribal governments of $100 million or greater in any year, so it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act. This interim rule will not result in any combined expenditure by State, local, or tribal governments.

Executive Order 12630 (Takings)

Under Executive Order 12630, this interim rule does not have significant takings implications or affect any constitutionally protected property rights. This interim rule will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. A takings implication assessment is not required. Therefore, this interim rule does not have significant takings implications.

Executive Order 13132 (Federalism)

Under Executive Order 13132, this interim rule does not have significant Federalism effects. A Federalism assessment is not required. This interim rule will not have a substantial direct effect on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government.

Executive Order 12988 (Civil Justice Reform)

Under Executive Order 12988, the Office of the Solicitor has determined that this interim rule does not overly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. Specifically, this interim rule has been reviewed to eliminate errors and ensure clarity, has been written to minimize lawsuits, provides a clear legal standard for affected actions, and specifies in clear language the effect on existing Federal law or regulation.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This interim rule does not contain any information collection requirements that require approval by the OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

National Environmental Policy Act

This interim rule has been analyzed under the criteria of the National Environmental Policy Act and 318 DM 2.2 (g) and 6.3 (D). This interim rule does not amount to a major Federal action significantly affecting the quality of the human environment. An environmental impact statement/evaluation is not required. This interim rule is categorically excluded from further National Environmental Policy Act requirements, under part 516 of the Departmental Manual, Chapter 2, Appendix 1.10.

Executive Order 13175 (Tribal Consultation) and 512 DM 2 (Government-to-Government Relationship With Tribes)

Under 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 adverse effects. Individual tribal members must meet the same regulatory requirements as other individuals who import, export, buy, sell, transport, receive or acquire beluga sturgeon products.

Executive Order 13211

We have evaluated this rule in accordance with E.O. 13211 and have determined that this rule will have no effects on energy supply, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

■ For the reasons set out in the preamble, we hereby amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

■ 2. Amend § 17.31 by adding a new paragraph (d) as set forth below:

§ 17.31 Prohibitions.

* * * * *

(d) Except for specimens that are or have been imported into the United States in compliance with the requirements of CITES, the prohibitions of § 17.21 and this section and the permit requirements of § 17.32 apply to the take, import, export, re-export, and interstate and foreign commerce in beluga sturgeon (*Huso huso*) and its by-products.

Dated: October 21, 2004.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 04–23993 Filed 10–21–04; 5:07 pm]

BILLING CODE 4310–55–P

Proposed Rules

Federal Register

Vol. 69, No. 206

Tuesday, October 26, 2004

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 360

[Docket No. 04–037–1]

Noxious Weeds; Notice of Availability of Petitions To Regulate Caulerpa

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Petitions and request for comments.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has received two petitions requesting that additional aquatic plants of the genus *Caulerpa* be added to the list of noxious weeds. We are soliciting public comments on the petitions and the implications of adopting them.

DATES: We will consider all comments that we receive on or before December 27, 2004.

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

- *Postal Mail/Commercial Delivery:* Please send four copies of your comment (an original and three copies) to Docket No. 04–037–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 04–037–1.
- *E-mail:* Address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and ''Docket No. 04–037–1'' on the subject line.
- *Agency Web Site:* Go to *http://www.aphis.usda.gov/ppd/rad/cominst.html* for a form you can use to submit an e-mail comment through the APHIS Web site.

Petitions: The petitions discussed in this document are available on the APHIS Web site at *http://www.aphis.usda.gov/ppq/weeds/* or from the individual listed as the contact for further information.

Reading Room: You may also review all documents associated with this notice in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Other Information: You may view APHIS documents published in the **Federal Register** and related information, including the names of groups and individuals who have commented on APHIS dockets, on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html.*

FOR FURTHER INFORMATION CONTACT: Dr. Alan V. Tasker, Noxious Weeds Program Coordinator, Invasive Species and Pest Management, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1237; (301) 734–5225.

SUPPLEMENTARY INFORMATION:

Background

The Plant Protection Act (7 U.S.C. 7701 *et seq.*) (PPA) authorizes the Secretary of Agriculture to prohibit or restrict the importation, entry, exportation, or movement in interstate commerce of any plant, plant product, biological control organism, noxious weed, article, or means of conveyance if the Secretary determines that the prohibition or restriction is necessary to prevent the introduction of a plant pest or noxious weed into the United States or the dissemination of a plant pest or noxious weed within the United States. The PPA defines ''noxious weed'' as ''* * * any plant or plant product that can directly or indirectly injure or cause damage to crops (including nursery stock or plant products), livestock, poultry or other interests of agriculture, irrigation, navigation, the natural resources of the United States, the public health, or the environment.'' The PPA also provides that the Secretary may publish, by regulation, a list of noxious weeds that are prohibited or restricted from entering the United States or that are subject to the restrictions on interstate movement within the United States, and that any person may petition the Secretary to add a plant species to, or remove a plant species from, the regulations issued by the Secretary.

The Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture (USDA), regulates the importation and interstate movement of noxious weeds under 7 CFR part 360, ''Noxious Weed Regulations'' (referred to below as the regulations), which were established in 1976 under the authority of the Federal Noxious Weed Act (FNWA).

Section 360.200 of the regulations lists noxious weeds. In this section, noxious weeds are divided into three categories: Aquatic weeds, parasitic weeds, and terrestrial weeds. Listed noxious weeds are only eligible to be moved into or through the United States, or interstate, under a permit granted by APHIS. Persons who move noxious weeds under permit must follow all the conditions contained in the permit with regard to storage, shipment, cultivation, and propagation.

There are typically five steps in adding a weed to the list of noxious weeds in § 360.200 [1]:

(1) Identify a weed that may meet the definition of a ''quarantine pest'' (a pest of potential economic importance to the area endangered thereby and not yet present there, or present but not widely distributed and being officially controlled);

(2) Prepare a risk assessment that establishes the identity of the weed (scientific name, common name, description, etc.); verifies quarantine pest status; assesses habitat suitability in the United States, including the likelihood of introduction, dispersal and survival; provides information on potential environmental and economic impacts; characterizes pest risk (low, medium, high, etc.); and cites references;

(3) Publish a proposed rule in the **Federal Register**;

(4) Analyze and respond to public comments; and

(5) Publish a final rule in the **Federal Register** if appropriate.

On March 16, 1999, APHIS published a final rule in the **Federal Register** (64 FR 12881–12884, Docket No. 98–063–2) adding *Caulerpa taxifolia*

[1] *See* APHIS' Guide to the Listing Process for Federal Noxious Weeds at *http://www.aphis.usda.gov/ppq/weeds/listingguide.pdf.*

(Mediterranean clone) to the list of aquatic weeds in § 360.200(a). This listing was prompted by a petition for action addressed to the Secretary of the Interior dated October 19, 1998, asking him to work with the USDA to list the Mediterranean strain as a noxious weed, and followed a report prepared for the Aquatic Nuisance Species Task Force by the Fish and Wildlife Service. Based on the report, APHIS determined that the Mediterranean clone met the definition of a quarantine pest and provided a high level of risk.

C. taxifolia (Mediterranean clone) has invaded the Mediterranean coasts of France and Italy and now covers thousands of acres of the coastal zone. This invasive, aquarium-bred strain appears to have been introduced into the Mediterranean Sea from the Monaco Aquarium in 1984. It covered approximately 1 square yard in 1984, spread to over 2 acres by 1989, and now covers over 10,000 acres, extending from the shore to depths of over 250 feet. *C. taxifolia* (Mediterranean clone) grows on both rocky and sandy bottoms, from protected bays to exposed capes, and attains great densities, forming monocultural stands whose impact has been compared to unrolling a carpet across the bottom of the sea. In the regions where it is established, *C. taxifolia* (Mediterranean clone) has caused ecological devastation by overgrowing and eliminating native seaweeds, sea grasses, and invertebrates (such as corals, sea fans, and sponges) and has caused economic damage by harming tourism and recreational diving and creating a costly impediment to commercial fishing. No effective eradication strategies have been identified for *C. taxifolia* (Mediterranean clone), partly because it has the ability to regenerate from small fragments.

On April 29, 2003, the International Center for Technology Assessment sent APHIS a petition requesting that APHIS add the entire *Caulerpa* genus to the list of noxious weeds. A second petition, submitted by the same organization on April 30, 2003, requested, in the event the first petition was denied, that APHIS add all varieties of the species *C. taxifolia* to the list of noxious weeds.

In their first petition, the petitioners cite several sources that provide information to support the listing of four additional species of *Caulerpa* to the noxious weed list: *C. scalpelliformis, C. racemosa, C. verticillata,* and *C. brachypus.* According to the petitioners, it is too difficult to tell the difference between species of *Caulerpa* due to their morphological variability, especially when tiny fragments of the species could be imported into the United States in the crevices of what are sold as ''live rocks,'' and because of this, all species of *Caulerpa* must be designated as noxious weeds.

The second petition states that at least two new strains of *C. taxifolia* have been discovered in Australia. These strains, which lack scientific or recognized common names, are described by the petitioners as genetically distinct from the Mediterranean strain. The petitioners maintain that it would be impossible to list all genetically distinct strains of the algae as separate noxious weeds and, therefore, they request the amendment of the regulations by removing the parenthetical (Mediterranean clone) so that the noxious weed listing includes all varieties of *C. taxifolia.*

The scope of the regulations continues to expand as new invasive plants and new pathways for the introduction of invasive plants are brought to our attention. With few exceptions, APHIS has regulated only vascular plants that present a risk of introducing plant pests or posing weed threats to agriculture or forest resources, and that move via pathways that are traditional targets for agricultural inspection.[2] APHIS first regulated a species of nonvascular plant in 1983 by listing invasive aquatic ferns as noxious weeds. The 1998 listing of *C. taxifolia* (Mediterranean clone) marked the first time APHIS regulated a form of marine algae. The expanding scope of the noxious weed list poses new challenges for APHIS as unique pathways for marine algae, such as ''live rocks,'' live fish, and other mediums of transport, are nontraditional targets for agricultural inspection.

Listing all species of *Caulerpa* as noxious weeds, or even all strains of *C. taxifolia,* as requested by the petitioner, would also extend our regulations to native species, as there are one or more strains of *C. taxifolia* native to Florida and Hawaii. As noted above, APHIS lists in the regulations only those weeds that meet the international definition of a quarantine pest; *i.e.*, ''a pest of potential economic importance to the area endangered thereby and not yet present there, or present but not widely distributed and being officially controlled.'' This practice is consistent with the International Plant Protection Convention (IPPC), to which the United States is a signatory. Under the IPPC, a country may prohibit or restrict importation of quarantine pests or, in the case of contaminants in plants for planting, regulated nonquarantine pests. This practice is also consistent with sections 414 and 415 of the PPA, which authorize the Secretary to take general remedial measures or to declare an extraordinary emergency if necessary to prevent the introduction or spread of plant pests or noxious weeds that are new to or not known to be prevalent or distributed widely within and throughout the United States.

There are other legal authorities such as the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (16 U.S.C. 4701, *et seq.*) that apply to marine algae. This Act established the Aquatic Nuisance Species Task Force, co-chaired by the Departments of the Interior and Commerce and consisting of several Federal agencies, including the Department of Agriculture and non-Federal entities. A Task Force Working Group, on which APHIS participates, is currently developing a national management plan for the genus Caulerpa that will include a range of approaches to Caulerpa prevention and management.

Before receiving the petitions, we recognized that the present listing for *C. taxifolia* (Mediterranean clone) could be confusing, and we planned to amend it in a future rulemaking. We recognized it might be confusing because the noxious weed list includes common names in parentheses following the scientific names for other noxious weeds. In the case of *C. taxifolia,* (Mediterranean clone), we used parentheses to designate the regulated strain, not to provide a common name. While the term ''clone'' was in use at the time of the listing, ''strain'' is used most commonly in recent scientific literature. The term ''killer algae'' is in use as a common name. Therefore, we have considered changing the listing to *Caulerpa taxifolia,* Mediterranean strain (killer algae). We also planned to change the wording of the footnote in § 360.200 to clarify that a scientific name includes all subordinate taxa except in the case of *C. taxifolia,* where we only regulate the Mediterranean strain. The footnote would read ''Except for *C. taxifolia,* scientific names include all subordinate taxa. For example, taxa listed at the genus level include all species, subspecies, varieties and forms within the genus; taxa listed at the species level include all subspecies, varieties and forms within the species. In the case of *C. taxifolia,* the listing includes only the Mediterranean strain.'' We will be making these changes in a future separate rulemaking.

[2] Vascular plants have vessels in their tissues that carry fluids, such as water or sap. Nonvascular plants do not and are commonly referred to as ''lower plants'' because they do not achieve the structural complexity and size of vascular plants.

Request for Comments

We are publishing this notice to inform the public that APHIS will accept written comments from the public regarding these petitions for 60 days. This is the first time APHIS has published a notice of availability of petitions to list noxious weeds and sought comments. We are publishing these petitions and seeking comments because the petitions raise unusually complex and controversial issues.

Issues for Discussion

We are particularly interested in comments pertaining to the following issues. We request responses to the bulleted questions at the end of each section:

In accordance with international agreements, APHIS supports all noxious weed listings with risk assessments based on data and other published information. Depending on the source of the information, the number of *Caulerpa* species ranges from 70 to about 1,000. However, there has been little scientific research on *Caulerpa,* and many species have not been fully characterized. The petitioners requested that all species of *Caulerpa* be listed as noxious weeds and submitted information concerning four species, in addition to *C. taxifolia,* that have caused harmful invasions: *C. scalpelliformis, C. racemosa, C. verticillata,* and *C. bracypus.*

- What data is there to help us evaluate the risks associated with non-native species of *Caulerpa* other than *C. taxifolia*?
- How many and what species of *Caulerpa* and other nonvascular plants are currently being imported?
- In addition to aquatic plant shipments, ballast water, fishing gear, ''live rocks,'' and live fish, what other pathways exist that could potentially facilitate the spread of *C. taxifolia* (Mediterranean clone) and other demonstrably invasive, non-native *Caulerpa* species?

We recognize that regulating the importation and interstate movement of marine algae is difficult. Most noxious weeds are introduced with common agricultural commodities and not in the marine aquarium trade. The pathways by which the algae may travel into the United States are not traditional targets for agricultural inspection. Among these potential pathways are ''live rocks,'' fishing gear, and live fish, where specimens may be merely fragments that are not clearly visible. In these cases, identifying the presence of *C. taxifolia* (Mediterranean clone) has been particularly difficult.

Currently, APHIS's policy is to prohibit the entry of any plant intercepted at the port of entry if there is reason to believe that it is *C. taxifolia* (Mediterranean clone). The importer or exporter is given an opportunity to establish the identity of specimens that resemble *C. taxifolia* (Mediterranean clone). We consider any foreign origin *Caulerpa* to be suspect.

Expanding our noxious weed program to cover additional species of *Caulerpa* would require additional funding, personnel, training, and possibly additional facilities and equipment as there is a lack of Agency expertise in the area of marine algae and no new funds automatically become available when a new weed is listed. It seems that, at this time, other Federal agencies are not able to provide financial or other resources in support. Without increased appropriations, the program expansion could divert attention and resources from APHIS's current weed programs.

- Given the difficulty of identifying *C. taxifolia* (Mediterranean clone), and the existence of native species of *Caulerpa* in United States waters, how could APHIS effectively regulate additional species and strains of marine algae?
- If we list additional species and strains of non-native marine algae, how should our current weed program resources be shifted in order to regulate these other strains or species as well as currently listed noxious weeds?
- If we list additional non-native species or strains of non-native marine algae, where should most of our existing resources and efforts be placed in order to be most effective? For example: Increased port of entry Inspection, surveying, eradication, public education, etc.

Authority: 7 U.S.C. 7711–7714, 7718, 7731, 7751, and 7754; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 21st day of October 2004.

Elizabeth E. Gaston,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 04–23921 Filed 10–25–04; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–19446; Directorate Identifier 2004–NM–130–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767–200 and –300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede an existing airworthiness directive (AD) that applies to certain Boeing Model 767 series airplanes. The existing AD currently requires repetitive detailed and eddy current inspections of the aft pressure bulkhead for damage and cracking, and repair if necessary. This proposed AD would add one-time detailed and high frequency eddy current inspections of any ''oil-can'' located on the aft pressure bulkhead, and related corrective actions if necessary. An ''oil-can'' is an area on a pressure dome web that moves when pushed from the forward side. This proposed AD is prompted by reports of cracking at ''oil-can'' boundaries on the aft pressure bulkhead. We are proposing this AD to detect and correct fatigue cracking of the aft pressure bulkhead, which could result in rapid depressurization of the airplane and possible damage or interference with the airplane control systems that penetrate the bulkhead, and consequent loss of controllability of the airplane.

DATES: We must receive comments on this proposed AD by December 10, 2004.

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

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, room PL–401, Washington, DC 20590.
- *Fax:* (202) 493–2251.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington,

DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207.

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

FOR FURTHER INFORMATION CONTACT: *Technical Information:* Suzanne Masterson, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6441; fax (425) 917–6590.

Plain Language Information: Marcia Walters, *marcia.walters@faa.gov*.

SUPPLEMENTARY INFORMATION:

Docket Management System (DMS)

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

Comments Invited

We invite you to submit any written relevant data, views, or arguments regarding this proposed AD. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2004–19446; Directorate Identifier 2004–NM–130–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

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

Examining the Docket

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

Discussion

On February 24, 2004, we issued AD 2004–05–10, amendment 39–13505 (69 FR 10321, March 5, 2004), for certain Model 767 series airplanes. AD 2004–05–10 requires repetitive detailed and eddy current inspections of the aft pressure bulkhead for damage and cracking, and repair if necessary. That AD was prompted by a report of multiple-site fatigue cracking in two lap splices on the aft pressure bulkhead of one airplane. We issued AD 2004–05–10 to detect and correct fatigue cracking of the aft pressure bulkhead, which could result in rapid depressurization of the airplane and possible damage or interference with the airplane control systems that penetrate the bulkhead, and consequent loss of controllability of the airplane.

Actions Since Existing AD Was Issued

In the ''Differences Between the ASB and the AD'' section of AD 2004–05–10, we explained that we were considering further rulemaking to require inspections of ''oil-cans''. We now have determined that further rulemaking is indeed necessary, and this proposed AD follows from that determination.

Relevant Service Information

As discussed in the preamble of AD 2004–05–10, we have reviewed Boeing Alert Service Bulletin (ASB) 767–53A0026, Revision 5, dated January 29, 2004. Revision 5 of the ASB describes procedures for repetitive detailed inspections for damage (*e.g.*, nicks, tears, scratches, dents, and corrosion) of the aft pressure bulkhead, and repair if necessary. The ASB also describes procedures for repetitive high frequency and low frequency eddy current inspections for cracking of the body station (BS) 1582 bulkhead, web lap splices, and tearstrap splices, and repair if necessary. Additionally, the ASB describes procedures for a one-time detailed inspection and a high frequency eddy current inspection of the web to determine if any ''oil cans'' are present, and repair if necessary. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other products of this same type design. Therefore, we are proposing this AD, which would supersede AD 2004–05–10. This proposed AD would continue to require repetitive detailed and eddy current inspections of the aft pressure bulkhead for damage and cracking, and repair if necessary. This proposed AD would also require detailed and high frequency eddy current inspections of any ''oil-can'' located on the aft pressure bulkhead, and repair if necessary. This proposed AD would require you to use the service information described previously to perform these actions, except as discussed under ''Differences Between the Proposed AD and the Service Bulletin.''

Differences Between the Proposed AD and the Service Bulletin

The Boeing ASB provides the following information in Note 6 of the Accomplishment Instructions: ''For the purposes of this service bulletin, do not count flight-cycles with a cabin pressure differential of 2.0 [pounds per square inch (psi)] or less. However, any flight-cycle with momentary spikes in cabin pressure differential above 2.0 psi must be included as a full-pressure flight-cycle. Cabin pressure records must be maintained for each airplane. Fleet averaging of cabin pressure is not allowed.'' We have determined that an adjustment of flight cycles due to a lower cabin differential pressure is not substantiated and will not be allowed for use in determining the flight cycle threshold for this proposed AD.

Additionally, the Accomplishment Instructions of the ASB specify that operators may contact the manufacturer for disposition of certain repair instructions. This AD requires that, if repair requirements exceed allowable repair criteria, operators must repair per a method approved by the FAA or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the FAA to make such findings.

Change to Existing AD

This proposed AD would retain certain requirements of AD 2004–05–10. Since AD 2004–05–10 was issued, the AD format has been revised, and certain paragraphs have been rearranged. As a result, the corresponding paragraph identifiers have changed in this proposed AD, as listed in the following table:

REVISED PARAGRAPH IDENTIFIERS

Requirement in AD 2004–05–10	Corresponding requirement in this proposed AD
paragraph (e)	paragraph (f).
paragraph (f)	paragraph (g).

Costs of Compliance

There are about 162 airplanes worldwide of the affected design. This proposed AD would affect about 99 airplanes of U.S. registry.

The actions that are required by AD 2004–05–10 and retained in this proposed AD take about 22 work hours per airplane, at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of the currently required actions is $1,430 per airplane, per inspection cycle.

The new proposed actions would take about 2 work hours per ''oil-can,'' at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of the new actions specified in this proposed AD for U.S. operators is $130 per ''oil-can.'' The number of ''oil cans'' varies per airplane, so an estimate per airplane or for the U.S. registered fleet is not available.

Regulatory Findings

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

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

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing amendment 39–13505 (69 FR 10321, March 5, 2004) and adding the following new airworthiness directive (AD):

Boeing: Docket No. FAA–2004–19446; Directorate Identifier 2004–NM–130–AD.

Comments Due Date

(a) The Federal Aviation Administration must receive comments on this airworthiness directive (AD) action by December 10, 2004.

Affected ADs

(b) This AD supersedes AD 2004–05–10, amendment 39–13505.

Applicability

(c) This AD applies to Boeing Model 767–200 and –300 series airplanes, certificated in any category, as listed in Boeing Alert Service Bulletin (ASB) 767–53A0026, Revision 5, dated January 29, 2004.

Unsafe Condition

(d) This AD was prompted by reports of cracking at ''oil-can'' boundaries on a Boeing Model 747 series airplane's aft pressure bulkhead, which is similar to the aft pressure bulkheads on Boeing Model 767 series airplanes. We are issuing this AD to detect and correct fatigue cracking of the aft pressure bulkhead, which could result in rapid depressurization of the airplane and possible damage or interference with the airplane control systems that penetrate the bulkhead, and consequent loss of controllability of the airplane.

Compliance

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

Requirements of AD 2004–05–10

Detailed Inspections and Eddy Current Inspections

(f) Perform a detailed inspection for damage and cracking of the aft side of the aft pressure bulkhead and perform high frequency and low frequency eddy current inspections for cracking of the aft pressure bulkhead, per the Accomplishment Instructions of Boeing ASB 767–53A0026, Revision 5, dated January 29, 2004, at the later of the times specified in paragraph (f)(1) or (f)(2) of this AD. Thereafter, repeat these inspections at intervals not to exceed 1,800 flight cycles.

Note 1: For the purposes of this AD, a detailed inspection is: ''an intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.''

(1) Prior to the accumulation of 25,000 total flight cycles, or within 1,800 flight cycles after the most recent inspection done per AD 88–19–03 R1, whichever occurs later; or

(2) Within 90 days after March 22, 2004 (the effective date of AD 2004–05–10).

Repair Requirements

(g) If any damage or cracking is detected during any inspections required by paragraph (f) of this AD: Before further flight accomplish the requirements of paragraph (g)(1) or (g)(2) of this AD, as applicable:

(1) For repairs within the limits of the Accomplishment Instructions of Boeing ASB 767–53A0026, Revision 5, dated January 29, 2004, repair per the ASB.

(2) For any repairs outside the limits, repair per a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative (DER) who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved, as required by this paragraph, the approval must specifically reference this AD.

New Requirements of This AD

''Oil-Can'' Inspection and Repair

(h) Before the accumulation of 37,500 total flight cycles, or within 1,800 flight cycles after the effective date of this AD, whichever occurs later: Do a one-time detailed and surface high frequency eddy current inspections at all ''oil-can'' locations of the aft pressure bulkhead web for damage and cracks, in accordance with Figure 4 of the Accomplishment Instructions of the Boeing ASB 767–53A0026, Revision 5, dated January 29, 2004. All ''oil-cans'' must meet the limits specified in the service bulletin.

Note 2: An ''oil-can'' is an area on a pressure dome web that moves when pushed from the forward side.

(1) If no damage and no crack is found, no further action is required by this paragraph.

(2) If any damage or crack is found, before further flight, repair in accordance with the service bulletin, except as required by paragraph (i) of this AD.

(3) If any ''oil can'' does not meet the limits specified in the service bulletin, before further flight, repair the ''oil can'' in accordance with the service bulletin, except as required by paragraph (i) of this AD.

(i) Where the service bulletin specifies to contact Boeing for repair data, before further flight, repair the damage or crack per a method approved by the Manager, Seattle ACO, FAA; or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative (DER) who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved, as required by this paragraph, the approval must specifically reference this AD.

(j) Inspections and repairs accomplished before the effective date of this AD in accordance with Boeing ASB 767–53A0026, Revision 4, dated March 27, 2003, are considered acceptable for compliance with paragraph (h) of this AD.

Determining the Number of Flight Cycles for Compliance Time

(k) For the purposes of calculating the compliance threshold for the actions required by paragraph (f) and (h) of this AD, the number of flight cycles in which cabin differential pressure is at 2.0 pounds per square inch (psi) or less must be counted when determining the number of flight cycles that have occurred on the airplane. Where the service bulletins and this AD differ, the AD prevails.

Alternative Methods of Compliance (AMOCs)

(l)(1) The Manager, Seattle ACO, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make those findings.

(3) Alternative methods of compliance, approved previously in accordance with AD 2004–05–10, amendment 39–13505, are approved as alternative methods of compliance with this AD.

Issued in Renton, Washington, on October 18, 2004.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–23931 Filed 10–25–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–19448; Directorate Identifier 2004–NM–134–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–90–30 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all McDonnell Douglas Model MD–90–30 airplanes. This proposed AD would require replacing, with improved parts, certain existing fluorescent light lamp holders located in the ceiling panels and life raft ceiling support housings, and behind the overhead stowage compartments in the main cabin. This proposed AD is prompted by reports of failure of fluorescent light lamp holders in the main cabin. We are proposing this AD to prevent chafing of the lamp holder power wire against the mounting bracket, and moisture intrusion into the lamp holders, which could result in failure of the lamp holders and consequent smoke and fire in the airplane cabin.

DATES: We must receive comments on this proposed AD by December 10, 2004.

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

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

For service information identified in this proposed AD, contact Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024).

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

FOR FURTHER INFORMATION CONTACT: *Technical information:* George Mabuni, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5341; fax (562) 627–5210.

Plain language information: Marcia Walters, *marcia.walters@faa.gov.*

SUPPLEMENTARY INFORMATION:

Docket Management System (DMS)

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

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2004–19448; Directorate Identifier 2004–NM–134–AD'' in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments submitted by the closing date and may amend the proposed AD in light of those comments.

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

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

Examining the Docket

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

Discussion

We have received reports of failure of certain fluorescent light lamp holders that are installed in the ceiling panels and life raft ceiling support housings and behind the overhead stowage compartments in the main cabin on all McDonnell Douglas MD–90–30 airplanes. The failures have been attributed to chafing of the lamp holder power wire against the mounting bracket, and moisture intrusion into the lamp holders. Failure of the lamp holders, if not corrected, could result in smoke and fire in the airplane cabin.

Relevant Service Information

We have reviewed Boeing Alert Service Bulletin MD90–33A012, Revision 3, dated January 14, 2004. The service bulletin describes procedures for replacing existing Page Aerospace Limited fluorescent light lamp holders located in the ceiling panels and life raft ceiling support housings with improved Bruce Industries Incorporated lamp holders. Boeing Alert Service Bulletin MD90–33A012, Revision 3, refers to C & D Aerospace Alert Service Bulletin 59406XX–25A01 as an additional source of service information for accomplishing the replacement. The current version of that C&D Aerospace service bulletin is Revision 4, dated July 31, 2003.

We have also reviewed Boeing Alert Service Bulletin MD90–33A013, dated November 29, 2001. The service bulletin describes procedures for replacing existing Page Aerospace Limited fluorescent light lamp holders located behind the overhead stowage compartments in the main cabin with improved Bruce Industries Incorporated lamp holders. Boeing Alert Service Bulletin MD90–33A013 refers to C & D Aerospace Alert Service Bulletin 51310XX–25A01 as an additional source of service information for accomplishing the replacement. The current version of that C&D Aerospace service bulletin is Revision 5, dated March 30, 2004.

Accomplishing the actions specified in the Boeing service bulletins is intended to adequately address the unsafe condition.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other airplanes of this same type design. Therefore, we are proposing this AD, which would require replacing, with improved parts, certain existing fluorescent light lamp holders in the ceiling panels and life raft ceiling support housings, and behind the overhead stowage compartments in the main cabin. The proposed AD would require you to use the service information described previously to perform these actions.

Costs of Compliance

This proposed AD would affect about 84 airplanes worldwide and 21 airplanes of U.S. registry. The proposed actions would take about 98 work hours per airplane, at an average labor rate of $65 per work hour. Required parts would cost about $27,158 per airplane. Based on these figures, the estimated cost of the proposed AD for U.S. operators is $704,088, or $33,528 per airplane.

Regulatory Findings

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

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

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD. See the ADDRESSES section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

McDonnell Douglas: Docket No. FAA–2004–19448; Directorate Identifier 2004–NM–134–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this AD action by December 10, 2004.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Model MD–90–30 airplanes, certificated in any category.

Unsafe Condition

(d) This AD was prompted by reports of failure of fluorescent light lamp holders in the main cabin. We are issuing this AD to prevent chafing of the lamp holder power wire against the mounting bracket, and moisture intrusion into the lamp holders, which could result in failure of the lamp holders and consequent smoke and fire in the airplane cabin.

Compliance

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

Replacement

(f) Within 18 months after the effective date of this AD, replace existing fluorescent light lamp holders manufactured by Page Aerospace Limited, with improved parts manufactured by Bruce Industries Incorporated, as specified in Table 1 of this AD.

TABLE 1.—REPLACEMENT OF LAMP HOLDERS

Replace lamp holders in these locations—	In accordance with this service information—	Which refers to this service information as an additional source of replacement instructions—
(1) Ceiling panels and life raft ceiling support housings.	Boeing Alert Service Bulletin MD90–33A012, Revision 3, dated January 14, 2004.	C & D Aerospace Alert Service Bulletin 59406XX–25A01; currently at Revision 4, dated July 31, 2003.
(2) Sidewall behind the overhead stowage compartments in the main cabin.	Boeing Alert Service Bulletin MD90–33A013, dated November 29, 2001.	C & D Aerospace Alert Service Bulletin C & D Aerospace Alert Service Bulletin 51310XX–25A01; currently at Revision 5, dated March 30, 2004.

Parts Installation

(g) As of the effective date of this AD, no person may install a fluorescent light lamp holder manufactured by Page Aerospace Limited, in the locations specified in this AD, on any airplane.

Replacements Accomplished Per Previous Issues of Service Bulletin

(h) Replacements accomplished before the effective date of this AD per the Accomplishment Instructions of Boeing Alert Service Bulletin MD90–33A012, dated March 28, 2001; Revision 01, dated September 17, 2001; or Revision 02, dated January 17, 2002; are considered acceptable for compliance with paragraph (f) of this AD.

Alternative Methods of Compliance (AMOCs)

(i) The Manager, Los Angeles Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

Issued in Renton, Washington, on October 18, 2004.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–23930 Filed 10–25–04; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 228, 229, 232, 240, 249 and 270

[Release Nos. 33–8496A, 34–50453A, 35–27894A, 39–2428A, IC–26622A; File Number S7–35–04]

RIN 3235–AJ32

XBRL Voluntary Financial Reporting Program on the Edgar System

AGENCY: Securities and Exchange Commission.

ACTION: Correction to proposed rule.

SUMMARY: This document contains a correction to the proposed rule, which was published Friday, October 1, 2004 (69 FR 59093). The ''39'' release number should read 39–2428.

Dated: October 20, 2004.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 04–23898 Filed 10–25–04; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 658

[FHWA Docket No. FHWA–2003–16164]

RIN 2125–AE99

Commercial Vehicle Width Exclusive Devices

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Withdrawal of proposed rulemaking and closing of public docket.

SUMMARY: This document withdraws a proposed rulemaking to amend the Federal Highway Administration (FHWA) regulations to increase by one-inch the distance that width exclusive devices could extend beyond the sides of commercial motor vehicles. The intent of the one-inch increase was to harmonize the United States' width exclusion limits for certain devices with those of Canada and Mexico, as recommended in a draft report of the Land Transportation Standards Subcommittee, created as a result of the North American Free Trade Agreement (NAFTA). The FHWA is unable to determine at this time that there is a need for an increase in the existing width exclusion applicable to safety and energy conservation devices. In addition, there is no evidence that the lack of harmonization is adversely affecting NAFTA implementation or that harmonization in this area is otherwise necessary. Therefore, the FHWA is withdrawing the proposed rulemaking and closing the public docket.

FOR FURTHER INFORMATION CONTACT: Mr. Phillip Forjan, Office of Freight Management and Operations (202) 366–6817, or Mr. Raymond Cuprill, Office of the Chief Counsel (202) 366–1377, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

In October 1999, the Land Transportation Standards Subcommittee (LTSS), created by the NAFTA Working Group 2, issued a draft discussion paper. The draft paper, ''Highway Safety Performance Criteria in Support of Vehicle Weight and Dimension Regulations'' (a copy of which is included in this docket), contained candidate vehicle performance criteria and recommended threshold values. The primary objective of Working Group 2 was to seek areas within the broad range of vehicle weights and dimensions that could be harmonized among the participating countries (Mexico, Canada, and the United States).

The working group's draft discussion paper included the definition of ''overall width'' and proposed a standard for use by the three countries. This definition described width exclusive devices or appurtenances at the sides of a truck, tractor, semitrailer, or trailer whose function is related to the safe operation of the vehicle. Such devices may extend no more than 10 centimeters beyond the side of the vehicle. (Using accepted conversion factors, 10 centimeters equates to 3.937 inches.)

In a final rule published March 29, 2002 (67 FR 15102), the FHWA said it was preparing to issue a notice of proposed rulemaking (NPRM) to consider an extension from three inches (the current U.S. exclusion standard) to four inches in the distance that non-property carrying devices could protrude from the sides of commercial motor vehicles. The NPRM was eventually published under FHWA Docket No. 2001–10370 on July 29, 2002 (67 FR 48994).

Because of concerns raised by several respondents to this NPRM, in particular the absence of research on the effects of such an increase, the FHWA determined it appropriate to issue a supplemental notice of proposed rulemaking (SNPRM). On March 12, 2004, the FHWA published an SNPRM requesting further public comment on the proposal under Docket No. FHWA–2003–16164 (65 FR 11997). By issuing the SNPRM, the FHWA sought to obtain information that would document the experience of others in undertaking similar changes to vehicle width exclusion standards or monitoring and evaluating vehicle crashes caused by contact with width exclusive devices. Our goal was to ascertain whether there might be any known operating or safety repercussions that could result from the one-inch increase.

The FHWA received 3 comments in response to the SNPRM. None of these provided any more definitive information to make the required determination that the proposed expansion of the width exclusion is needed to promote commercial motor vehicle safety and efficiency. We received comments from an individual, the Truck Manufacturers Association (TMA), and the Advocates for Highway and Automobile Safety (AHAS).

Discussion of Comments

The individual commented that a Federal rule requiring all States to allow an extra inch on each side of commercial motor vehicles (CMVs) for non-cargo carrying devices on the National Network (NN) and reasonable access routes would be more efficient than each State issuing its own overwidth permits. Nevertheless, she opposed such a rule because issuing a special permit would be different than allowing a whole class of ‘‘humongous’’ vehicles. It appears that her objection was not so much directed at an extra inch for safety or energy conserving devices, but at the overall size of trucks, which is beyond the scope of this rulemaking action.

The TMA stated that the FHWA would be unable to find answers concerning possible effects of allowing the additional inch for excluded devices. It noted that this situation was not surprising, given the ‘‘obscure and essentially unresearchable nature of the underlying question—namely, will one inch of additional width of a vehicle, all things else being equal, cause more crashes?’’ It noted that the proposed change would not increase the width dimensions of the vehicle per se, but only the attached, excludable non-cargo carrying devices. The TMA stated that the change in ‘‘encroachments’’ of these devices would be ‘‘extremely small,’’ would make ‘‘researching the crash cause and effect relationship’’ very difficult, and would ‘‘not [be] readily identifiable in crash data bases.’’ The TMA concluded that, ‘‘given the de minimus nature’’ of the change, and the benefits to NAFTA harmonization efforts, it would support the one-inch increase proposed in the NPRM and SNPRM.

Repeating its earlier objections to the NPRM, the AHAS again opposed the proposal for the one-inch change in the exclusion provisions. Referring to the FHWA’s request for information in the SNPRM, it concluded that ‘‘the FHWA has acknowledged [in the SNPRM] the need to make a specific safety finding on the safety consequences of allowing an additional inch of width on each side of a commercial motor vehicle.’’ The AHAS also challenged the FHWA’s reliance upon sources claiming no knowledge about the ‘‘precise safety effects of vehicle width increases’’ as an ‘‘application of agency expertise.’’ The AHAS indicated that such reliance would not allow the FHWA to ‘‘draw well-crafted and strongly supported conclusions from the facts entered into the record.’’

It further noted that the references cited in the SNPRM are no substitute for making ‘‘specific safety findings about the consequences of change in policy,’’ and demanded that the agency employ ‘‘empirical’’ research, rather than rely upon sources that can offer no insight into the safety consequences of the suggested change. The AHAS reminded the FHWA that the requirement for such empirical research grows out of a ‘‘statutory obligation to measure the safety impact of such changes’’ that cannot be satisfied merely by ‘‘expressions of ignorance or a priori argument.’’

The AHAS further stated that adding an extra inch in the width of excluded devices is not a de minimus change in the current limitation. It also noted that there are many highways on the NN with less than 12-foot wide lanes where the one-inch increase could have safety implications.

Conclusion

The FHWA is unable to determine at this time that there is a need for an increase in the existing width exclusion applicable to safety and energy conservation devices. The administrative record of this rulemaking action has failed to identify any specific devices that would need the proposed expansion of the width exclusion in order to promote commercial motor vehicle safety and efficiency. In addition, there is no evidence that the lack of harmonization is adversely affecting NAFTA implementation or that harmonization in this area is otherwise necessary. Therefore, the FHWA is withdrawing this rulemaking and closing the docket.

Authority: 23 U.S.C. 127 and 315; 49 U.S.C. 31111 through 31115; 49 CFR 1.48(b)(19) and (c)(19).

Issued on: October 20, 2004.

Mary E. Peters,

Federal Highway Administrator.

[FR Doc. 04–23966 Filed 10–25–04; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD01–04–133]

RIN 1625–AA11

Navigation and Waterways Management Improvements, Buzzards Bay, MA

AGENCY: Coast Guard, DHS.

ACTION: Advance notice of proposed rulemaking; notice of public meetings.

SUMMARY: The Coast Guard is considering amending the existing Regulated Navigation Area for navigable waters within the First Coast Guard District, to require additional navigation safety measures within Buzzards Bay, including tug escorts and use of Recommended Routes. This advance notice of proposed rulemaking seeks public comment on the merits, advantages, and disadvantages of any amendment to the currently-existing RNA that would require tug escort of tank barges transiting Buzzards Bay, Massachusetts. In addition, the Coast Guard seeks comments on the merits of formally designating the existing Recommended Route in Buzzard’s Bay.

DATES:

1. Comments are due on or before December 27, 2004.

2. Public hearings will be held at 7:30 p.m. on November 16, 2004, and at 7:30 p.m. on November 17, 2004.

ADDRESSES: The Commanding Officer, U.S. Coast Guard Marine Safety Office Providence maintains the public docket for this ANPRM. Comments and documents will become part of this docket and will be available for inspection and copying at the same address between 8 a.m. and 3 p.m. Monday through Friday, except Federal holidays. You may submit comments and related material by:

(1) Mail or delivery to Commanding Officer, U.S. Coast Guard Marine Safety Office Providence, 20 Risho Avenue, East Providence, RI, 02914–1208.

(2) Fax to 401–435–2399.

(3) Electronically via e-mail at *EleBlanc@msoprov.uscg.mil.*

The public hearing locations are:

(1) New Bedford Whaling Museum, 18 Johnny Cake Hill, New Bedford, MA; and

(2) Massachusetts Maritime Academy, 101 Academy Drive, Buzzard's Bay, MA.

FOR FURTHER INFORMATION CONTACT: If you have questions on this ANPRM, address mail to, or call, e-mail, or fax, Mr. Edward G. LeBlanc, c/o Commanding Officer, U.S. Coast Guard Marine Safety Office Providence, 20 Risho Avenue, East Providence, RI 02914–1208, telephone 401–435–2351, or e-mail at *EleBlanc@msoprov.uscg.mil,* or fax 401–435–2399.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this ANPRM (CGD01–04–133), indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by mail, hand delivery, fax, or electronic means to the project officer at the addresses or phone numbers listed under **FOR FURTHER INFORMATION CONTACT,** but please submit your comments and material by only one means. If you submit them by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached U.S. Coast Guard Marine Safety Office Providence, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period.

Public Meetings

We intend to hold two public meetings to receive comments on this ANPRM. The times, dates, and locations for these meetings are:

(1) 7:30 p.m., Tuesday, November 16th, 2004, New Bedford Whaling Museum, 18 Johnny Cake Hill, New Bedford, MA; and

(2) 7:30 p.m. Wednesday, November 17th, 2004, Massachusetts Maritime Academy, 101 Academy Drive, Buzzards Bay, MA.

Background and Purpose

Congress designated Buzzards Bay as an Estuary of National Significance in 1985, one of only five estuaries in the U.S. so designated. The Bay has some of Massachusetts' most productive shellfish beds. It interacts with three very different marine systems, the Atlantic Ocean to the south, Vineyard Sound to the east, and Cape Cod Bay to the north. In 2002, there were nearly 10,000 commercial vessel transits and over 1200 tank barge transits in Buzzards Bay, and an estimated 80% of those tank barges were single hull vessels. Since 1969 there have been several significant incidents of tank barge groundings and tank barge groundings with oil spills in Buzzards Bay, including the grounding of the tank barge Florida in 1969 with a spill of approximately 175,000 gallons of No. 2 fuel oil; the grounding of the tank barge Bouchard in 1977 with a spill of approximately 81,000 gallons of No. 2 fuel oil; the grounding of the tank barge ST–85 in 1986 with a spill of approximately 119,000 gallons of gasoline; the grounding of the tug Marie J. Turecamo and its asphalt-laden barge in 1999; the grounding of the tug Mary Turecamo and its barge Florida in 1999 carrying 4.7 million gallons of No. 6 fuel oil; and the grounding of the barge B–120 in April 2003 with a spill of No. 6 oil estimated to be of approximately 22,000 to 98,000 gallons. Groundings or collisions of tank barges could lead to a significant discharge or release of oil or other hazardous materials, as demonstrated by the incidents noted above, with potentially significant adverse impacts on the coastal and maritime environment, and the local economy. The purpose of examining strategies for navigation and waterways management improvements in Buzzards Bay is to reduce the likelihood of another accident that might result in the discharge or release of oil or hazardous material into the navigable waters of the United States.

After a previous oil spill from the tank barge North Cape off of Point Judith, Rhode Island, in 1996, the Coast Guard chartered a Regional Risk Assessment Team (RRAT), comprised of government, commercial, and environmental entities, to examine navigation safety issues within New England waters. The RRAT recommended, and the Coast Guard implemented, a Regulated Navigation Area (RNA) that imposed certain requirements on single-hulled tank barges transiting New England waters, including Buzzards Bay. Subsequent to an oil spill in Buzzards Bay in April, 2003, noted above, the Coast Guard sponsored a Ports and Waterways Safety Assessment (PAWSA), which was conducted by a cross-section of key Buzzards Bay waterways users and stakeholders, resulting in numerous suggestions for improving navigation safety in the Bay. The PAWSA report suggested, in part, that the risk for oil or hazardous material discharge in Buzzards Bay is relatively high, and that one method of reducing that risk, among many that were suggested, might be to ''establish requirements for escort tugs.'' (The PAWSA report is available in docket CGD01–04–133. *See* **ADDRESSES** above on procedures to access the docket.) The PAWSA also recommended that Recommended Routes be established to help assist vessel traffic and provide safer transit routes for commercial vessels. Additionally, in a letter from several members of the U.S. Congressional delegation from Massachusetts, the Coast Guard was asked to consider measures similar to those recommended in the PAWSA, specifically: Assist tugs, Recommended Routes, and an Automatic Identification System (AIS). This letter, along with the Coast Guard's response, in available in the public docket.

AIS is currently the subject of a separate Coast Guard rulemaking process. See docket USCG–2003–14878, 68 FR 39369, or at *http://dms.dot.gov/.* Under the AIS rule, tank barges, among others, transiting Buzzards Bay would be required to carry AIS, although an implementation date for that carriage requirement has not yet been established, except for certain vessels on international voyages. Additionally, the Coast Guard Marine Safety Office, Providence, RI, has requested that Buzzards Bay be designated a Vessel Movement Reporting System under 33 CFR 161 to monitor the movements of certain vessels, including tank barges under tow, within Buzzards Bay. That request is currently under review by

Coast Guard headquarters in Washington, DC. A copy of this request is available in the public docket for this ANPRM (CGD01–04–133).

The National Oceanic and Atmospheric Administration (NOAA), at the request of the Coast Guard, has already indicated Recommended Routes on navigational charts for Rhode Island Sound, Narragansett Bay, and Buzzards Bay. These recommended Routes are currently included on all new editions of charts 13205, 13218, 13221, and 13230. Currently, an escort tug is required in Buzzards Bay only for single hull tank barges, unless the single hull tank barge is being towed by a primary towing vessel with twin-screw propulsion and with a separate system for power to each screw. Consequently, the vast majority of tug and barges transiting Buzzards Bay (of which most barges are single hull) employ tugs with twin screws and twin engines, but with no additional positive control. The Coast Guard is considering a regulation that would require a tug escort of all tank barges carrying oil or hazardous material regardless of the towing vessel's propulsion configuration, to ensure positive control of the tank vessel.

Discussion of Proposed Regulation

The Coast Guard is considering a regulation that would require tug escorts of all laden tank barges. The Coast Guard is also seeking comments on the merits of formally designating the existing Recommended Route, currently in place in Buzzards Bay.

For the purposes of this Notice, the following terms are as defined in 46 U.S.C. 2101:

Tank vessel is defined as ''a vessel that is constructed or adapted to carry, or that carries, oil or hazardous material in bulk as cargo or cargo residue.''

Barge is defined as a non-self-propelled vessel.

Oil is defined as ''oil of any type or in any form, including petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes except dredged spoil.''

Hazardous material is defined as ''a liquid material or substance that is flammable or combustible; designated a hazardous substance under section 311(b) of the Federal Water Pollution Control Act (33 U.S.C. 1231); or designated a hazardous material under 49 U.S.C. 5103(a)''.

For the purposes of this Notice, ''*tank barge*'' is a non-self-propelled vessel constructed or adapted to carry, or that carries, oil or hazardous material in bulk as cargo or cargo residue.

For the purposes of this Notice, the following term is as defined in 33 CFR 165.100, ''Regulated Navigation Area: Navigable waters within the First Coast Guard District:''

Tug escort is an escort or assist tug ''of sufficient capability to promptly push or tow the tank (vessel) away from danger of grounding or collision in the event of a propulsion failure; a parted towing line; a loss of tow; a fire; grounding; a loss of steering; or any other casualty that affects the navigation or seaworthiness of either vessel.''

For the purposes of this Notice,

Buzzards Bay is the body of water east and north of a line drawn from the southern tangent of Sakonnet Point, Rhode Island, in approximate position latitude 41°27.2′ N, longitude 70°11.7′ W, to the Buzzards Bay Entrance Light in approximate position latitude 41°23.5′ N, longitude 71°02.0′ W, and then to the southwestern tangent of Cuttyhunk Island, Massachusetts, at approximate position latitude 41°24.6′ N, longitude 70°57.0′ W, and including all of the Cape Cod Canal to its eastern entrance, except that the area of New Bedford harbor within the confines (north of) the hurricane barrier, and the passages through the Elizabeth Islands, would not be considered to be Buzzards Bay.

Recommended Route is the light green-shaded route contained on the most recent editions of NOAA navigational charts 13230 and 13218, and accompanied by a ''Note'' on each chart which reads ''Recommended Routes for deep draft vessels (including tugs and barges) entering and departing Rhode Island Sound, Block Island Sound, Narragansett Bay, and Buzzards Bay. While not mandatory, deep draft commercial vessels (including tugs and barges) are requested to follow the Recommended Routes at the master's discretion. Other vessels, while not excluded from these Recommended Routes, should exercise caution in and around these areas and monitor VHF channel 16 or 13 for information concerning deep draft vessels (including tugs and barges) transiting these routes. See U.S. Coast Pilot Section 2, Chapter 5, 6 or 7 as appropriate.'' These Recommended Routes are not part of the internationally recognized and approved Narragansett Bay Traffic Lane and Buzzards Bay Traffic Lane in Rhode Island Sound, and have not been formally adopted by the Coast Guard.

Questions

We invite the public to answer the following questions. Any additional information provided on this topic is welcome. In responding to each question, please identify the question to which your response applies, and explain your reasoning as fully as possible so that we can carefully weigh the consequences and impacts of any future regulatory actions the Coast Guard may take.

In preparing your responses to these questions, please indicate your position in the maritime industry, if applicable.

Tug Escorts

1. What would constitute an effective ''tug escort?'' Does the definition in this ANPRM suffice?

2. What would be the costs, if any, to tank barge owners, operators, and consumers, of requiring a tug escort for all tank barges transiting Buzzards Bay?

3. What would be the economic impact to small entities, if any, of a requirement that all tank barges have tug escorts? ''*Small entities*'' is as defined by Regulatory Flexibility Act [5 U.S.C. 601], and generally refers to an enterprise or business that ''is independently owned and operated and which is not dominant it its field of operation.''

4. Would a requirement that all tank barges have tug escorts cause a shortage of tug availability in the Buzzards Bay or Northeast U.S. areas? If so, what are the likely, potential economic impacts? Would rates for hiring tugs in the Buzzards Bay or Northeast U.S. areas change significantly as a result of such a requirement? If so, how much would rates change?

5. Are there alternatives to tug escorts, such as increased manning or pilotage requirements on tugs, or double hulls on barges, that would provide an equivalent or improved level of navigational safety in Buzzards Bay?

Vessel Routing

6. Would a requirement that tank barges under tow, and with tug escort, use the Recommended Route in Buzzards Bay currently displayed on NOAA charts have any adverse economic or navigation safety impacts?

7. Are there other alternatives to required routing that would enhance navigational safety in Buzzard's Bay, such as a Recommended Route approved by the International Maritime Organization? If so, should such a route differ from the Recommended Route currently shown on navigational charts?

Comments are not limited to the preceding questions and are invited on any aspect of the proposed regulation.

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. The U.S. Supreme Court, in the cases of *United States* v. *Locke,* 529 U.S. 89 (2000) and *Ray* v. *Atlantic Richfield Co.,* 435 U.S. 151 (1978) has ruled that certain categories regulation issued pursuant to the Ports and Waterways Safety Act of 1972, as amended, are reserved exclusively to the Coast Guard, and that state regulation in these areas is preempted.

On August 4, 2004, the Commonwealth of Massachusetts enacted Chapter 251 of the Acts of 2004, an Act Relative to Oil Spill Prevention and Response in Buzzard's Bay and Other Harbors and Bays of the Commonwealth. It is the view of the Coast Guard that several provisions of the Massachusetts Act touch categories of regulation reserved to the Federal Government and are preempted per the rulings in *Locke* and *Ray.* It is likely that any regulations promulgated as a result of this advance notice of proposed rulemaking would likewise touch categories of regulation reserved to the Federal Government, thus becoming further indicia of preemption.

Section 17 of the Massachusetts Act purports to impose a state pilotage requirement on certain vessels engaged in the coastwise trade. It is the view of the Coast Guard that this provision is void by operation of law pursuant to 46 U.S.C. § 8501. Coast Guard regulations promulgated as a result of this advance notice of proposed rulemaking may also address pilotage.

Because of the preemption issues described above, the Coast Guard will conduct a Federalism analysis pursuant to E.O. 13132 for any rules promulgated as a result of this notice. Sections 4 and 6 of E.O. 13132 require that for any rules with preemptive effect, the Coast Guard shall provide elected officials of affected state and local governments and their representative national organizations the notice and opportunity for appropriate participation in any rulemaking proceedings, and to consult with such officials early in the rulemaking process. Although it is the view of the Coast Guard that certain sections of the Massachusetts law are preempted for reasons independent of any potential rulemaking action here, in order to comply with the spirit of E.O. 13132, the Coast Guard has already begun consultations with the state government of Commonwealth of Massachusetts. We invite other affected state and local governments and their representative national organizations to indicate their desire for participation and consultation in the rulemaking process by submitting comments to this notice.

Dated: October 14, 2004.

David Pekoske,

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

[FR Doc. 04–23963 Filed 10–25–04; 8:45 am]

BILLING CODE 4910–15–P

Notices

Federal Register

Vol. 69, No. 206

Tuesday, October 26, 2004

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Notice of Availability of the Environmental Assessment (EA) for the Program Comments Under 36 CFR 800.14(e) Regarding Department of Defense Historic Properties Management

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice of availability of Environmental Assessment (EA).

SUMMARY: This announces the availability of the Department of Defense's EA for the Program Comments under 36 CFR 800.14(e) Regarding Department of Defense Historic Properties Management. The Army, as the Service designated as lead for this action, intends to sign a Finding of No Significant Impact (FONSI) unless public comments identify significant impacts or issues that have not been considered.

DATES: Submit comments on or before November 26, 2004.

ADDRESSES: Requests for copies of the EA may be directed by mail to the US Army Environmental Center, ATTN: SFIM–AEC–PA (ATTN: Mr. Robert DiMichele) Aberdeen Proving Ground, MD 21010–5401, or by phone (410) 436–2556. The DoD also solicits written comments on the EA. Such comments must be submitted by mail to the same address no later than the date mentioned above.

FOR FURTHER INFORMATION CONTACT: Mr. Lee Foster, Cultural Resources Action Officer, Office of Director of Environmental Programs, at (703) 601–1591.

SUPPLEMENTARY INFORMATION: Section 106 of the National Historic Preservation Act (section 106), 16 U.S.C. 470f, requires Federal agencies to take into account the effects of their undertakings on historic properties, and provide the Advisory Council on Historic Preservation (ACHP) a reasonable opportunity to comment on those undertakings. The regulations implementing Section 106 are found at 36 CFR part 800.

The Department of Defense (DoD) has identified a programmatic approach to comply with the requirements of section 106 for the treatment of historic properties including Cold War era Unaccompanied Personnel Housing (UPH), World War II and Cold War era Ammunition Storage Facilities, and World War II and Cold War era Army Ammunition Production Facilities and Plants.

These approximately 45,000 buildings and structures are about 11% of the overall DoD inventory of 397,389 buildings and structures. UPH encompasses all current and former DoD enlisted barracks, bachelor officer quarters, and transient quarters constructed during the period commencing in 1946 and ending in 1974. Ammunition Storage Facilities comprises all DoD Ammunition bunkers and magazines constructed from 1939 through 1974. The third category includes Army Ammunition Plants constructed from 1939 to 1974.

The DoD engaged in a major construction program during these periods in order to address the shortage of housing, storage facilities, and production plants that developed out of World War II mobilization requirements and the increased size of the standing military during the Cold War era. A significant portion of these buildings and structures are nearing the age of fifty years old, triggering the need for the DoD to consider, in accordance with Section 106, these buildings and structures.

In order to support the military mission, the DoD needs to develop a programmatic approach to Section 106 compliance for each of these categories of property types. Management activities affecting these buildings and structures occur on a daily basis, including but not limited to ongoing operations, maintenance and repair, rehabilitation, renovation, mothballing, ceasing maintenance activities, new construction, demolition, deconstruction and salvage, and transfer, sale, lease and/or closure.

These programs comments are meant to directly support improvement of quality of life, safety and advancements in technology that directly affect soldiers. The DoD is developing a Barracks Modernization Program to provide better quarters for unaccompanied personnel. As the military adopts new ammunition technologies to meet new environmental and war-fighting requirements, storage needs are likely to change, resulting in modifications to existing storage facilities or the need to re-use or excess those that cannot be adapted. To allow for advancement in production technology and to facilitate planned excessing actions as well as possible future Base Realignment and Closure activities in the most effective manner for a large number of properties, the Army is planning multiple actions at Army Ammunition Plants and Production Facilities.

Development of the EA was preceded by coordination with the ACHP. The EA gives full consideration of the request and implementation of Program Comments in accordance with 36 CFR 800.14(e) as the proposed action, and two reasonable alternatives to the proposed action.

The EA considered, evaluated and assessed alternatives: (i) The no action alternative (continued project-by-project review under 36 CFR Part 800); (ii) the Programmatic Agreement Alternative; and (iii) the proposed action alternative of requesting and implementing Program Comments in accordance with 36 CFR 800.14(e). Consideration of the alternatives analyzed in the EA leads to the DoD's decision to request and implement Program Comments.

The no action alternative would allow a continued ad hoc approach to compliance with Section 106 and management of historic properties. With the anticipated growth in DoD's historic properties inventory, continued review of undertakings on a case-by-case basis will likely remain inefficient and lead to increased program costs. This could have adverse impacts on the ability of the DoD to provide suitable housing for unaccompanied personnel, safe storage of ammunition, and improved and updated ammunition production facilities.

The Programmatic Agreement (PA) Alternative better meets the stated purpose and need than the no action alternative since it would provide an installation-specific or regional programmatic basis for Section 106 compliance. PAs must be negotiated with appropriate stakeholders such as State and Tribal Historic Preservation Officers, Indian tribes, and other consulting parties. This approach, however, would involve lengthy and complex negotiations that have no specified time limits, and which might ultimately still require some case-by-case review. Also, after a PA goes into effect, it may be unilaterally terminated by any signatory, limiting the long-term effectiveness and consistency of such agreements. In addition, installation-specific or regional PAs would not address all DoD NHPA Section 106 compliance responsibilities in a single agreement, and would not provide for an economy of scale in the treatment of agency-wide resources. Like the no action alternative, the PA alternative could result in adverse impacts to the DoD's need to provide suitable housing for unaccompanied personnel, safely store ammunition, and improve and update ammunition production facilities.

The proposed action more squarely meets the stated purpose and need for action and provides the necessary balance between preservation and the need to expeditiously provide suitable housing for unaccompanied personnel, safely store ammunition, and improve and update ammunition production facilities. While the proposed action has the potential to adversely impact historic properties, those impacts are not likely to be significant. The DoD will ensure that effects on historic properties are considered and addressed up front through programmatic treatment.

The Council on Environmental Quality regulations, at 40 CFR 1501.6, encourage Federal lead agencies to request that other Federal agencies with special expertise concerning a relevant environmental issue associated with a proposed action to participate as a cooperating agency in the National Environmental Policy Act (NEPA) process. The DoD recognizes that the ACHP has special expertise with respect to historic properties, and, in particular, on the review of Federal agency undertakings under Section 106 of the NHPA. The ACHP is responsible for reviewing, and, if appropriate, issuing program comments in accordance with 36 CFR 800.14(e)(1)–(6). For these reasons, DoD has requested that the ACHP participate as a consulting party in the drafting, review and release of this EA. The ACHP has agreed to participate as a cooperating agency and, in that role, is publishing this notice of availability on behalf of the DoD. The ACHP's agreement to publish this DoD notice of availability does not in any way signify any ACHP endorsement, or lack thereof, of the program comments or commitment to ultimately adopt or reject them. Such decisions will be made by the ACHP pursuant to the process under 36 CFR 800.14(e).

Authority: 40 CFR 1501.6

Dated: October 21, 2004.

John M. Fowler,

Executive Director (ACHP).

[FR Doc. 04–23952 Filed 10–25–04; 8:45 am]

BILLING CODE 4310–10–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 04–105–1]

Melaleuca; Availability of an Environmental Assessment

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of availability and request for comments.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has prepared an environmental assessment relative to an application for a permit for the environmental release of the nonindigenous fly *Fergusonina turneri* and its obligate nematode, *Fergusobia quinquenerviae,* potential biological control agents for *Melaleuca quinquenervia.* The environmental assessment documents our review and analysis of environmental impacts associated with, and alternatives to, issuing a permit for the environmental release of the fly and nematode in the continental United States. We are making this environmental assessment available to the public for review and comment.

DATES: We will consider all comments that we receive on or before November 26, 2004.

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

- Postal Mail/Commercial Delivery: Please send four copies of your comment (an original and three copies) to Docket No. 04–105–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 04–105–1.
- E-mail: Address your comment to *regulations@aphis.usda.gov.* Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 04–105–1" on the subject line.
- Agency Web Site: Go to *http://www.aphis.usda.gov/ppd/rad/cominst.html* for a form you can use to submit an e-mail comment through the APHIS Web site.

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

Other Information: You may view APHIS documents published in the **Federal Register** and related information, including the names of groups and individuals who have commented on APHIS dockets, on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html.*

FOR FURTHER INFORMATION CONTACT: Dr. Wayne Wehling, Biological and Technical Services, Pest Permit Evaluations, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1236; (301) 734–8757.

SUPPLEMENTARY INFORMATION:

Background

The Australian broad-leaved paperbark tree, *Melaleuca quinquenervia,* commonly called melaleuca, has become a successful invasive weed in southern Florida because of its ability to produce large quantities of seed. Individual trees bear up to 100 million seeds. Massive, simultaneous seed release occurs after fire or when some other event causes drying of the seed capsules, but a steady seed rain occurs even without such an event. Densities of seedlings may be as high as 10 million seedlings/hectare (ha), and growth and development of the trees, along with simultaneous self-thinning produces mature stands of 10–15,000 trees/ha. Individual trees can grow into localized stands. These stands merge with other stands to form expansive monocultures often covering hundreds of acres. Melaleuca has invaded more than a half-million acres in southern Florida and over $25 million has been spent over the past decade to manage it, yet it continues to spread.

Melaleuca was first imported to southern Florida as an ornamental tree around 1900. Later, it was widely planted in wetlands as an inexpensive production method for the nursery trade in an attempt to produce a harvestable commodity. By the late 1970's, melaleuca became recognized as an invasive weed due to its ability to produce large quantities of seed. It was added to the Florida Prohibited Plant List in 1990, and to the Federal Noxious Weed List in 1992.

Melaleuca has been difficult to control. Herbicide treatments or controlled burns cause the release of billions of seeds and result in thickets of saplings where only a few trees existed prior to treatment. These infestations are often in sensitive habitats that are difficult to access and hazardous in which to work. Moreover, multiple followup visits are necessary to hand remove seedlings that continue to reappear from the remaining seed bank. Although melaleuca trees can be killed using traditional methods, the inability to control reinvasion or to limit continued spread remains a problem. Biological control has also been pursued as an option, with the Australian weevil *Oxyops vitiosa* and the melaleuca psyllid *Boreioglycaspis melaleucae* having been released to control melaleuca in 1997 and 2002, respectively. More recently, the nonindigenous fly *Fergusonina turneri* Taylor (Diptera: Fergusoninidae) and its obligate nematode, *Fergusobia quinquenerviae* Davies and Giblin-Davis (Tylenchida: Sphaerulariidae), have been identified as potential biological control agents of melaleuca.

The fly *F. turneri* and the nematode *F. quinquenerviae* have a mutualistic biology that causes galls on plant buds and young leaves of melaleuca. Female flies are infected with parasitic female nematodes, nematode eggs, and nematode juveniles that persist through the life of the female fly. The female fly deposits multiple eggs along with the juvenile nematodes into developing melaleuca buds. These nematodes induce the formation of galls in the bud. Fly larvae then feed on the gall tissue and complete development within the gall. The adult fly will later emerge from a ''window'' in the gall wall, starting the cycle all over again. This process hampers the ability of melaleuca to regenerate by decreasing seed production and reducing survival of melaleuca seedlings and saplings.

The Animal and Plant Health Inspection Service (APHIS) is considering an application for a permit for the release of *F. turneri* and *F. quinquenerviae* into the continental United States to reduce the severity and extent of melaleuca infestation. APHIS' review and analysis of the proposed action and its alternatives are documented in detail in an environmental assessment (EA) entitled, ''Field Release of the Biological Control Agent *Fergusonina turneri* Taylor (Diptera: Fergusoninidae) and its Obligate Nematode, *Fergusobia quinquenerviae* Davies and Giblin-Davis (Tylenchida: Sphaerulariidae) for the Control of *Melaleuca quinquenervia* (Cav.) S.T. Blake (Myrtales: Myrtaceae) in the Continental United States'' (September 2004). We are making this environmental assessment available to the public for review and comment. We will consider all comments that we receive on or before the date listed under the heading **DATES** at the beginning of this notice.

The EA may be viewed on the Internet at *http://www.aphis.usda.gov/ppq/.* In the middle of that page, click on ''Document/Forms Retrieval System.'' At the next screen, click on the triangle beside ''Permits—Environmental Assessments.'' A list of documents will appear; the EA for melaleuca is document number 0039. You may request paper copies of the EA by calling or writing to the person listed under **FOR FURTHER INFORMATION CONTACT.** Please refer to the title of the EA when requesting copies. The EA is also available for review in our reading room (information on the location and hours of the reading room is listed under the heading **ADDRESSES** at the beginning of this notice).

The environmental assessment has been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500-1508), (3) USDA regulations implementing NEPA (7 CFR part 1), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Done in Washington, DC, this 21st day of October 2004.

Elizabeth E. Gaston,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E4–2856 Filed 10–25–04; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Resource Advisory Committee Meeting

AGENCY: Lassen Resource Advisory Committee, Susanville, California, USDA Forest Service.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committees Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) the Lassen National Forest's Lassen County Resource Advisory Committee will meet Wednesday, November 10th and Friday, November 12th in Susanville, California for a business meeting. The meetings are open to the public.

SUPPLEMENTARY INFORMATION: The business meetings on November 10th and 12th will begin at 9 a.m., at the Lassen National Forest Headquarters Office, Caribou Conference Room 2550 Riverside Drive, Susanville, CA 96130. These meetings will be dedicated to hearing presentations from project proponents for funding through the ''Secure Rural Schools and Self Determination Act of 2000,'' commonly known as Payments to States. Time will also be set aside for public comments at the beginning of the meeting.

FOR FURTHER INFORMATION CONTACT: Robert Andrews, District Ranger, Designated Federal Officer, at (530) 257–4188; or Public Affairs Officer, Heidi Perry, at (530) 252–6605.

Jeff Withroe,

Acting Forest Supervisor.

[FR Doc. 04–23923 Filed 10–25–04; 8:45 am]

BILLING CODE 3410–11–M

APPALACHIAN STATES LOW-LEVEL RADIOACTIVE WASTE COMMISSION

Annual Meeting

Time and Date: 10 a.m.–12 p.m. November 3, 2004.

Place: Harrisburg Hilton and Towers, One North Second Street, Harrisburg, PA 17101.

Status: Most of the meeting will be open to the public. If there is a need for an executive session (closed to the public), it will be held at about 9:30 a.m.

Matters To Be Considered:

Portions Open to the Public: The primary purpose of this meeting is to (1) Review the independent auditors' report of Commission's financial statements for fiscal year 2003–2004; (2) Review the

Low-Level Radioactive Waste (LLRW) generation information for 2003; (3) Consider a proposed budget for fiscal year 2005–2006; (4) Review recent national developments regarding LLRW management and disposal; and (5) Elect the Commission's Officers.

Portions Closed to the Public: Executive Session, if deemed necessary, will be held at about 9:30 a.m.

Contact for Further Information: Richard R. Janati, Pennsylvania Staff member on the Commission, at (717) 787–2163.

Richard R. Janati,

PA Staff Member on the Commission.

[FR Doc. 04–23884 Filed 10–25–04; 8:45 am]

BILLING CODE 0000–00–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 45–2004]

Foreign-Trade Zone 208—New London, CT, Application for Subzone, (Pharmaceutical Products), Pfizer, Inc.

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board), by the New London Foreign Trade Zone Commission, grantee of FTZ 208, requesting special-purpose subzone status for the manufacturing facilities of Pfizer, Inc. (Pfizer), in the Groton, Connecticut, area, adjacent to the New London Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on October 20, 2004.

Pfizer's Groton plant (57 acres) is located at 445 Eastern Point Road, Groton, New London County, Connecticut. The facility (approximately 400 employees) is used for the manufacture, processing, warehousing and distribution of pharmaceuticals, as well as for research and development activities. Pfizer will use zone procedures at the Groton plant to purify selamectin (HTSUS 2932.29.5050), a pharmaceutical ingredient used in the manufacture of the animal health care product Revolution (TM), a topical parasiticide for dogs and cats (HTSUS 3004.90.9103). The activity related to selamectin also involves the use of hydroxylamine (HTSUS 2928.00.5000). Selamectin is currently sourced from the United Kingdom, while hydroxylamine is sourced from Germany. The foreign-sourced chemicals will account for most of the material value of the finished product.

Zone procedures would exempt Pfizer from Customs duty payments on foreign input when used in production for export (some 33 percent of production). On domestic shipments, the processing of selamectin at the Groton plant would not affect the classification or duty rate of selamectin. The company plans to ship the product to another FTZ plant for final processing, at which time Pfizer would be able to choose the lower duty rate (duty free) that applies to the finished product, rather than the duty rates on the foreign-sourced inputs listed above. The duty rates on the foreign-sourced inputs range from 3.7 percent to 6.5 percent. The request indicates that the savings from utilizing FTZ procedures would help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following addresses:

1. *Submissions via Express/Package Delivery Services:* Foreign-Trade Zones Board, U.S. Department of Commerce, Franklin Court Building-Suite 4100W, 1099 14th Street, NW., Washington, DC 20005; or,

2. *Submissions via the U.S. Postal Service:* Foreign-Trade Zones Board, U.S. Department of Commerce, FCB–Suite 4100W, 1401 Constitution Avenue, NW., Washington, DC 20230.

The closing period for their receipt is [December 19, 2004]. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to [January 4, 2005]).

A copy of the application and accompanying exhibits will be available during this time for public inspection at the address Number 1 listed above, and at the City of New London's Office of Development & Planning, 111 Union Street, New London, CT 06320.

Dated: October 20, 2004.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 04–23956 Filed 10–25–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–851]

Amended Final Results of Sixth Antidumping Duty New Shipper Review: Certain Preserved Mushrooms From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of amended final results of sixth antidumping duty new shipper review.

EFFECTIVE DATE: October 26, 2004.

FOR FURTHER INFORMATION CONTACT: Brian C. Smith or James Mathews, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1766 or (202) 482–2778, respectively.

Amendment to Final Results

In accordance with section 751(a) of the Tariff Act of 1930 (the "Act"), on September 9, 2004, the Department published the final results of the sixth antidumping duty new shipper review of the antidumping duty order on certain preserved mushrooms from the People's Republic of China ("PRC"), in which we determined that the sole respondent, Primera Harvest (Xiangfan) Co., Ltd. ("Primera Harvest"), sold subject merchandise to the United States at less than normal value during the period of review (69 FR 54635). On September 17, 2004, we received an allegation, timely filed pursuant to section 751(h) of the Act and 19 CFR 351.224(c)(2), from Primera Harvest that the Department made a ministerial error in its final results. The petitioner [1] did not comment on the alleged ministerial error.

After analyzing Primera Harvest's submission, we have determined, in accordance with section 751(h) of the Act and 19 CFR 351.224, that two ministerial errors were made in our final margin calculation for Primera Harvest. Specifically, we incorrectly applied the surrogate value for cans and lids in the calculation of Primera Harvest's factors

[1] The petitioner is the Coalition for Fair Preserved Mushroom Trade which includes the American Mushroom Institute and the following domestic companies: L.K. Bowman, Inc., Nottingham, PA; Modern Mushroom Farms, Inc., Toughkenamon, PA; Monterey Mushrooms, Inc., Watsonville, CA; Mount Laurel Canning Corp., Temple, PA; Mushrooms Canning Company, Kennett Square, PA; Southwood Farms, Hockessin, DE; Sunny Dell Foods, Inc., Oxford, PA; United Canning Corp., North Lima, OH.

of production-based normal value. In addition, we discovered during our analysis of Primera Harvest's September 17, 2004, ministerial error allegation that we inadvertently did not include in Primera Harvest's verification report a correction noted with respect to the respondent's reported can and lid weights. (*See* page 1 of verification exhibit 6A of Primera Harvest's verification report entitled Verification of the Response of Primera Harvest (Xiangfan) Co., Ltd. in the Sixth Antidumping Duty New Shipper Review of Certain Preserved Mushrooms from the People's Republic of China.) Furthermore, we failed to account for this correction in our final margin program for Primera Harvest. Because this additional clerical error was not raised by the parties during the ministerial error comment period, on September 28, 2004, we provided parties with an opportunity to comment on it. No parties submitted comments on the additional clerical error noted above. For a detailed discussion of the ministerial errors, as well as the Department's analysis, *see* the memorandum to Louis Apple from the Team, dated September 28, 2004.

Therefore, in accordance with section 751(h) of the Act and 19 CFR 351.224(e), we are amending the final results of the 2002–2003 antidumping duty new shipper review of the order on certain preserved mushrooms from the PRC. The revised dumping margin is as follows:

Exporter/manufacturer	Original final margin percentage	Revised final margin percentage
Primera Harvest (Xiangfan) Co., Ltd	82.22	67.79

We will notify U.S. Customs and Border Protection (''CBP'') of the revised cash deposit rate for Primera Harvest.

Scope of the Order

The products covered by the order are certain preserved mushrooms whether imported whole, sliced, diced, or as stems and pieces. The preserved mushrooms covered under the order are the species *Agaricus bisporus* and *Agaricus bitorquis.* ''Preserved mushrooms'' refer to mushrooms that have been prepared or preserved by cleaning, blanching, and sometimes slicing or cutting. These mushrooms are then packed and heated in containers including but not limited to cans or glass jars in a suitable liquid medium, including but not limited to water, brine, butter or butter sauce. Preserved mushrooms may be imported whole, sliced, diced, or as stems and pieces. Included within the scope of the order are ''brined'' mushrooms, which are presalted and packed in a heavy salt solution to provisionally preserve them for further processing.

Excluded from the scope of the order are the following: (1) All other species of mushroom, including straw mushrooms; (2) all fresh and chilled mushrooms, including ''refrigerated'' or ''quick blanched mushrooms''; (3) dried mushrooms; (4) frozen mushrooms; and (5) ''marinated,'' ''acidified'' or ''pickled'' mushrooms, which are prepared or preserved by means of vinegar or acetic acid, but may contain oil or other additives.[2]

The merchandise subject to the order is currently classifiable under subheadings 2003.10.0027, 2003.10.0031, 2003.10.0037, 2003.10.0043, 2003.10.0047, 2003.10.0053, and 0711.90.4000 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

These amended final results of this new shipper review and notice are in accordance with sections 751(h) and 777(i) of the Act and 19 CFR 351.224(e).

Dated: October 19, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. E4–2858 Filed 10–25–04; 8:45 am]

BILLING CODE 3510–DS–P

[2] On June 19, 2000, the Department affirmed that ''marinated,'' ''acidified,'' or ''pickled'' mushrooms containing less than 0.5 percent acetic acid are within the scope of the antidumping duty order. *See* ''Recommendation Memorandum—Final Ruling of Request by Tak Fat, *et al.* for Exclusion of Certain Marinated, Acidified Mushrooms from the Scope of the Antidumping Duty Order on Certain Preserved Mushrooms from the People's Republic of China,'' dated June 19, 2000.

DEPARTMENT OF COMMERCE

International Trade Administration

Application for Duty-Free Entry of Scientific Instrument

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether an instrument of equivalent scientific value, for the purposes for which the instrument shown below is intended to be used, is being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5 p.m. in Suite 4100W, U.S. Department of Commerce, Franklin Court Building, 1099 14th Street, NW., Washington, DC.

Docket Number: 04–019. *Applicant:* Texas A & M Research Foundation, 3578 TAMU—Dulie Bell Bldg., College Station, TX 77843–3578. *Instrument:* Scanning Hall Probe Microscope. *Manufacturer:* NanoMagnetics Instruments Ltd., United Kingdom.

Intended Use: The instrument is intended to be used to investigate:

1. The magnetic field properties of mesoscopically patterned thin films and nanostructured clusters of single magnet molecules for use as dense magnetic memories and in quantum computing.

2. The influence of periodic or randomly varying magnetic fields on the properties of thin films of superconductors, ordinary conductors, semiconductors and other magnetic materials at temperatures as low as 2 K.

3. The development of magnetic microstructures for diamagnetic levitation and manipulation of small particles and droplets.

The Instrument will also be used in courses on microscale magnetic field properties. Application accepted by Commissioner of Customs: October 7, 2004.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 04–23955 Filed 10–25–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

University of Pennsylvania; Notice of Decision on Application for Duty-Free Entry of Electron Microscope

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in Suite 4100W, Franklin Court Building, U.S. Department of Commerce, 1099 14th Street, NW., Washington, DC.

Docket Number: 04–017. *Applicant:* University of Pennsylvania, Philadelphia, PA. *Instrument:* Electron Microscope, Model Technai G^2 TWIN bioTWIN. *Manufacturer:* FEI Company, Japan. *Intended Use:* See notice at FR 69, 60395, October 8,2004. *Order Date:* January 20, 2004.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as the instrument is intended to be used, was being manufactured in the United States at the time the instrument was ordered. Reasons: The foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or any other instrument suited to these purposes, which was being manufactured in the United States either at the time of order of the instrument OR at the time of receipt of the application by U.S. Customs and Border Protection.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. 04–23954 Filed 10–25–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free-Trade Agreement (NAFTA), Article 1904 NAFTA Panel Reviews; Decision of the Panel

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of decision of NAFTA Panel.

SUMMARY: On October 19, 2004, the NAFTA Panel issued its decision in the matter of Corrosion-Resistant Carbon Steel Flat Products from Canada, Secretariat File No. USA–CDA–00–1904–11.

FOR FURTHER INFORMATION CONTACT: Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, NW., Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement (''Agreement'') establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* (''Rules''). These rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686). The panel review in this matter was conducted in accordance with these rules.

Background Information: On December 28, 2000, Dofasco filed a First Request for Panel Review with the United States Section of the NAFTA Secretariat pursuant to Article 1904 of the North American Free Trade Agreement. Panel review was requested of the final results of the full sunset review of antidumping duty orders made by the United States International Trade Commission, respecting Certain Corrosion-Resistant Steel Flat Products from Canada and the continuation of antidumping duty order by the U.S. Department of Commerce based on the International Trade Commission's determination. These determinations were published in the **Federal Register**, (65 FR 75301) on December 1, 2000, and (65 FR 78469) on December 15, 2000. The NAFTA Secretariat has assigned Case Number USA–CDA–00–1904–11 to this request.

Panel Decision

The Panel remanded this matter back to the International Trade Commission and found:

(1) The Commission's decision to cumulate Canadian imports, in light of its consideration of the high capacity utilization rates in Canada, is unsupported by substantial evidence; and

(2) The Commission's determination that the Domestic Industry is in a ''weakened state'', in light of its ''profit center'' rationale, is unsupported by substantial evidence and not in accordance with law.

Accordingly, the Panel remanded the case to the Commission stating:

—If it still wishes to cumulate Canadian corrosion resistant steel products, the Commission must sufficiently explain and articulate—consistent with this opinion—the basis of its conclusions as to whether, in light of the high capacity utilization rates prevalent in Canada during the period of review, there exists substantial evidence in the record upon which to base the Commission's determination that there was available excess capacity in Canada sufficient to lead to an increase in imports having a discernible adverse impact upon the domestic industry if the antidumping order were to be revoked.

—If the Commission still chooses to find that the Domestic Industry is in a vulnerable or weakened state, the Commission must sufficiently explain and articulate—consistent with this opinion—the basis of its conclusions as to whether the Commission's analysis of the impact of Canadian imports involves the profits of the domestic corrosion-resistant steel industry or those of the broader steel industry, and the impact of the profit analysis upon the Commission's affirmative vulnerability determination regarding the domestic corrosion-resistant steel industry.

In a separate opinion, Panelist Anissimoff stated in part:

The issue concerns the Arguments made by parties before the Commission which are left unaddressed by the Commission in its determination. The Complainant says that its arguments and evidence were not expressly addressed by the Commission in its determination.

The obligation to discuss relevant and material arguments legally springs from 19 U.S.C. 1677f(i)(3)(B) along with the legislative history as found at the Uruguay Round Trade Agreements, Statement of Administrative Action, H.R. Doc. No. 316, Vol. 1, 103d Cong., 2d Sess. 892 (1994) (hereinafter ''SAA''). Shortly stated, the Commission is legally obliged to discuss in its determination the relevant and material arguments made by interested parties, in this case the Complainant.

Equally the Commission is presumed by law to have considered all of the arguments and evidence of the interested parties in making its determination. However, Dastech Int'l., as recognized in *Usinor Beautor* v. *United States,* in no sense gives a *carte blanche* to the Commission to not address in its determination the material and relevant arguments of a party.

The Panel ordered the Commission to issue a determination on remand consistent with the instructions set forth in the Panel's decision not later than December 3, 2004.

Dated: October 20, 2004.

Caratina L. Alston,

United States Secretary, NAFTA Secretariat.

[FR Doc. E4–2857 Filed 10–25–04; 8:45 am]

BILLING CODE 3510–GT–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Science Advisory Board; Meetings

AGENCY: Office of Oceanic and Atmospheric Research, NOAA, DOC.

ACTION: Notice of open meeting.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA) Science Advisory Board (SAB) was established by a Decision Memorandum dated September 25, 1997, and is the only Federal Advisory Committee with responsibility to advise the Under Secretary of Commerce for Oceans and Atmosphere on long- and short-range strategies for research, education, and application of science to resource management and environmental assessment and prediction. SAB activities and advice provide necessary input to ensure that science programs are of the highest quality and provide optimal support the NOAA mission.

Time and Date: The meeting will be held Tuesday, November 2, 2004, from 1 p.m. to 5 p.m. and Wednesday, November 3, 2004, from 9 a.m. to 5 p.m. These times and the agenda topics described below may be subject to change. Refer to the Web page listed below for the most up-to-date meeting agenda.

Place: The meeting will be held both days at the National Geographic Society Headquarters, 1145 17th Street, NW., Washington, DC.

Status: The meeting will be open to public participation with a 30-minute time period set aside on Wednesday, November 3 for direct oral statements or questions from the public. The SAB expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. In general, each individual or group making an oral presentation will be limited to a total time of five minutes. Written comments (at least 35 copies) should be received in the SAB Executive Director's Office by October 27, 2004, to provide sufficient time for SAB review prior to the meeting. Written comments received by the SAB Executive Director after October 27, 2004, will be distributed to the SAB, but may not be reviewed prior to the meeting date.

Approximately (30) seats will be available for the public including five seats reserved for the media. Seats will be available on a first-come, first-served basis.

Matters to be Considered: The meeting will include the following topics: (1) NOAA Response to the SAB recommendations in the Research Review Team Report ''Review of the Organization and Management of Research in NOAA'', (2) Draft Strategic Plan for the U.S. Integrated Earth Observing System, (3) NOAA 5-Year Research Plan and 20-Year Research Vision, (4) Final U.S. Commission on Ocean Policy Report, (5) Regional Ecosystem Based Management, (6) Cooperative Institute For Arctic Research (CIFAR) Review, (7) Cooperative Institute for Atmospheric Sciences and Terrestrial Applications (CIASTA) Review, (8) SAB Subcommittee and Working Group Reports and (9) public statements.

FOR FURTHER INFORMATION CONTACT: Dr. Michael Uhart, Executive Director, Science Advisory Board, NOAA, Rm. 11142, 1315 East-West Highway, Silver Spring, Maryland 20910. (Phone: 301–713–9121, Fax: 301–713–3515, e-mail: *Michael.Uhart@noaa.gov*); or visit the NOAA SAB Web site at *http://www.sab.noaa.gov.*

Dated: October 20, 2004.

Louisa Koch,

Deputy Assistant Administrator, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. 04–23888 Filed 10–25–04; 8:45 am]

BILLING CODE 3510–KD–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Request for Public Comments on Commercial Availability Petitions under the United States - Caribbean Basin Trade Partnership Act (CBTPA)

October 21, 2004.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Request for public comments concerning two petitions for determination that certain circular single knit jersey fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner under the CBTPA.

SUMMARY: On October 19, 2004, the Chairman of CITA received two petitions from Sandler, Travis & Rosenberg, P.A., on behalf of Jaclyn, Inc. of New York, alleging that certain circular single knit jersey fabrics of the specifications detailed below, classified in subheadings 6006.32.00.80 and 6006.31.00.80 of the Harmonized Tariff Schedule of the United States (HTSUS), cannot be supplied by the domestic industry in commercial quantities in a timely manner. These petitions request that women's and girl's nightwear of such fabrics assembled in one or more CBTPA beneficiary countries be eligible for preferential treatment under the CBTPA. CITA hereby solicits public comments on these petitions, in particular with regard to whether these fabrics can be supplied by the domestic industry in commercial quantities in a timely manner. Comments must be submitted by November 10, 2004, to the Chairman, Committee for the Implementation of Textile Agreements, Room 3001, United States Department of Commerce, 14th and Constitution, N.W., Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT: Anna Flaaten, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 213(b)(2)(A)(v)(II) of the CBERA, as added by Section 211(a) of the CBTPA; Section 6 of Executive Order No. 13191 of January 17, 2001.

BACKGROUND:

The CBTPA provides for quota- and duty-free treatment for qualifying textile and apparel products. Such treatment is generally limited to products manufactured from yarns or fabrics formed in the United States. The CBTPA also provides for quota- and duty-free treatment for apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more CBTPA beneficiary countries from fabric or yarn that is not formed in the United States, if it has been determined that such fabric or yarn cannot be supplied by the domestic industry in commercial quantities in a timely manner. In Executive Order No. 13191, the President delegated to CITA the authority to determine whether yarns or fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner under the CBTPA and directed CITA to establish procedures to ensure appropriate public participation in any such determination. On March 6, 2001, CITA published procedures that it will follow in considering requests. (66 FR 13502).

On October 19, 2004, the Chairman of CITA received two petitions on behalf of Jaclyn, Inc. of New York, alleging that certain circular single knit jersey fabrics of the specifications detailed below, cannot be supplied by the domestic industry in commercial quantities in a timely manner and requesting quota- and duty-free treatment under the CBTPA for certain apparel articles that are cut and sewn in one or more CBTPA beneficiary countries from such fabrics.

Specifications:

Fabric #1	
Fabric Description:	single knit jersey, jacquard geometric rib stitch
Petitioner Style No:	4934A
HTS Subheading:	6006.32.00.80
Fiber Content:	66-68% polyester staple/32-34% cotton/0.2-0.5% spandex
Weight:	6.165 sq. meters/kg
Yarn Size:	54.14 metric (32/1 English), spun, filament core
Gauge:	24
Finish:	(Piece) dyed
Stretch Characteristics:	Minimum 25% from relaxed state; 90% recovery to relaxed state
Fabric #2	
Fabric Description:	single knit jersey, jacquard geometric rib stitch
Petitioner Style No:	4944S
HTS Subheading:	6006.31.00.80 & 6006.32.00.80
Fiber Content:	64% polyester/35.5 - 35.8% cotton/0.2 - 0.5% spandex
Weight:	6.06 sq. meters/kg
Yarn Size:	54.14 metric (32/1 English), spun, filament core
Gauge:	28
Finish:	Bleached or (Piece) dyed
Stretch Characteristics:	25% from relaxed state; 90% recovery to relaxed state

The petitioner emphasizes that these fabrics must be knit on a jacquard machine in order to provide the geometric pattern and puckered effect apparent in the fabrics. Also, the petitioner states that the fabrics' stretch properties set forth are necessary.

CITA is soliciting public comments regarding this request, particularly with respect to whether this fabric can be supplied by the domestic industry in commercial quantities in a timely manner. Also relevant is whether other fabrics that are supplied by the domestic industry in commercial quantities in a timely manner are substitutable for the fabric for purposes of the intended use. Comments must be received no later than November 10, 2004. Interested persons are invited to submit six copies of such comments or information to the Chairman, Committee for the Implementation of Textile Agreements, room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, DC 20230.

If a comment alleges that these fabrics can be supplied by the domestic industry in commercial quantities in a timely manner, CITA will closely review any supporting documentation, such as a signed statement by a manufacturer of the fabric stating that it produces the fabric that is the subject of the request, including the quantities that can be supplied and the time necessary to fill an order, as well as any relevant information regarding past production.

CITA will protect any business confidential information that is marked ''business confidential'' from disclosure to the full extent permitted by law. CITA will make available to the public non-confidential versions of the request and non-confidential versions of any public comments received with respect to a request in room 3100 in the Herbert Hoover Building, 14th and Constitution Avenue, N.W., Washington, DC 20230. Persons submitting comments on a request are encouraged to include a non-confidential version and a non-confidential summary.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 04–23939 Filed 10–21–04; 12:44 pm]

BILLING CODE 3510–DR–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: The Defense Science Board Task Force on Force Protection in Urban and Unconventional Environments will meet in closed session on October 27–28, 2004, at Strategic Analysis, Inc., 3601 Wilson Boulevard, Arlington, VA. This Task Force will review and evaluate force protection capabilities in urban and unconventional environments and provide recommendations to effect change to the future Joint Force.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. Specifically, the Task Force's foci will be to evaluate force protection in the context of post major combat operations that have been conducted in Iraq and Afghanistan. In the operations, loss of national treasure—military and civilian, U.S. and other nations—has resulted from actions executed by non-state and rogue actors. The threat and capabilities these insurgent, terrorist and criminal actions present pose a most serious challenge to our ability to achieve unified action.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92–463, as amended (5 U.S.C. App. 2), it has been determined that these Defense Science Board Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, these meetings will be closed to the public.

Due to scheduling difficulties, there is insufficient time to provide timely notice required by section 10(a)(2) of the Federal Advisory Committee Act and Subsection 101–6.1015(b) of the GSA Final Rule on Federal Advisory Committee Management, 41 CFR part 101–6, which further requires publication at least 15 calendar days prior to the meeting.

Dated: October 20, 2004.

Linda Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 04–23885 Filed 10–25–04; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Air Force

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DoD.

ACTION: Notice to amend a system of records.

SUMMARY: The Department of the Air Force is amending a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on November 26, 2004, unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to the Air Force Privacy Act Manager, Office of the Chief Information Officer, AF–CIO/P, 1155 Air Force Pentagon, Washington, DC 20330–1155.

FOR FURTHER INFORMATION CONTACT: Mrs. Anne Rollins at (703) 696–6280.

SUPPLEMENTARY INFORMATION: The Department of the Air Force systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: October 20, 2004.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

F034 AF SVA F

SYSTEM NAME:

Automated Air Force Library Information System (June 11, 1997, 62 FR 31793).

CHANGES:

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Replace 'Air Force Regulation 215–15, Air Force Library and Information System,' with 'Air Force Instruction 34–270, Air Force Library and Information System'.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Replace entry with 'Director, Air Force Libraries, Air Force Services Agency, Libraries Branch, 10100 Reunion Place, Suite 502, San Antonio, TX 78216–4138'.

* * * * *

F034 SVA F

SYSTEM NAME:

Automated Air Force Library Information System.

SYSTEM LOCATION:

At all Air Force bases, stations, laboratories, and centers operating automated library systems. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notice.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All military personnel and dependents; civilian personnel (including contractors) and dependents who are authorized to use Air Force libraries.

CATEGORIES OF RECORDS IN THE SYSTEM:

Social security number, library card number, name, base and/or home address, privilege code, statistical code, base organizational affiliation code, telephone number(s), expiration date, registration date, issuing library, number of cards issued, service code (if appropriate), and graduate school code (if appropriate) for special borrowers; on-line patron registration which may include at some locations security clearance level/special accesses; need-to-know subject areas, and citizenship.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force; Air Force Instruction 34–270, Air Force Library and Information System, and E.O. 9397 (SSN).

PURPOSE(S):

This system is used to track accountability of materials charged via operation of the library's automated circulation control system; to follow up on delinquent borrowers by generation of overdue notices, to clear departing patrons and delete their names from the file, to issue library cards, and to ensure proper control of classified and limited distribution material.

ROUTINE USED OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' published at the beginning of the Air force's compilation of record system notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in computer and computer output products, and on paper application forms.

RETRIEVABILITY:

Individual's name, Social security Number, and library card number.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets. Those in computer storage devices are protected by computer system software.

RETENTION AND DISPOSAL:

Records are destroyed when expended, when material is returned on consolidation of records, or on other proper settlement of responsibility. Records are destroyed by tearing into pieces, shredding, pulping, macerating or burning. Computer records are destroyed by erasing, deleting or overwriting.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Air Force Libraries, Air Force Services Agency, Libraries Branch, 10100 Reunion Place, Suite 502, San Antonio, TX 78216–4138.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether this system of records contains information on them should address inquiries to the Air Force Libraries, Air Force Services Agency, Libraries Branch, 10100 Reunion Place, Suite 502, San Antonio, TX 78216–4138 or to library officials at location of assignment.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address requests to the Air Force Libraries, Air Force Services Agency, Libraries Branch, 10100 Reunion Place, Suite 502, San Antonio, TX 78216–4138 or to library officials at location of assignment.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 33–322; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Personal information obtained from the individual.

EXEMPTION CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 04–23886 Filed 10–25–04; 8:45 am]

BILLING CODE 5001–04–M

DEPARTMENT OF ENERGY

Notice of Cancellation of Environmental Impact Statement for the McIntosh Unit 4 Pressurized Circulating Fluidized Bed Demonstration Project

AGENCY: Department of Energy.

ACTION: Notice of cancellation of Environmental Impact Statement Process.

SUMMARY: The Department of Energy (DOE) is canceling the preparation of an Environmental Impact Statement (EIS) for a proposal by the City of Lakeland to design, construct, and operate a project known as the McIntosh Unit 4 Pressurized Circulating Fluidized Bed Demonstration Project in Lakeland, Florida. DOE selected the City of Lakeland's proposal for further consideration under DOE's Clean Coal Technology Demonstration Program competitive solicitation. The City of Lakeland proposed constructing the demonstration project at the site of the existing C.D. McIntosh Junior Power Plant along the northeastern shore of Lake Parker. The proposed project was intended to demonstrate advanced circulating fluidized bed combustion technologies using a variety of low and high sulfur coal to produce electricity. DOE published a Notice of Intent to prepare an EIS for the proposal in the **Federal Register** on March 26, 1999 (64 FR 14710), and conducted a public scoping meeting in the City of Lakeland's City Commission Chambers on April 13, 1999. The proposed project has been discontinued. As a result, DOE is canceling the EIS process.

FOR FURTHER INFORMATION, CONTACT: Lloyd Lorenzi, National Energy Technology Laboratory, U.S. Department of Energy, P.O. Box 10940, Pittsburgh, PA 15236–0940, telephone (412) 386–6159, or electronic mail at *lorenzi@netl.doe.gov.*

Issued in Morgantown, WV, on this 15th day of September, 2004.

Ralph Carabetta,

Deputy Director, National Energy Technology Laboratory.

[FR Doc. 04–23918 Filed 10–25–04; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Notice of Cancellation of Environmental Impact Statement for the Colorado Springs Utilities Next-Generation CFB Coal Generating Unit, Fountain, CO

AGENCY: Department of Energy.

ACTION: Notice of cancellation of Environmental Impact Statement Process.

SUMMARY: The Department of Energy (DOE) is canceling the preparation of an Environmental Impact Statement (EIS) for a proposal by Colorado Springs Utilities (CSU) to design, construct, and operate a project known as the Next-Generation Circulating Fluidized Bed (CFB) Coal Generating Unit near Fountain, El Paso County, Colorado. DOE selected CSU's proposal for further consideration under DOE's Clean Coal Power Initiative competitive solicitation. CSU proposed building a new power plant at a site adjacent to the existing 227-megawatt Ray D. Nixon Power Plant on the Clear Springs Ranch, a 5,000-acre, CSU-owned property located approximately 17 miles south of Colorado Springs. The proposed project was intended to demonstrate advanced technologies for using a variety of fuels, including Powder River Basin sub-bituminous coal from Wyoming, bituminous coals from Illinois and Pennsylvania, waste coal, and wood waste, to produce electricity to meet forecasted demand. DOE issued a Notice of Intent to prepare an EIS for the proposal in the **Federal Register** on August 15, 2003 (68 FR 48893), and conducted a public scoping meeting in Fountain, Colorado, on September 3, 2003. On December 17, 2003, CSU announced its intention to cancel plans for the proposed project. In a letter to DOE dated January 9, 2004, CSU withdrew its application for the project. As a result, DOE is canceling the EIS process.

FOR FURTHER INFORMATION, CONTACT: Lloyd Lorenzi, National Energy Technology Laboratory, U.S. Department of Energy, P.O. Box 10940, Pittsburgh, PA 15236–0940, telephone (412) 386–6159, or electronic mail at *lorenzi@netl.doe.gov.*

Issued in Morgantown, WV, on this 15th day of September, 2004.

Ralph Carabetta,

Deputy Director, National Energy Technology Laboratory.

[FR Doc. 04–23919 Filed 10–25–04; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Notice of Cancellation of Environmental Impact Statement for the Clean Power From Integrated Coal/Ore Reduction (CPICOR) Project

AGENCY: Department of Energy.

ACTION: Notice of cancellation of Environmental Impact Statement process.

SUMMARY: The Department of Energy (DOE) is canceling the preparation of an Environmental Impact Statement (EIS) for a proposal by Geneva Steel Company to design, construct, and operate a project known as the Clean Power from Integrated Coal/Ore Reduction (CPICOR) Project near Provo, Utah. DOE selected Geneva Steel Company's proposal for further consideration under DOE's Clean Coal Technology Demonstration Program competitive solicitation. Geneva Steel proposed constructing the demonstration project at the site of its existing steel-making operations in Provo, Utah. The proposed CPICOR project was intended to demonstrate advanced circulating fluidized bed combustion technologies using a variety of low and high sulfur coal to produce electricity. DOE published a Notice of Intent to prepare an EIS for the proposal in the **Federal Register** on June 28, 1999 (64 FR 34640), and conducted a public scoping meeting in the Council Chambers of the Provo City Center on July 15, 1999.

The proposed project has been discontinued. As a result, DOE is canceling the EIS process.

FOR FURTHER INFORMATION CONTACT: Lloyd Lorenzi, National Energy Technology Laboratory, U.S. Department of Energy, P.O. Box 10940, Pittsburgh, PA 15236–0940, telephone 412–386–6159, or electronic mail at *lorenzi@netl.doe.gov.*

Issued in Morgantown, WV, on this 15th day of September 2004.

Ralph Carabetta,

Deputy Director, National Energy Technology Laboratory.

[FR Doc. 04–23917 Filed 10–25–04; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC05–5–000, et al.]

Calpine Eastern Corporation, et al.; Electric Rate and Corporate Filings

October 19, 2004.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Calpine Eastern Corporation, Bethpage Energy Center 3, LLC, Calpine Bethpage 3, LLC

[Docket Nos. EC05–5–000 and EL05–8–000]

Take notice that on October 13, 2004, Calpine Eastern Corporation, Bethpage Energy Center 3, LLC, and Calpine Bethpage 3, LLC (Applicants), submitted an application pursuant to section 203 of the Federal Power Act for authorization of a disposition of jurisdictional facilities whereby: (1) Calpine Eastern Corporation proposes to sell its membership interests in Bethpage Energy Center 3, LLC to a subsidiary of the General Electric Company; (2) Bethpage Energy Center 3, LLC proposes to lease to Calpine Bethpage 3, LLC an approximately 79.9 megawatt electric generating facility currently under construction in New York; and (3) Bethpage Energy Center 3, LLC proposes to assign a power sales agreement to Calpine Bethpage 3, LLC. Applicants also request that the Commission, pursuant to section 201(e) of the FPA, disclaim jurisdiction over the proposed passive owner participant and passive owner lessor of the Bethpage III Energy Center.

Comment Date: 5 p.m. eastern time on November 3, 2004.

2. Oasis Power Partners, LLC

[Docket No. EG05–8–000]

Take notice that on October 12, 2004, Oasis Power Partners, LLC (Oasis), filed an application for a determination that it is an exempt wholesale generator. Oasis states that it will own an electric generating facility located in Kern County, California, that will consist of 60 wind-powered turbine generators and ancillary equipment having a generating capability of 60.0 MW.

Comment Date: 5 p.m. eastern time on November 2, 2004.

3. Bethpage Energy Center 3, LLC

[Docket No. EG05–9–000]

Take notice that on October 14, 2004, Bethpage Energy Center 3, LLC (Applicant), c/o Calpine Corporation, Two Atlantic Avenue, Third Floor, Boston, MA 02110, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Applicant states that it is a Delaware limited liability company and proposes to own a 79.9 megawatt natural gas-fired combined cycle electric generating facility located in the Town of Oyster Bay, Nassau County, New York. Applicant further states that copies of the application were served upon the United States Securities and Exchange Commission and New York State Public Service Commission.

Comment Date: 5 p.m. eastern time on November 4, 2004.

4. Calpine Bethpage 3, LLC

[Docket No. EG05–10–000]

Take notice that on October 14, 2004, Calpine Bethpage 3, LLC (Applicant), c/o Calpine Corporation, 50 W. San Fernando Street, San Jose, CA 95113, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Applicant states that it is a Delaware limited liability company and proposes to operate a 79.9 megawatt natural gas-fired combined cycle electric generating facility located in the Town of Oyster Bay, Nassau County, New York. Applicant further states that copies of the application were served upon the United States Securities and Exchange Commission and New York State Public Service Commission.

Comment Date: 5 p.m. eastern time on November 4, 2004.

5. New York Independent System Operator, Inc.

[Docket Nos. EL02–125–002]

Take notice that on October 15, 2004, the New York Independent System Operator, Inc. (NYISO) filed revisions to Attachment S of its Open-Access Transmission Tariff. NYISO states that these revisions implement provisions of a settlement approved by the Commission in these proceedings by order issued August 20, 2004. The NYISO has requested an effective date of October 25, 2004 for the revised tariff sheets.

NYISO states that it has served a copy of this filing on the service list maintained by the Commission in this proceeding. NYISO further states that it has electronically served a copy of this filing on the official representative of each of its customers, on each participant in its stakeholder committees, and on the New York State Public Service Commission. The NYISO has also served the electric utility regulatory agencies of New Jersey and Pennsylvania.

Comment Date: 5 p.m. eastern time on October 29, 2004.

6. NorthWestern Energy, a division of NorthWestern Corporation

[Docket No. ER03–329–005]

Take notice that on October 14, 2004, NorthWestern Energy, a division of NorthWestern Corporation (NWE) tendered for filing with the Commission, a second amendment to its July 29 and 30, 2003, compliance filing in Docket No. ER03–329–001.

Comment Date: 5 p.m. eastern time on November 4, 2004.

7. Xcel Energy Services Inc.

[Docket No. ER04–1174–001]

Take notice that on October 13, 2004, Xcel Energy Services Inc. (XES), on behalf of its affiliates, Public Service Company of Colorado (PSCo) and Southwestern Public Service Company (SPS) an amendment to the September 2, 2004, filing in Docket No. ER04–1174–000.

XES states that it has served a copy of the amended filing on each of the persons listed on the Commission's official service list as well as on other persons to whom copies of the complete September 2, 2004, filing were sent.

Comment Date: 5 p.m. eastern time on November 3, 2004.

8. Black Creek Hydro, Inc.

[Docket No. ER05–42–000]

Take notice that on October 13, 2004, Black Creek Hydro, Inc. (Black Creek Hydro) tendered for filing an Agreement for Power Sale (Agreement) between Black Creek Hydro and Avista Corporation (Avista), dated July 1, 2004. Black Creek Hydro states that the Agreement provides for the sale by Black Creek Hydro to Avista of the total energy produced by the Black Creek Hydroelectric Project, located in King County, Washington. Black Creek Hydro also states that the Agreement supersedes Black Creek Hydro's Supplement No. 1 to Rate Schedule FERC No. 1. Black Creek Hydro requests an effective date of June 30, 2004.

Black Creek Hydro states that it has served copies of this filing on Avista.

Comment Date: 5 p.m. eastern time on November 3, 2004.

9. Wisconsin Power and Light Company

[Docket No. ER05–43–000]

Take notice that on October 13, 2004, Wisconsin Power and Light Company (WPL), on its own behalf and on behalf of Municipal Wholesale Power Group, and Wisconsin Public Power Inc. (the Parties), submitted an amendment to the settlement agreement among the Parties on file with the Commission in Docket No. ER02–977–000.

Comment Date: 5 p.m. eastern time on November 3, 2004.

10. Williams Power Company, Inc.

[Docket No. ER05–44–000]

Take notice that on October 13, 2004, Williams Power Company, Inc.

(Williams) filed with the Commission a request to modify Schedule A of its Reliability Must-Run Service Agreements with the California Independent System Operator Corporation (CAISO) for Alamitos and Huntington Beach generating facilities, WPC Rate Schedules FERC Nos. 17 and 19. Williams states that the proposed revisions to Schedule A reflect ramp rate set out in the CAISO Tariff and, if adopted, will simplify and expedite the dispatch and settlement process.

Comment Date: 5 p.m. eastern time on November 3, 2004.

11. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER05–46–000]

Take notice that on October 14, 2004, Midwest Independent Transmission System Operator, Inc. (Midwest ISO) pursuant to section 205 of the Federal Power Act and section 35.13 of the Commission's regulations, 18 CFR 35.13 (2004), submitted for filing revisions to Exhibit A and Exhibit B of the Network Integration Transmission Service Agreement under the Midwest ISO's Open Access Transmission Tariff, FERC Electric Tariff, Second Revised Volume No. 1, between Wabash Valley Power Association, Inc., Midwest Energy Cooperative and the Midwest ISO.

Comment Date: 5 p.m. eastern time on November 4, 2004.

12. Calpine Bethpage 3, LLC

[Docket No. ER05–48–000]

Take notice that on October 14, 2004, Calpine Bethpage 3, LLC (the Applicant) tendered for filing, under section 205 of the Federal Power Act (FPA), a request for authorization to make wholesale sales of electric energy, capacity, replacement reserves, and ancillary services at market-based rates, to reassign transmission capacity, and to resell firm transmission rights. Applicant states that it will finish the construction of, test, lease and operate a 79.9 megawatt combined-cycle electric generation facility in the Town of Oyster Bay, New York.

Comment Date: 5 p.m. eastern time on November 4, 2004.

Standard Paragraph

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all parties to this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–2840 Filed 10–25–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice; Sunshine Act

October 20, 2004.

The following notice of meeting is published pursuant to section 3(A) of the Government in the Sunshine Act (Pub. L. 94–409), 5 U.S.C 552b:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: October 27, 2004, 10 a.m.

PLACE: Room 2C, 888 First Street, NE., Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

***Note**—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Magalie R. Salis, Secretary, Telephone (202) 502–8400. For a recording listing items stricken from or added to the meeting, call (202) 502–8627.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Reference and Information Center.

872ND—Meeting, October 27, 2004. Regular Meeting, 10 a.m.

Administrative Agenda

A–1.
Docket# AD02–1, 000, Agency Administrative Matters
A–2.
Docket# AD02–7, 000, Customer Matters, Reliability, Security and Market Operations
A–3 Presentation by John Bear, Chief Operating Officer, for Midwest Independent Transmission System Operator, Inc.

Markets, Tariffs and Rates—Electric

E–1.
Docket# EL00–95, 111, San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator Corporation and the California Power Exchange
Other #s EL00–98, 098, Investigation of Practices of the California Independent System Operator and the California Power Exchange
E–2.
Docket# EL02–129, 001, Southern California Water Company
E–3.
Docket# ER03–171, 002, Entergy Mississippi, Inc.
Other #s ER03–171, 003, Entergy Mississippi, Inc.
ER03–171, 004, Entergy Mississippi, Inc.
E–4.
Docket# ER04–458, 002, Midwest Independent Transmission System Operator, Inc.
Other #s ER04–458, 003, Midwest Independent Transmission System Operator, Inc
E–5.
Docket# ER04–316, 001, Southern California Edison Company on Behalf of Mountainview Power Company, LLC
E–6.
Docket# ER04–622, 001, Redbud Energy LP
E–7.
Docket# ER04–521, 002, PJM Interconnection, L.L.C. and Midwest Independent Transmission System Operator, Inc.
Other #s ER04–521, 001, PJM Interconnection, L.L.C. and Midwest Independent Transmission System Operator, Inc.
ER04–521, 004, PJM Interconnection, L.L.C. and Midwest Independent Transmission System Operator, Inc.
ER04–375, 004, PJM Interconnection, L.L.C. and Midwest Independent Transmission System Operator, Inc.
ER04–375, 002, PJM Interconnection, L.L.C. and Midwest Independent Transmission System Operator, Inc.
ER04–718, 000, PJM Interconnection, L.L.C. and Commonwealth Edison Company
ER04–718, 002, PJM Interconnection, L.L.C. and Commonwealth Edison Company

E–8.
Docket# EL00–95, 092, San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator Corporation and the California Power Exchange
Other #s EL00–98, 079, Investigation of Practices of the California Independent System Operator and the California Power Exchange
E–9.
Docket# ER04–1013, 000, Wheelabrator Westchester, L.P.
Other #s ER04–1013, 001, Wheelabrator Westchester, L.P.
ER04–1013, 002, Wheelabrator Westchester, L.P.
ER98–3030, 002, Wheelabrator Westchester, L.P.
ER98–3030, 004, Wheelabrator Westchester, L.P.
E–10.
Docket# ER99–1610, 006, Xcel Energy Services, Inc.
Other #s ER04–1207, 000, Xcel Energy Services, Inc.
E–11.
Docket# ER04–1245, 000, Fibrominn LLC
E–12.
Docket# ER03–10, 002, ONEOK Energy Marketing and Trading Company, L.P.
E–13.
Docket# ER04–1131, 000, Starlight, Energy LP
Other #s ER04–1131, 001, Starlight, Energy LP
E–14.
Docket# ER04–1022, 000, Choice Energy Services, L.P.
Other #s ER04–1022, 001, Choice Energy Services, L.P.
E–15.
Docket# ER04–1113, 000, Pythagoras Global Investors, L.P.
Other #s ER04–1113, 001, Pythagoras Global Investors, L.P.
E–16.
Docket# ER04–1220, 000, Caprock Wind LLC
E–17.
Docket# ER04–1222, 000, DB Energy Trading LLC
E–18.
Docket# ER04–1215, 000, Anthracite Power and Light Company
Other #s ER04–1215, 001, Anthracite Power and Light Company
E–19.
Docket# ER03–1102, 003, California Independent System Operator Corporation
Other #s ER03–1102, 004, California Independent System Operator Corporation
E–20.
Docket# ER03–1102, 005, California Independent System Operator Corporation
E–21.
Docket# EL03–26, 000, New York Independent System Operator, Inc. v. Dynegy Power Marketing, Inc.
Other #s EL03–26, 001, New York Independent System Operator, Inc. v. Dynegy Power Marketing, Inc.
EL003–26, 002, New York Independent System Operator, Inc. v. Dynegy Power Marketing, Inc.
E–22.
Omitted
E–23.
Omitted
E–24.
Omitted
E–25.
Omitted
E–26.
Omitted
E–27.
Docket# ER04–1188, 000, New York Independent System Operator, Inc.
E–28.
Docket# ER04–1149, 000, NewCorp Resources Electric Cooperative, Inc.
Other #s ER04–1149, 001, NewCorp Resources Electric Cooperative, Inc.
E–29.
Docket# ER04–1179, 000, PJM Interconnection, L.L.C.
E–30.
Docket# ER04–1160, 000, Midwest Independent Transmission System Operator, Inc.
E–31.
Omitted
E–32.
Docket# ER04–1010, 000, AES Ironwood, LLC
Other #s ER04–1010, 001, AES Ironwood, LLC
ER01–1315, 002, AES Ironwood, LLC
E–33.
Docket# ER04–1176, 000, Southern California Edison Company
E–34.
Docket# ER04–1194, 000, SESCO Enterprises Canada Ltd.
E–35.
Docket# ER04–1165, 000, Midwest Independent Transmission System Operator, Inc.
Other #s ER04–1165, 001, Midwest Independent Transmission System Operator, Inc.
EL04–43, 002, Tenaska Power Services Company v. Midwest Independent Transmission System Operator, Inc.
EL04–43, 003, Tenaska Power Services Company v. Midwest Independent Transmission System Operator, Inc.
EL04–46, 002, Cargill Power Markets, LLC v. Midwest Independent Transmission System Operator, Inc.
EL04–46, 003, Cargill Power Markets, LLC v. Midwest Independent Transmission System Operator, Inc.
E–36.
Docket# ER04–1135, 000, Wisconsin Power & Light Company
E–37.
Omitted
E–38.
Docket# ER04–663, 000, Entergy Services, Inc.
E–39.
Docket# ER02–2407, 002, Brascan Energy Marketing Inc.
E–40.
Docket# ER01–989, 002, Green Mountain Power Corporation
ER01–989, 003, Green Mountain Power Corporation
E–41.
Docket# ER01–2306, 001, Peoples Energy Services Corporation
E–42.
Docket# ER01–2508, 001, ENMAX Energy Marketing, Inc.
E–43.
Omitted
E–44.
Docket# ER03–407, 004, California Independent System Operator Corporation
E–45.
Docket# ER03–1272, 003, Entergy Services, Inc.
E–46.
Omitted
E–47.
Docket# EC4–110, 000, Michigan Electric Transmission Company, LLC
Other #s ER04–847, 000, Michigan Electric Transmission Company, LLC
E–48.
Omitted
E–49.
Docket# EF03–3011, 000, United States Department of Energy—Southeastern Power Administration (Georgia-Alabama-South Carolina System)
E–50.
Omitted
E–51.
Omitted
E–52.
Omitted
E–53.
Omitted
E–54.
Omitted
E–55.
Docket# ER00–565, 001, Pacific Gas and Electric Company
Other #s ER00–565, 007, Pacific Gas and Electric Company
E–56.
Docket# EL03–184, 000, Colorado River Commission of Nevada
E–57.
Docket# ER04–227, 000, Mirant Delta, LLC and Mirant Potrero, Inc.
E–58.
Docket# EL04–26, 000, Sithe Energies, Inc.
Other #s QF85–311, 004, Acme POSDEF Partners, L.P.
E–59.
Docket# QF95–328, 007, EcoEléctrica, L.P.
E–60.
Docket# ER04–835, 001, California Independent System Operator Corporation
Other #s ER04–835, 002, California Independent System Operator Corporation
ER04–835, 003, California Independent System Operator Corporation
E–61.
Docket# ER01–2214, 003, Entergy Services, Inc.
E–62.
Docket# ER04–691, 003, Midwest Independent Transmission System System Operator, Inc.
Other #s ER04–691, 007, Midwest Independent Transmission System System Operator, Inc.

EL04–104, 003, Public Utilities With Grandfathered Agreements in the Midwest ISO Region
EL04–104, 006, Public Utilities With Grandfathered Agreements in the Midwest ISO Region

Markets, Tariffs and Rates—Gas

G–1.
Docket# RP04–254, 000, City of Hamilton, Ohio v. Texas Eastern Transmission, L.P.
G–2.
Docket# RP04–378, 000, Gas Technology Institute
G–3.
Docket# RP02–362, 006, Gas Transmission Northwest Corporation
G–4.
Docket# RP04–92, 001, Georgia Public Service Commission
Other #s RP04–92, 002, Georgia Public Service Commission
G–5.
Omitted
G–6.
Omitted
G–7.
Omitted
G–8.
Omitted
G–9.
Docket# RP00–469, 007, East Tennessee Natural Gas Company
Other #S RP00–469, 008, East Tennessee Natural Gas Company
RP00–469, 009, East Tennessee Natural Gas Company
RP01–22, 009, East Tennessee Natural Gas Company
RP01–22, 010, East Tennessee Natural Gas Company
RP01–22, 011, East Tennessee Natural Gas Company
RP03–177, 004, East Tennessee Natural Gas Company
RP03–177, 005, East Tennessee Natural Gas Company
RP03–177, 006, East Tennessee Natural Gas Company
G–10.
Docket# RP02–551, 002, Dominion Transmission, Inc.
Other #s RP02–551, 003, Dominion Transmission, Inc.
G–11.
Docket# RP04–267, 001, Transcontinental Gas Pipe Line Corporation
G–12.
Omitted
G–13.
Omitted
G–14.
Docket# TS04–76, 000, American Transmission Company, LLC
Other #s TS04–76, 001, American Transmission Company, LLC
TS04–53, 001, Destin Pipeline Company, LLC
TS04–280, 000, Jupiter Energy Corporation
TS04–282, 000, Old Dominion Electric Cooperative
TS04–234, 001, SCG Pipeline, Inc.
TS04–278, 000, Stingray Pipeline Company and Nautilus
Pipeline Company
TS04–276, 000, United Illuminating Company
TS04–164, 000, Venice Gathering System
TS04–268, 000, WestGas Interstate, Inc.
TS04–125, 000, Wisconsin Public Service Corp., and Upper Peninsula Power Company
ER04–397, 000, Wisconsin Public Service Corp., and Upper Peninsula Power Company
G–15.
Docket# RP04–51, 000, Paiute Pipeline Company
G–16.
Docket# RP02–335, 002, ANR Pipeline Company
G–17.
Docket# RP05–04, 000, Maritimes and Northeast Pipeline, L.L.C.

Energy Projects—Hydro

H–1.
Omitted
H–2.
Docket# P–1494, 251, Grand River Dam Authority
H–3.
Docket# P–3605, 036, Adirondack Hydro-Fourth Branch, LLC
H–4.
Docket# P–1971, 093, Idaho Power Company
H–5.
Docket# P–2000, 051, Power Authority of the State of New York
Other #s EL03–224, 001, Massachusetts Municipal Wholesale Electric Company v. Power Authority of the State of New York
H–6.
Docket# P–516, 396, South Carolina Electric & Gas Company
H–7.
Docket# P–516, 398, South Carolina Electric & Gas Company
H–8.
Docket# P–1354, 036, Pacific Gas and Electric Company
H–9.
Docket# P–516, 386, South Carolina Electric & Gas Company
H–10.
Docket# P–11659, 002, Gustavus Electric Company

Energy Projects—Certificates

C–1.
Omitted
C–2.
Docket# CP04–371, 000, Chandeleur Pipe Line Company
C–3.
Docket# CP04–60, 000, Tennessee Gas Pipeline Company
C–4.
Docket# CP04–334, 000, CenterPoint Energy—Mississippi River Transmission Corporation
C–5.
Docket# RP04–139, 001, Virginia Natural Gas, Inc., v. Columbia Gas Transmission Corporation

Magalie R. Salas,
Secretary.

The Capitol Connection offers the opportunity for remote listening and viewing of the meeting. It is available for a fee, live over the Internet, via C-Band Satellite. Persons interested in receiving the broadcast, or who need information on making arrangements should contact David Reininger or Julia Morelli at the Capitol Connection (703–993–3100) as soon as possible or visit the Capitol Connection Web site at *http://www.capitolconnection.gmu.edu* and click on ''FERC''.

[FR Doc. 04–23995 Filed 10–21–04; 4:44 pm]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Meeting, Notice of Vote, Explanation of Action Closing Meeting and List of Persons to Attend; Sunshine Act

October 20, 2004.

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. 94–409), 5 U.S.C. 552b:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: October 27, 2004, (within a relatively short time after the Commission's open meeting on October 27).

PLACE: Room 3M 4A/B, 888 First Street, NE., Washington, DC 20426.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Non-Public Investigations and Inquiries, Enforcement Related Matters, and Security of Regulated Facilities.

CONTACT PERSON FOR MORE INFORMATION: Magalie R. Salas, Secretary, telephone (202) 502–8400.

Chairman Wood and Commissioners Brownell, Kelliher, and Kelly voted to hold a closed meeting on October 27, 2004. The certification of the General Counsel explaining the action closing the meeting is available for public inspection in the Commission's Public Reference Room at 888 First Street, NE., Washington, DC 20426.

The Chairman and the Commissioners, their assistants, the Commission's Secretary and her assistant, the General Counsel and members of her staff, and a stenographer are expected to attend the meeting. Other staff members from the Commission's program offices who will advise the Commissioners in the matters discussed will also be present.

Magalie R. Salas,

Secretary.

[FR Doc. 04–23996 Filed 10–21–04; 4:45 pm]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[MN85; FRL–7830–3]

Notice of Issuance of Part 71 Federal Operating Permit to Great Lakes Gas Transmission L.P.

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: This notice announces that, pursuant to title V of the Clean Air Act and to 40 CFR part 71, on September 28, 2004, the Environmental Protection Agency (EPA), Region 5 issued a title V Permit to Operate (title V permit), to Great Lakes Gas Transmission L.P. (Great Lakes). This permit authorizes the company to operate Compressor Station No. 4 (CS #4), one of five Great Lakes compressor stations located in Minnesota. The compressor station is composed of two natural gas-fired turbines and one natural gas-fired generator, which the source uses to add pressure along a natural gas pipeline. The turbines are located in Deer River, Minnesota on the Leech Lake Band of Ojibwe Indian Reservation.

DATES: The title V Permit will become effective on October 28, 2004. EPA has provided the required public comment period for the permit in accordance with 40 CFR 71.11, and has issued it as final.

ADDRESSES: The final signed permits are available for public inspection online at *http://www.epa.gov/region5/air/permits/epermits.htm* or during normal business hours at the following address: EPA, Region 5, 77 West Jackson Boulevard (AR–18J), Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Ethan Chatfield, EPA, Region 5, 77 W. Jackson Boulevard (AR–18J), Chicago, Illinois 60604, (312) 886–5112, or *chatfield.ethan@epa.gov.*

SUPPLEMENTARY INFORMATION: This supplemental information is organized as follows:

A. What Is the Background Information?
B. What Action Is EPA Taking?

A. What Is the Background Information?

Great Lakes operates nearly 2,000 miles of large diameter underground pipeline, which transports natural gas for delivery to customers in the midwestern and northeastern United States and eastern Canada. The pipeline's 14 compressor stations, located approximately 75 miles apart, operate to keep natural gas moving through the system. Compressors operated at these stations add pressure to natural gas in the pipeline, causing it to flow to the next compressor station. The pipeline normally operates continuously, but at varying load, 24 hours per day and 365 days per year.

CS #4 is located approximately 3 miles west of the City of Deer River on the Leech Lake Band of Ojibwe Indian Reservation in Itasca County, Minnesota. The station consists of two stationary natural gas-fired turbines (EU–001, EU–002), which drive two natural gas compressors, and one natural gas-fired standby electrical generator (EU–003), which provides electrical power for critical operations during temporary electrical power outages and during peak loading.

Since Great Lakes CS #4 is a major stationary source, is subject to section 111 of the Clean Air Act, and is located in Indian Country, it is subject to the permitting requirements of Part 71 (40 CFR 71.3(a), 71.4(b)). On September 28, 2004, EPA issued a federal title V Permit (No. V–LL–R50002–04–01) incorporating all applicable air quality requirements, including monitoring sufficient to yield reliable data on the source's compliance with the permit. In accordance with the requirements of 40 CFR 71.11(d), EPA provided the public with the required 30 days to comment on the draft permit. EPA received comments from the Leech Lake and Mille Lacs Band of Ojibwe. EPA has attached to the Statement of Basis a Response to Comments document summarizing the comments and providing a brief explanation as to why changes were or were not made, and has placed it online at *http://www.epa.gov/region5/air/permits/const/r5permits.htm.*

EPA is not aware of any outstanding enforcement actions against Great Lakes and believes issuance of this permit is non-controversial.

B. What Action Is EPA Taking?

EPA is notifying the public of the issuance of the title V permit to Great Lakes Gas Transmission L.P.

Dated: October 14, 2004.

Gary Gulezian,

Acting Regional Administrator, Region 5.

[FR Doc. 04–23943 Filed 10–25–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7830–4]

Notice of Tentative Approval and Solicitation of Request for a Public Hearing for Public Water System Supervision Program Revisions for the State of Maryland

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Tentative Approval and Solicitation of Requests for a Public Hearing.

SUMMARY: Notice is hereby given in accordance with the provision of section 1413 of the Safe Drinking Water Act, as amended and the requirements governing the National Primary Drinking Water Regulations Implementation, 40 CFR part 142, that the State of Maryland is revising its approved Public Water System Supervision (PWSS) Program. Maryland has revised its administrative penalty authority to be consistent with the Safe Drinking Water Act and its related Federal regulations. Under the revised regulation, Maryland is authorized to assess administrative penalties for violations of its PWSS program including disinfectant residual levels in drinking water and plans for compliance to resolve deficiencies found in sanitary surveys. EPA has determined that these revisions, all effective March 1, 2004, are no less stringent than the corresponding Federal regulations. Therefore, EPA has decided to tentatively approve these program revisions. All interested parties are invited to submit written comments on this determination and may request a public hearing.

DATES: Comments or a request for a public hearing must be submitted by November 26, 2004. This determination shall become effective on November 26, 2004, if no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on his own motion, and if no comments are received which cause EPA to modify its tentative approval.

ADDRESSES: Comments or a request for a public hearing must be submitted to the U.S. Environmental Protection Agency Region III, 1650 Arch Street, Philadelphia, PA 19103–2029. Comments only can be submitted electronically to Steve Maslowski at *maslowski.steven@epa.gov.*

All documents relating to this determination are available for inspection between the hours of 8 a.m.

and 4:30 p.m., Monday through Friday, at the following offices:

- Drinking Water Branch, Water Protection Division, U.S. Environmental Protection Agency Region III, 1650 Arch Street, Philadelphia, PA 19103–2029.
- Water Supply Program, Maryland Department of the Environment, Montgomery Park Business Center, 1800 Washington Blvd, Baltimore, MD 21230.

FOR FURTHER INFORMATION CONTACT: Steve Maslowski, Drinking Water Branch(3WP22) at the Philadelphia address given above; telephone (215) 814–2371 or fax (215) 814–2318.

SUPPLEMENTARY INFORMATION: All interested parties are invited to submit written comments on this determination and may request a public hearing. All comments will be considered, and, if necessary, EPA will issue a response. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request for a public hearing is made by November 26, 2004, a public hearing will be held.

A request for public hearing shall include the following: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; (2) a brief statement of the requesting person's interest in the Regional Administrator's determination and of information that the requesting person intends to submit at such a hearing; and (3) the signature of the individual making the request; or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

Dated: September 14, 2004.

Andrew P. Carlin,

Acting Regional Administrator, Region III.

[FR Doc. 04–23942 Filed 10–25–04; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL ELECTION COMMISSION

Sunshine Act; Meeting

DATE AND TIME: Thursday, October 28, 2004, 10 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

THE FOLLOWING ITEM HAS BEEN ADDED TO THE AGENDA: Report of the Audit Division on the Conservative Leadership Political Action Committee.

PERSON TO CONTACT FOR INFORMATION: Robert Biersack, Acting Press Officer, telephone (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 04–24064 Filed 10–22–04; 2:52 pm]

BILLING CODE 6715–01–M

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 19, 2004.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. CTB Holdings, Inc., Waco, Texas, and CTB Holdings Delaware, Inc., Wilmington, Delaware; to become bank holding companies by acquiring 100 percent of the voting shares of The Coupland State Bank of Coupland, Coupland, Texas.

Board of Governors of the Federal Reserve System, October 20, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–23889 Filed 10–25–04; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 9, 2004.

A. Federal Reserve Bank of Minneapolis (Jacqueline G. Nicholas, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. Bradley E. Bakken, St. Louis Park, Minnesota; to acquire voting shares of Bakken Securities, St. Louis Park, Minnesota, and thereby indirectly acquire voting shares of Citizens Independent Bank, St. Louis Park, Minnesota.

Board of Governors of the Federal Reserve System, October 20, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–23890 Filed 10–25–04; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 9, 2004.

A. Federal Reserve Bank of Cleveland (Cindy C. West, Banking Supervisor) 1455 East Sixth Street, Cleveland, Ohio 44101–2566:

1. Tri–State 1st Banc, Inc., East Liverpool, Ohio; to acquire MDH Investment Management, Inc., East Liverpool, Ohio, and thereby engage in permissible investment advisory activities, pusuant to section 225.28(b)(6)(i) of Regulation Y.

Board of Governors of the Federal Reserve System, October 20, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–23891 Filed 10–25–04; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003P–0090]

Determination That SERZONE (Nefazodone Hydrochloride) Was Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined that SERZONE (nefazodone hydrochloride (HCl)) was not withdrawn from sale for reasons of safety or effectiveness. This determination means that FDA will not begin procedures to suspend approval of abbreviated new drug applications (ANDAs) for nefazodone HCl, and FDA may continue to approve ANDAs for nefazodone HCl.

FOR FURTHER INFORMATION CONTACT: Nicole Mueller, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION: In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products approved under an ANDA procedure. ANDA sponsors must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the ''listed drug,'' which is a version of the drug that was previously approved. Sponsors of ANDAs do not have to repeat the extensive clinical testing otherwise necessary to gain approval of a new drug application (NDA). The only clinical data required in an ANDA are data to show that the drug that is the subject of the ANDA is bioequivalent to the listed drug.

The 1984 amendments include what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(7)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the ''Approved Drug Products With Therapeutic Equivalence Evaluations,'' which is generally known as the ''Orange Book.'' Under FDA regulations, drugs are withdrawn from the list if the agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162).

Under § 314.161(a)(1) and (a)(2) (21 CFR 314.161(a)(1) and (a)(2)), the agency must determine whether a listed drug was withdrawn from sale for reasons of safety or effectiveness both before an ANDA that refers to that listed drug may be approved and if an ANDA referring to that listed drug has already been approved. FDA may not approve an ANDA that does not refer to a listed drug, and, under § 314.161(d), FDA must pursue suspension of approval for an ANDA if the agency determines the listed drug to which the ANDA refers was withdrawn for reasons of safety or effectiveness.

SERZONE (nefazodone HCl) is the subject of approved NDA 20–152 held by the Bristol-Meyers Squibb Co. (BMS). SERZONE is indicated for the treatment of depression. The Public Citizen Health Research Group (PCHRG) submitted a citizen petition to the agency, dated March 6, 2003, requesting that we immediately remove SERZONE from the market because of adverse events associated with the drug (cases of serious liver toxicity). On May 19, 2004, BMS announced that for commercial business reasons, particularly declining sales and increased generic competition, BMS would be discontinuing all sales and manufacture of SERZONE in the U.S. market effective June 14, 2004. Because of the potential for continued marketing of generic versions of nefazodone after BMS's withdrawal of SERZONE from sale, the issues raised in PCHRG's petition still warranted agency response. FDA responded to the petition in a letter dated June 14, 2004, denying the petition and explaining our reasons for concluding that the available data did not justify the agency's removal of nefazodone from the market. The agency also concluded, however, that the safe use of the drug could be improved through additional risk management measures, and BMS made changes to the product labeling to discourage the drug's use as a first-line drug (i.e., to encourage physicians to consider using other treatments first). The labeling for generic versions of nefazadone now must include these changes.

Having independently evaluated relevant literature and data, including from FDA's Adverse Event Reporting System, for possible postmarketing adverse event reports, FDA has now also determined, under § 314.161, that BMS's voluntary withdrawal from sale of SERZONE was not for reasons of safety or effectiveness. Accordingly, the agency will list SERZONE (nefazodone HCl) in the ''Discontinued Drug Product List'' section of the Orange Book. The ''Discontinued Drug Product List'' delineates, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. Approved ANDAs that refer to the SERZONE (nefazodone HCl) are unaffected by the withdrawal of SERZONE from the market. Additional ANDAs for nefazodone HCl may also be approved by the agency.

Dated: October 15, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–23857 Filed 10–25–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committee on Special Studies Relating to the Possible Long-Term Health Effects of Herbicides and Contaminants (Ranch Hand Advisory Committee); Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Advisory Committee on Special Studies Relating to the Possible Long-Term Health Effects of Herbicides and Contaminants (Ranch Hand Advisory Committee).

General Function of the Committee: To advise the Secretary of Health and Human Services (Secretary) and the Assistant Secretary for Health concerning its oversight of the conduct of the Ranch Hand study by the U.S. Air Force and provide scientific oversight of the Department of Veterans Affairs (VA) Army Chemical Corps Vietnam Veterans Health Study and other studies in which the Secretary or the Assistant Secretary for Health believes involvement by the committee is desirable.

Date and Time: The meeting will be held on November 19, 2004, from 8 a.m. to 3 p.m.

Location: Food and Drug Administration, 5630 Fishers Lane, rm. 1066, Rockville, MD.

Contact Person: Leonard Schechtman, National Center for Toxicological Research (HFT–10), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–6696, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512560. Please call the Information Line for up-to-date information on this meeting.

Agenda: The Air Force will present for review to the Ranch Hand Advisory Committee the following chapters from the ongoing health study: Chapter 18, Endocrine; Chapter 20, Pulmonary; Chapter 11, Neurology; Chapter 13, Gastrointestinal; Chapter 14, Dermatology; Chapter 10, Neoplasia; Chapter 21, Conclusions; and the Executive Summary.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by November 5, 2004. Oral presentations from the public will be scheduled between approximately 10:20 a.m. and 10:55 a.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before November 12, 2004, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Leonard Schechtman at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: October 17, 2004.

Sheila Dearybury Walcoff,

Associate Commissioner for External Relations.

[FR Doc. 04–23856 Filed 10–25–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

One Time Supplement; Award Announcement

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Announcement of a one-time supplement to nine regional AIDS Education Training Centers (AETCs) Programs located at the following institutions: University of Illinois; University of California, San Francisco; University of Colorado; University of Washington; Louisiana State University Health Sciences Center; University of Massachusetts Medical School; Columbia University; Dallas County Hospital District; and University of Pittsburgh.

SUMMARY: The Health Resources and Services Administration's (HRSA) HIV/AIDS Bureau (HAB), Division of Training and Technical Assistance (DTTA), announces the awarding of a one-time supplement to nine regional AETCs during fiscal year (FY) 2004. HRSA awarded these funds to the nine AETCs for targeted education and training to expand the HIV/AIDS treatment capacity of professional and paraprofessional health care providers caring for American Indian/Alaska Native (AI/AN) people on reservations, in rural areas, IHS tribally-managed health care hospitals and clinics, and urban Indian health centers.

Justification: These funds were awarded to existing AETCs because the AETCs are uniquely qualified to provide training on HIV/AIDS care and treatment that is consistent with the Department of Health and Human Services (HHS) HIV Treatment Guidelines. The AETCs are the only entities within the Ryan White Comprehensive AIDS Resources Emergency (CARE) Act that are legislatively required to provide HIV/AIDS training to minority serving care providers. The AETCs are the training arm of the HAB and have provided more than 10 years of quality HIV/AIDS training services on care and treatment to health care providers in the United States and its territories. The AETCs have the existing national, regional and local infrastructure necessary to support the effective delivery of HIV/AIDS training services. The AETCs are linked to resources and services through the national AETC programs, such as the National Minority AETC, National Clinical Consultation Center, and the National Resource Center which will enhance the services available to trainees. Because of the AETC national and regional network and prior work with the AI/AN populations, the AETCs have developed and have access to culturally appropriate curriculum, training needs assessments, and other training materials that are tailored to the target population and needed to support the training activities.

Amount of Award: Funding is awarded as follows:

University of Illinois—$125,000, (Project Period—7/1/02–6/30/05);
University of California, San Francisco—$125,000, (Project Period—7/1/02–6/30/05);
University of Colorado—$125,000, (Project Period—7/1/02–6/30/05);
University of Washington—$125,000, (Project Period—7/1/02–6/30/05);
University of Massachusetts Medical School—$125,000, (Project Period—7/1/02–6/30/05);
Dallas County Hospital District—$175,000, (Project Period—7/1/02–6/30/05);

Louisiana State University Health Sciences Center—$100,000, (Project Period—7/1/02–6/30/05);
Columbia University—$100,000, (Project Period—9/30/02–6/30/05);
University of Pittsburgh—$100,000, (Project Period—7/1/02–6/30/05).

FOR FURTHER INFORMATION CONTACT: Brenda Woods-Francis, M.P.H., R.D., Project Officer, DTTA, HAB, HRSA, 5600 Fishers Lane, Parklawn Building, Room 7–46, Rockville, MD 20857; telephone (301) 443–0415, or e-mail *bwoods-francis@hrsa.gov.*

Dated: October 18, 2004.

Elizabeth M. Duke,

Administrator.

[FR Doc. 04–23858 Filed 10–25–04; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2004–19421]

Collection of Information Under Review by Office of Management and Budget (OMB): OMB Control Number 1625–0106

AGENCY: Coast Guard, DHS.

ACTION: Request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Coast Guard intends to seek the approval of OMB for the renewal of an Information Collection Request (ICR), 1625–0106, Unauthorized Entry into Cuban Territorial Waters. Before submitting this ICR to OMB, the Coast Guard is inviting your comments.

DATES: Comments must reach the Coast Guard on or before December 27, 2004.

ADDRESSES: To make sure that your comments and related material do not enter the docket (USCG–2004–19421) more than once, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility, U.S. Department of Transportation (DOT), Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. Caution: Because of recent delays in the delivery of mail to Federal facilities, your comments may reach the Facility more quickly if you choose one of the other means described below.

(2) By delivery to Room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 366–9329.

(3) By fax to the Docket Management Facility at (202) 493–2251.

(4) Electronically through the Web Site for the Docket Management System at *http://dms.dot.gov.*

The Docket Management Facility maintains the public docket for this notice. Comments and material received from the public, as well as documents mentioned in this notice as being available in the docket, will become part of this docket and will be available for inspection or copying at Room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov.*

Copies of the complete ICR are available through this docket on the Internet at *http://dms.dot.gov,* and also from Commandant (CG–611), U.S. Coast Guard Headquarters, Room 6106 (Attn: Mr. Arthur Requina), 2100 Second Street, SW., Washington, DC 20593–0001. The telephone number is (202) 267–2326.

FOR FURTHER INFORMATION CONTACT: Mr. Arthur Requina, Office of Information Management, (202) 267–2326, for questions on these documents; or Ms. Andrea M. Jenkins, Program Manager, Docket Operations, (202) 366–0271, for questions on the docket.

SUPPLEMENTARY INFORMATION: *Public participation and request for comments:* We encourage you to participate in this request for comments by submitting comments and related materials. We will post all comments received, without change, to *http://dms.dot.gov,* and they will include any personal information you have provided. We have an agreement with DOT to use their Docket Management Facility. Please see the paragraph on DOT's ''Privacy Act Policy'' below.

Submitting comments: If you submit a comment, please include your name and address, identify the docket number for this request for comment [USCG–2004–19421], indicate the specific section of this document or the ICR to which each comment applies, and give the reason for each comment. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES;** but please submit them by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8 ½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change the documents supporting this collection of information or even the underlying requirements in view of them.

Viewing comments and documents: To view comments, as well as documents mentioned in this notice as being available in the docket, go to http://dms.dot.gov at any time and conduct a simple search using the docket number. You may also visit the Docket Management Facility in Room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone can search the electronic form of all comments received in dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Privacy Act Statement of DOT in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit http://dms.dot.gov.

Information Collection Request:

Title: Unauthorized entry into Cuban territorial waters (Formerly, ''Unauthorized departure of U.S. vessels and entry into Cuban territorial waters'').

OMB Control Number: 1625–0106.

Type of Request: Extension of currently approved collection.

Affected Public: Certain individuals.

Form: None.

Abstract: The President by proclamation and the Secretary of Homeland Security by order have directed and authorized the U.S. Coast Guard to regulate the anchorage and movement of certain U.S vessels, and vessels without nationality, located within the territorial waters of the United States, that thereafter enter Cuban territorial waters. The Coast Guard has issued a final rule (69 FR 41367, July 8, 2004) that requires all U.S. registered vessels, and vessels without nationality, less than 100 meters in length, to apply for and receive a permit to enter Cuban territorial waters. This requirement is necessary to preclude such vessels from departing U.S. waters and thereafter entering Cuban waters, unless such vessels hold licenses from other government agencies that allow them to engage in exports to, and transactions with Cuba. The information is collected to regulate departure of U.S. vessels from U.S. territorial waters and entry thereafter into Cuban territorial waters.

The need to regulate this vessel traffic supports ongoing efforts to enforce the Cuban embargo, which is designed to bring about an end to the current government and a peaceful transition to democracy. Accordingly, only applicants that demonstrate prior U.S. government approval for exports to and transactions with Cuba may be issued a Coast Guard permit.

Burden Estimate: The estimated burden is 43.0 hours a year.

Dated: October 21, 2004.

Ronald T. Hewitt,

Assistant Commandant for C4 and Information Technology.

[FR Doc. 04–23964 Filed 10–25–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1554–DR]

Georgia; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Georgia (FEMA–1554–DR), dated September 18, 2004, and related determinations.

EFFECTIVE DATE: October 14, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Georgia is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 18, 2004:

Clayton County for Individual Assistance.
Forsyth County for Individual Assistance (already designated for Public Assistance).
Pike and Upson Counties for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–23914 Filed 10–25–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1548–DR]

Louisiana; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Louisiana (FEMA–1548–DR), dated September 15, 2004, and related determinations.

EFFECTIVE DATE: October 18, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Louisiana is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 15, 2004:

Ascension, Avoyelles, Bossier, Caddo, Concordia, East Baton Rouge, Grant, Lafayette, Livingston, Ouachita, Rapides, St. Helena, and St. Martin Parishes for emergency protective measures (Category B) under the Public Assistance Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program—Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–23909 Filed 10–25–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1569–DR]

Minnesota; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Minnesota (FEMA–1569–DR), dated October 7, 2004, and related determinations.

EFFECTIVE DATE: September 27, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective September 27, 2004.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–23911 Filed 10–25–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1557–DR]

Pennsylvania; Amendment No. 6 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of Pennsylvania (FEMA–1557–DR), dated September 19, 2004, and related determinations.

EFFECTIVE DATE: October 19, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the Commonwealth of Pennsylvania is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 19, 2004:

Elk and Potter Counties for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–23912 Filed 10–25–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1555–DR]

Pennsylvania; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of Pennsylvania (FEMA–1555-DR), dated September 19, 2004, and related determinations.

EFFECTIVE DATE: October 19, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the Commonwealth of Pennsylvania is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 19, 2004:

Bedford, Butler, Erie, Huntingdon, Lawrence, Warren, and Washington Counties for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–23913 Filed 10–25–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1552–DR]

Puerto Rico; Amendment No. 5 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of Puerto Rico (FEMA–1552–DR), dated September 17, 2004, and related determinations.

EFFECTIVE DATE: October 19, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the Commonwealth of Puerto Rico is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 17, 2004:

Gurabo Municipality for Individual Assistance (already designated for debris removal and emergency protective measures [Categories A & B] under the Public Assistance program, including direct Federal assistance, at 100 percent Federal funding of the total eligible costs for a period of up to 72 hours.)

Guayanilla, Peñuelas, Ponce, San Juan, and Yauco Municipalities for Public Assistance [Categories C–G] (already designated for debris removal and emergency protective measures [Categories A & B] under the Public Assistance program, including direct Federal assistance, at 100 percent Federal funding of the total eligible costs for a period of up to 72 hours.)

Añasco, Ciales, Dorado, Fajardo, Florida, Isabela, Juana Díaz, Juncos, Lares, Moca, Salinas, San Lorenzo, San Sebastian, Vega Alta, and Vega Baja Municipalities for Public Assistance [Categories C–G] (already designated for debris removal and emergency protective measures [Categories A & B] under the Public Assistance program, including direct Federal assistance, at 100 percent Federal funding of the total eligible costs for a period of up to 72 hours, and Individual Assistance.)

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment

Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–23910 Filed 10–25–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Submitted for Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of an extension of a currently approved information collection (OMB Control Number 1010–0074).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are notifying the public that we have submitted to OMB an information collection request (ICR) to renew approval of the paperwork requirements in the regulations under 30 CFR part 206, subpart J—Indian Coal. This notice also provides the public a second opportunity to comment on the paperwork burden of these regulatory requirements. The ICR is titled 30 CFR part 206—Product Valuation, subpart J—Indian Coal (Forms MMS–4292, Coal Washing Allowance Report, and MMS–4293, Coal Transportation Allowance Report). We changed the title of this ICR to clarify the regulatory language we are covering under 30 CFR part 206. The previous title was ‘‘Coal Washing and Transportation Allowances (Forms MMS–4292 and MMS–4293).’’

DATES: Submit written comments on or before November 26, 2004.

ADDRESSES: Submit written comments by either FAX (202) 395–6566 or e-mail (*OIRA_Docket@omb.eop.gov*) directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (OMB Control Number 1010–0074). Mail or hand-carry a copy of your comments to Sharron L. Gebhardt, Lead Regulatory Specialist, Minerals Management Service, Minerals Revenue Management, P.O. Box 25165, MS 302B2, Denver, Colorado 80225. If you use an overnight courier service, our courier address is Building 85, Room A–614, Denver Federal Center, Denver, Colorado 80225. You may also e-mail your comments to us at *mrm.comments@mms.gov.* Include the title of the information collection and the OMB Control Number in the ‘‘Attention’’ line of your comment. Also include your name and return address. Submit electronic comments as an ASCII file avoiding the use of special characters and any form of encryption. If you do not receive a confirmation that we have received your e-mail, contact Ms. Gebhardt at (303) 231–3211.

FOR FURTHER INFORMATION CONTACT: Sharron L. Gebhardt, telephone (303) 231–3211, FAX (303) 231–3781, e-mail *Sharron.Gebhardt@mms.gov.* You may also contact Sharron Gebhardt to obtain a copy at no cost of the forms and regulations that require the subject collection of information.

SUPPLEMENTARY INFORMATION: Title: 30 CFR part 206—Product Valuation, subpart J—Indian Coal (Forms MMS–4292, Coal Washing Allowance Report, and MMS–4293, Coal Transportation Allowance Report).

OMB Control Number: 1010–0074.

Bureau Form Number: Forms MMS–4292 and MMS–4293.

Abstract: The Secretary of the U.S. Department of the Interior is responsible for matters relevant to mineral resource development on Federal and Indian lands and the Outer Continental Shelf (OCS). The Secretary, under the Mineral Leasing Act (30 U.S.C. 1923) and the Outer Continental Shelf Lands Act (43 U.S.C. 1353), is responsible for managing the production of minerals from Federal and Indian lands and the OCS, collecting royalties from lessees who produce minerals, and distributing the funds collected in accordance with applicable laws.

The Secretary also has an Indian trust responsibility to manage Indian lands and seek advice and information from Indian beneficiaries. The MMS performs the royalty management functions and assists the Secretary in carrying out the Department's Indian trust responsibility.

This ICR provides for the collection of coal washing and transportation information for Indian leases. The information collected is essential for the royalty valuation process. Applicable citations include 25 U.S.C. 396d and the Indian Mineral Development Act of 1982 (25 U.S.C. 2103) pertaining to Indian lands on which solid minerals are produced. The product valuation and allowance determination processes are essential to assure that the Indians receive payment on the full value of the minerals removed.

In order to determine whether the amount of royalty paid is correct, the value of the coal being sold or otherwise disposed of in some other manner (for example, used by the lessee) must be established. Under some circumstances, the lessee may be authorized to deduct certain costs in the calculation of royalties due. The total of these authorized deductible costs is known as an allowance. An allowance may be granted to compensate the lessee for the reasonable actual cost of washing the royalty portion of the coal. Also, when the sales point is not in the immediate vicinity of a lease or mine area, an allowance may be granted to compensate the lessee for the reasonable actual cost of transporting the royalty portion of the coal to a sales point not on the lease or mine area.

We developed Form MMS–4292, Coal Washing Allowance Report, and Form MMS–4293, Coal Transportation Allowance Report, for industry to use when reporting or requesting a washing or transportation allowance. Historically, the lessee requested approval of royalty deductions by submitting a letter, which provided information enabling the Department to evaluate the reasonableness of the deductions. Under the product valuation regulations at 30 CFR 206—Product Valuation, subpart J—Indian Coal, we normally accept costs incurred under arm's-length contracts for transporting and/or washing coal. (An arm's-length contract is a contract or an agreement that has been arrived at in the marketplace between independent, nonaffiliated persons with opposing economic interests regarding that contract.) The regulations further provide that we normally accept the gross proceeds accruing to the lessee pursuant to their arm's-length contract as being representative of value for ad valorem leases (*see* 30 CFR 206.456(b)(1)).

In those instances when Indian royalty coal is washed or transported under non-arm's-length conditions, it is necessary for us to obtain cost data. This cost data enables us to accurately determine if the lessee correctly computed the coal value and the gross proceeds for royalty calculation purposes.

Not collecting this information would limit the Secretary's ability to discharge fiduciary duties and may also result in the inability to confirm accurate royalty value. The information that is collected under this ICR is essential for the royalty valuation process.

We are renewing this information collection request because of the possibility of 10 or more respondents in the future. The MMS has had no respondents for this information collection since the previous renewal; however, we are basing our calculations of the burden hours on 1 respondent, as we did for the previous renewal.

Proprietary information submitted is protected, and there are no questions of a sensitive nature included in this information collection.

Frequency: Annually.

Estimated Number and Description of Respondents: 1 Indian lessee.

Estimated Annual Reporting and Recordkeeping ''Hour'' Burden: 4 hours.

We base our calculations on the reasonable expectation of 2 responses from 1 Indian lessee. We have not included in our estimates certain requirements performed in the normal course of business and considered usual and customary. The following chart shows the estimated burden hours by CFR section and paragraph:

RESPONDENTS' ESTIMATED ANNUAL BURDEN HOURS

Citation 30 CFR subpart J	Reporting requirement	Hour burden	Average number annual responses	Annual burden hours
Form MMS–4292, Coal Washing Allowance Report				
206.458(a)(1), (b)(1), (c)(1)(i) and (iii), (c)(2)(i) and (iii).	Determination of washing allowances .... (a) *Arm's-length contracts.* (1) * * * However, before any deduction may be taken, the lessee must submit a completed page one of Form MMS–4292, Coal Washing Allowance Report * * *. (b) *Non-arm's-length or no contract.* (1) * * * However, before any estimated or actual deduction may be taken, the lessee must submit a completed Form MMS–4292 * * *. (c) *Reporting requirements.* (1) *Arm's-length contracts.* (i) * * * the lessee shall submit page one of the initial Form MMS–4292 prior to, or at the same time, as the washing allowance determined pursuant to an arm's-length contract is reported on Form MMS–4430, Solid Minerals Production and Royalty Report. * * * (iii) After the initial reporting period and for succeeding reporting periods, lessees must submit page one of Form MMS–4292 * * *. (2) *Non-arm's-length or no contract.* (i) * * * the lessee shall submit an initial Form MMS–4292 prior to, or at the same time as, the washing allowance determined pursuant to a non-arm's-length contract or no contract situation is reported on Form MMS–4430, Solid Minerals Production and Royalty Report. * * * (iii) For calendar-year reporting periods succeeding the initial reporting period, the lessee shall submit a completed Form MMS–4292 containing the actual costs for the previous reporting period. If coal washing is continuing, the lessee shall include on Form MMS–4292 its estimated costs for the next calendar year. * * *.	2	1	2
Form MMS–4293, Coal Transportation Allowance Report				
206.461(a)(1), (b)(1), (c)(1)(i) and (iii), (c)(2)(i) and (iii).	Determination of transportation allowances .... (a) *Arm's-length contracts.* (1) * * * However, before any deduction may be taken, the lessee must submit a completed page one of Form MMS–4293, Coal Transportation Allowance Report * * *. (b) *Non-arm's-length or no contract.* (1) * * * However, before any estimated or actual deduction may be taken, the lessee must submit a completed Form MMS–4293 * * *. (c) *Reporting requirements.* (1) *Arm's-length contracts.* (i) * * * the lessee shall submit page one of the initial Form MMS–4293 prior to, or at the same time as, the transportation allowance determined pursuant to an arm's-length contract is reported on Form MMS–4430, Solid Minerals Production and Royalty Report. * * * (iii) After the initial reporting period and for succeeding reporting periods, lessees must submit page one of Form MMS–4293 * * *. (2) *Non-arm's-length or no contract.* (i) * * * the lessee shall submit an initial Form MMS–4293 prior to, or at the same time as, the transportation allowance determined pursuant to a non-arm's-length contract or no contract situation is reported on Form MMS–4430, Solid Minerals Production and Royalty Report. * * * (iii) For calendar-year reporting periods succeeding the initial reporting period, the lessee shall submit a completed Form MMS–4293 containing the actual costs for the previous reporting period * * *.	2	1	2
Total Burden	....	....	2	4

Estimated Annual Reporting and Recordkeeping ''Non-hour'' Cost Burden: We have identified no ''non-hour'' cost burdens.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that 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.

Comments: Section 3506(c)(2)(A) of the PRA requires each agency ''* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *.'' Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

To comply with the public consultation process, we published a notice in the **Federal Register** on March 26, 2004 (69 FR 15897), announcing that we would submit this ICR to OMB for approval. The notice provided the required 60-day comment period. We received no comments in response to the notice.

If you wish to comment in response to this notice, you may send your comments to the offices listed under the **ADDRESSES** section of this notice. OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by November 26, 2004.

Public Comment Policy: We will post all comments in response to this notice on our Web site at *http://www.mrm.mms.gov/Laws_R_D/InfoColl/InfoColCom.htm.* We will also make copies of the comments available for public review, including names and addresses of respondents, during regular business hours at our offices in Lakewood, Colorado. Upon request, we will withhold an individual respondent's home address from the public record, as allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you request that we withhold your name and/or address, state your request prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

MMS Information Collection Clearance Officer: Arlene Bajusz (202) 208–7744.

Dated: September 10, 2004.

Lucy Querques Denett,

Associate Director for Minerals Revenue Management.

[FR Doc. 04–23938 Filed 10–25–04; 8:45 am]

BILLING CODE 4310–MR–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–500]

In the Matter of Certain Purple Protective Gloves; Notice of Commission Decision Not To Review an Initial Determination Finding a Violation of Section 337 and That the Domestic Industry Requirement Is Met; Schedule for Written Submissions on Remedy, Public Interest, and Bonding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (''ID'') (Order No. 17) issued by the presiding administrative law judge (''ALJ'') finding a violation of section 337 and that the domestic industry requirement has been met in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Michael Diehl, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3095. Copies of all nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–2000. General information concerning the Commission may be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on November 26, 2003, based on a complaint filed by Kimberly-Clark Corporation and Safeskin Corporation (collectively ''K-C/Safeskin''). The complaint alleged violations of section 337 of the Tariff Act of 1930 in the importation and sale of certain purple protective gloves by reason of infringement of U.S. Registered Trademark Nos. 2,596,539, 2,533,260, and 2,593,382.

The complaint named seven respondents, six of which have entered into settlement agreements with K-C/Safeskin. On May 24, 2004, the administrative law judge (''ALJ'') issued an initial determination (Order No. 15) terminating the investigation as to Latexx Partners Berhad and Medtexx Partners on the basis of a confidential settlement agreement. On June 1, 2004, the ALJ issued another initial determination (Order No. 16), terminating the investigation as to The Delta Group; Delta Hospital Supply, Inc.; Delta Medical Systems, Inc.; and Delta Medical Supply Group, Inc. on the basis of a settlement agreement and a consent order. The Commission determined not to review those initial determinations.

The seventh respondent—Dash Medical Gloves, Inc. (''Dash'')—failed to reply to the complaint and notice of investigation. Dash subsequently indicated that it ''will not oppose entry of a Default in this matter.'' On May 24, 2004, the ALJ issued an ID (Order No. 14) finding Dash in default pursuant to Commission rule 210.16(a)(1). The Commission determined not to review the initial determination.

On September 2, 2004, K-C/Safeskin filed a motion pursuant to Commission rule 210.18 for summary determination on the issues of violation of section 337 and the existence of a domestic industry. The motion also sought a general exclusion order. On September 13, 2004, the Commission's Investigative Attorney (''IA'') filed a response in support of the motion.

On September 23, 2004, the ALJ issued an initial determination (Order No. 17) finding ''substantial, reliable, and probative evidence'' of a violation of section 337 by reason of Dash's importation and sale of the accused gloves and the existence of a domestic industry. No party petitioned for review of the ID. As to remedy, the ALJ recommended the issuance of a general exclusion order. He also recommended that the bond permitting temporary importation during the Presidential review period be set at 100 percent of the value of the infringing imported product.

In connection with the final disposition of this investigation, the Commission may issue an order that could result in the exclusion of the subject articles from entry into the United States, and/or issue a cease and desist order that could result in the remaining respondent being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, it should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, *see In the Matter of Certain Devices for Connecting Computers via Telephone Lines,* Inv. No. 337–TA–360, USITC Pub. No. 2843 (December 1994) (Commission Opinion).

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider in this investigation include the effect that an exclusion order would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the President has 60 days to approve or disapprove the Commission's action. During this period, the subject articles would be entitled to enter the United States under a bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed.

Written Submissions: The parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on remedy, the public interest, and bonding. Such submissions should address the September 23, 2004 recommended determination by the ALJ on remedy and bonding. Complainants and the Commission's investigative attorney are also requested to submit proposed orders for the Commission's consideration. The written submissions and proposed orders must be filed no later than close of business on November 12, 2004. Reply submissions, if any, must be filed no later than the close of business on November 19, 2004. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file with the Office of the Secretary the original document and 14 true copies thereof on or before the deadlines stated above. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons that the Commission should grant such treatment. See section 201.6 of the Commission's Rules of Practice and Procedure, 19 CFR 201.6. Documents for which confidential treatment by the Commission is sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and sections 210.16 and 210.42 of the Commission's Rules of Practice and Procedure, 19 CFR 210.16, 210.42.

Issued: October 19, 2004.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–23883 Filed 10–25–04; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Office of Community Oriented Policing Services

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-day notice of information collection under review: COPS application attachment to SF–424.

The Department of Justice (DOJ) Office of Community Oriented Policing Services (COPS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies.

The purpose of this notice is to allow for 60 days for public comment until December 27, 2004. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Rebekah Dorr, Department of Justice Office of Community Oriented Policing Services, 1100 Vermont Avenue, NW., Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection:

(1) *Type of Information Collection:* New collection.

(2) *Title of the Form/Collection:* COPS Application Attachment to SF–424.

(3) *Agency Form Number, if Any, and the Applicable Component of the Department Sponsoring the Collection:* None. U.S. Department of Justice Office of Community Oriented Policing Services.

(4) *Affected Public Who Will Be Asked or Required To Respond, as Well as a*

Brief Abstract: Primary: Law enforcement agencies and other public and private entities that apply for COPS Office grants or cooperative agreements will be asked to complete the COPS Application Attachment to SF–424. The COPS Application Attachment to SF–424 is the result of a COPS Office business process reengineering effort aimed at standardization as required under the grant streamlining requirements of Pub. L. 106–107, the Federal Financial Assistance Management Improvement Act of 1999, as well as the President's Management Agenda E-grants Initiative. Currently, the COPS Office uses multiple application forms that are not standardized across programs. This new form streamlines application forms across all COPS Office programs and should reduce the burden on applicants due their ability to use the same form for multiple programs, thus reducing the need for applicant's to learn how to complete multiple forms.

(5) *An Estimate of the Total Number of Respondents and the Amount of Time Estimated for an Average Respondent To Respond/Reply:* It is estimated that 6,200 respondents annually will complete the form within 8 hours.

(6) *An Estimate of the Total Public Burden (in Hours) Associated With the Collection:* There are an estimated 49,600 total annual burden hours associated with this collection.

If additional information is required contact: Brenda E. Dyer, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: October 20, 2004.

Brenda E. Dyer,

Department Clearance Officer, Department of Justice.

[FR Doc. 04–23905 Filed 10–25–04; 8:45 am]

BILLING CODE 4410–AT–P

DEPARTMENT OF JUSTICE

Office of Community Oriented Policing Services; Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-day notice of information collection under review: COPS application guide: targeted/invited programs.

The Department of Justice (DOJ) Office of Community Oriented Policing Services (COPS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies.

The purpose of this notice is to allow for 60 days for public comment until December 27, 2004. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Rebekah Dorr, Department of Justice Office of Community Oriented Policing Services, 1100 Vermont Avenue, NW., Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* New Collection.

(2) *Title of the Form/Collection:* COPS Application Guide: Targeted/Invited Programs.

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection:* None. U.S. Department of Justice Office of Community Oriented Policing Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Law enforcement agencies and other public and private entities that apply for COPS Office grants or cooperative agreements will be asked to review the COPS Application Guide: Open/Competitive Programs. The COPS Application Guide: Targeted/Invited Programs is the result of a COPS Office business process reengineering effort aimed at standardization as required under the grant streamlining requirements of Pub. L. 106–107, the Federal Financial Assistance Management Improvement Act of 1999, as well as the President's Management Agenda E-grants Initiative. This new Guide streamlines instructional booklets across all COPS Office targeted/invited programs and should reduce the burden on applicants due their ability to use the same Guide to gather information on multiple COPS Office programs, thus reducing the need for applicant to review multiple instructions.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that 1,000 respondents annually will complete the form within 1 hour.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 1,000 total annual burden hours associated with this collection.

If additional information is required contact: Brenda E. Dyer, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: October 20, 2004.

Brenda E. Dyer,

Department Clearance Officer, Department of Justice.

[FR Doc. 04–23906 Filed 10–25–04; 8:45 am]

BILLING CODE 4410–AT–P

DEPARTMENT OF JUSTICE

Office of Community Oriented Policing Services; Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-day notice of information collection under review: COPS budget detail worksheets.

The Department of Justice (DOJ) Office of Community Oriented Policing Services (COPS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies.

The purpose of this notice is to allow for 60 days for public comment until December 27, 2004. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Rebekah Dorr, Department of Justice Office of Community Oriented Policing Services, 1100 Vermont Avenue, NW., Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
—Enhance the quality, utility, and clarity of the information to be collected; and
—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* New collection.

(2) *Title of the Form/Collection:* COPS Budget Detail Worksheets.

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection:* None. U.S. Department of Justice Office of Community Oriented Policing Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Law enforcement agencies and other public and private entities that apply for COPS Office grants or cooperative agreements will be asked to complete the COPS Budget Detail Worksheets. The COPS Budget Detail Worksheets are the result of a COPS Office business process reengineering effort aimed at standardization as required under the grant streamlining requirements of Public Law 106–107, the Federal Financial Assistance Management Improvement Act of 1999, as well as the President's Management Agenda E-grants Initiative. The new worksheets standardize the budget forms across all COPS Office programs and should reduce the burden on applicants due their ability to use the same form for multiple programs, thus reducing the need for applicant's to learn how to complete multiple forms.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that 6,200 respondents annually will complete the form within one and a half hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 9,300 total annual burden hours associated with this collection.

If additional information is required contact: Brenda E. Dyer, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: October 20, 2004.

Brenda E. Dyer,

Department Clearance Officer, Department of Justice.

[FR Doc. 04–23908 Filed 10–25–04; 8:45 am]

BILLING CODE 4410–AT–P

DEPARTMENT OF JUSTICE

Office of Community Oriented Policing Services; Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-day notice of information collection under review: COPS application guide: Open/competitive programs.

The Department of Justice (DOJ) Office of Community Oriented Policing Services (COPS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies.

The purpose of this notice is to allow for 60 days for public comment until December 27, 2004. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Rebekah Dorr, Department of Justice Office of Community Oriented Policing Services, 1100 Vermont Avenue, NW., Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
—Enhance the quality, utility, and clarity of the information to be collected; and
—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* New collection.

(2) *Title of the Form/Collection:* COPS Application Guide: Open/Competitive Programs.

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection:* None. U.S. Department of Justice Office of Community Oriented Policing Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Law enforcement agencies and other public and private entities that apply for COPS Office grants or cooperative agreements will be asked to review the COPS Application Guide: Open/Competitive Programs. The COPS Application Guide: Open/Competitive Programs is the result of a COPS Office business process reengineering effort aimed at

standardization as required under the grant streamlining requirements of Pub. L. 106–107, the Federal Financial Assistance Management Improvement Act of 1999, as well as the President's Management Agenda E-grants Initiative. This new Guide streamlines instructional booklets across all COPS Office open/competitive programs and should reduce the burden on applicants due their ability to use the same Guide to gather information on multiple COPS Office programs, thus reducing the need for the applicant to review multiple instructions.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that 5,200 respondents annually will complete the form within 1 hour.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 5,200 total annual burden hours associated with this collection.

If additional information is required contact: Brenda E. Dyer, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: October 20, 2004.

Brenda E. Dyer,

Department Clearance Officer, Department of Justice.

[FR Doc. 04–23907 Filed 10–25–04; 8:45 am]

BILLING CODE 4410–AT–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-day notice of information collection under review: report of theft or loss of controlled substances—DEA Form 106.

The Department of Justice (DOJ), Drug Enforcement Administration (DEA), has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until December 27, 2004. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments, especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Patricia M. Good, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—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 agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Report of Theft or Loss of Controlled Substances—DEA Form 106.

(3) *Agency Form Number, if Any, and the Applicable Component of the Department of Justice Sponsoring the Collection:* Form Number: DEA Form 106. Office of Diversion Control, Drug Enforcement Administration, Department of Justice.

(4) *Affected Public Who Will Be Asked or Required To Respond, as Well as a Brief Abstract:* Primary: Business or other for-profit. Other: Not-for-profit, State, local or tribal government. Abstract: Title 21 CFR 1301.74(c) and 1301.76(b) require DEA registrants to complete and submit DEA–106 upon discovery of a theft or significant loss of controlled substances. This provides accurate accountability and allows DEA to monitor substances diverted for illicit purposes.

(5) *An Estimate of the Total Number of Respondents and the Amount of Time Estimated for an Average Respondent To Respond:* DEA estimates that 5,659 registrants submit 8,310 forms annually for this collection. DEA estimates that each response takes 30 minutes.

(6) *An Estimate of the Total Public Burden (in Hours) Associated With the Collection:* DEA estimates this collection has a public burden of 4,155 hours annually.

If additional information is required contact: Brenda E. Dyer, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: October 20, 2004.

Brenda E. Dyer,

Department Clearance Officer, Department of Justice.

[FR Doc. 04–23904 Filed 10–25–04; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

October 20, 2004.

The U.S. Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by contacting Darrin King on 202–693–4129 (this is not a toll-free number) or e-mail: *king.darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Employment Standards Administration (ESA), Office of Management and Budget, Room 10235, Washington, DC 20503, (202) 395–7316 (this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Employment Standards Administration.

Type of Review: Revision of currently approved collection.

OMB Number: 1215–0131.

Title: OFCCP Complaint Form.

Form Number: CC–4.

Frequency: On occasion.

Type of Response: Reporting.

Affected Public: Individuals or households.

Number of Respondents: 848.

Number of Annual Responses: 848.

Average Response Time: 77 minutes (1.28 hours).

Annual Burden Hours: 1,085.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (Operating/maintaining systems or purchasing services): $0.

Description: Any employee or applicant for employment with a Government contractor may file a complaint with DOL alleging discrimination by completing the Complaint Form CC–4, Complaint of Discrimination in Employment under Federal Government Contracts. DOL investigates the complaint but retains the discretion whether to pursue prosecution. If a complaint filed under Executive Order 11246, as amended, involves discrimination against only one person, DOL will normally refer it to the U.S. Equal Employment Opportunity Commission. Complaints that involve groups of people or indicate patterns of discrimination are generally investigated by DOL. The implementing regulations which specify the content of this information collection are found at 41 CFR 60–741.61(c).

Darrin A. King,

Acting Departmental Clearance Officer.

[FR Doc. 04–23916 Filed 10–25–04; 8:45 am]

BILLING CODE 4510–CM–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–55,720]

The Boeing Aircraft Company Integrated Defense Systems Wichita, KS; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on October 4, 2004, in response to a petition filed by representatives of the International Association of Machinist & Aerospace Workers, AFL–CIO on behalf of workers at The Boeing Aircraft Company, Wichita, Kansas.

The Department issued a negative determination (TA–W–55,144) applicable to the petitioning group of workers on July 30, 2004. It was the intent of the current petitioners to file for reconsideration of that determination, and such a request has been accepted. Consequently, this investigation would duplicate efforts and has been terminated.

Signed in Washington, DC this 5th day of October, 2004.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E4–2851 Filed 10–25–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–55,562]

Engineering Service Inc., Troy, MI; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on September 7, 2004, in response to a worker petition filed on behalf of workers at Engineering Service, Inc., Troy, Michigan.

The Department issued a negative determination (TA–W–55,549) applicable to the petitioning group of workers on September 28, 2004. Further, investigation revealed that the petition filed on behalf of workers of Engineering Service, Inc., Troy, Michigan, TA–W–55,562 is a duplicate. Consequently, further investigation would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 6th day of October, 2004.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E4–2846 Filed 10–25–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–55,625]

Gateway Country Store, Whitehall Mall, Whitehall, PA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on September 20, 2003, in response to a petition filed on behalf of workers at Gateway Country Store, Whitehall Mall, Whitehall, Pennsylvania. Workers at the subject firm were engaged in the sales and service of Gateway products.

The Department of Labor issued a negative determination applicable to the petitioning group of workers on August 5, 2004 (TA–W–55,333). No new information or change in circumstances is evident which would result in a reversal of the Department's previous determination. Consequently, further investigation would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 4th day of October, 2004.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E4–2848 Filed 10–25–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–55,735]

Invista S.A.R.L. Kinston, NC; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on October 5, 2003, in response to a petition filed by a company official on behalf of workers at Invista, S.A.R.L., Kinston, North Carolina. Workers at the subject firm produced light denier dacron industrial sewing thread.

The Department of Labor issued a negative determination applicable to the petitioning group of workers on

September 29, 2004 (TA–W–55,516). No new information or change in circumstances is evident which would result in a reversal of the Department's previous determination. Consequently, further investigation would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 7th day of October, 2004.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E4–2852 Filed 10–25–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, as amended, (19 U.S.C. 2273), the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) number and alternative trade adjustment assistance (ATAA) by (TA–W) number issued during the periods of September and October 2004.

In order for an affirmative determination to be made and a certification of eligibility to apply for directly-impacted (primary) worker adjustment assistance to be issued, each of the group eligibility requirements of section 222(a) of the Act must be met.

I. Section (a)(2)(A) all of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. The sales or production, or both, of such firm or subdivision have decreased absolutely; and

C. Increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision; or

II. Section (a)(2)(B) both of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. There has been a shift in production by such workers' firm or subdivision to a foreign county of articles like or directly competitive with articles which are produced by such firm or subdivision; and

C. One of the following must be satisfied:

1. The country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;

2. The country to which the workers' firm has shifted production of the articles to a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or

3. There has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

Also, in order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance as an adversely affected secondary group to be issued, each of the group eligibility requirements of section 222(b) of the Act must be met.

(1) Significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm (or subdivision) is a supplier or downstream producer to a firm (or subdivision) that employed a group of workers who received a certification of eligibility to apply for trade adjustment assistance benefits and such supply or production is related to the article that was the basis for such certification; and

(3) Either—

(A) The workers' firm is a supplier and the component parts it supplied for the firm (or subdivision) described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) A loss or business by the workers' firm with the firm (or subdivision) described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

Negative Determinations for Worker Adjustment Assistance

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

The investigation revealed that criteria (a)(2)(A)(I.C.) (increased imports) and (a)(2)(B)(II.B) (No shift in production to a foreign country) have not been met.

TA–W–55,419; Kolonaki Import (Georgiou Studio), San Francisco, CA.

TA–W–55,528; Drager Medical, A division of Dragerwerk AG, Telford, PA.

TA–W–55,463; Rajala Lumber, Deer River, MN.

TA–W–55,468; Teleflex Automotive Group, a division of Teleflex, Inc., Lebanon, VA.

TA–W–55,474; Ecodyne MRM, Inc., Massillon, OH.

TA–W–55,452; U.S. Gypsum Company, Alabaster Plant, Tawas, MI.

TA–W–55,592; Advantek, Inc., a subsidiary of Siegel-Robert, Inc., Minnetonka, MN.

TA–W–55,472; Schneider Electric/ Square D, Monroe, NC.

TA–W–55,495; Tesco Technologies, LLC, Headquarters Office, Auburn Hills, MI.

TA–W–55,551; Corra-Board Products, a division of Timbar Packaging & Display, Hanover, PA.

TA–W–55,475; Synthetic Thread Co., Inc., Bethlehem, PA.

TA–W–55,408; Kokoku Wire Industries, South Bend, IN.

TA–W–55,290A, B, C, D; Butler Manufacturing Company, subsidiary of Bluescope Steel, Ltd, Buildings Div., Panels Production, Galesburg, IL, Trim and Components Production, Galesburg, IL, Secondaries Production, Galesburg, IL, Delta Joist Production, Galesburg, IL.

The workers firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–55,683; Parker Hannifin Corp., Hauser Textile Systems, Spartanburg, SC.

TA–W–55,604 & A; Leybold Vacuum USA, Inc., a division of Leybold Vacuum, a division of Unaxis AG, Tempe, AZ and Morgan Hill, CA.

TA–W–55,549; Engineering Service, Inc., Troy, MI.

TA–W–55,612; Tally Genicom, LP, Waynesboro, VA.

TA–W–55,665; Waltonen Engineering, Inc., Warren, MI.

TA–W–55,290E; Butler Manufacturing Company, Subsidiary of Bluescope Steel, Ltd, Buildings Div., Truss Purlins Production, Galesburg, IL.

TA–W–55,686; Electronic Data Systems Corporation (EDS), Coraopolis, PA.

TA–W–55,601; California Cedar Products Company, Stockton, CA.

The investigation revealed that criterion (a)(2)(A)(I.A) and (a)(2)(B)(II.A) (no employment decline) has not been met.

TA–W–55,593; Kongsberg Automotive, Inc., Farmington Hills, MI.

TA–W–55,455; Innovex, Inc., Maple Plain, MN.

TA–W–55,632; Turck, Inc., including leased workers of Doherty, Plymouth, MN.

The investigation revealed that criterion (a)(2)(A)(I.B) (Sales or production, or both, did not decline) and (a)(2)(B)(II.B) (has shifted production to a county not under the free trade agreement with U.S.) have not been met.

TA–W–55,511; Cherry Electrical Products, a division of Cherry Corp., including leased workers from QPS Staffing, Pleasant Prairie, WI.

TA–W–55,572; Down River, LLC, White City, OR.

TA–W–55,465; Diolen Industries, Fiberts, Inc., Industrial Fibers, Scottsboro, AL.

TA–W–55,516; Invista, Inc., Performance Fibers Division, Kinston, NC.

TA–W–55,610 & A; Broyhill Furniture Industries, Inc., Harper Furniture Plant, Lenoir, NC and Pacemaker Furniture Plant, Lenoir, NC.

TA–W–55,518; BASF Corporation, Freeport, TX.

The investigation revealed that criteria (1) has not been met. A significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated.

*TA–W–55,415; **Brook Industries, Inc., Fond du Lac, WI.*

The investigation revealed that criteria (a)(2)(A)(I.C) increased imports and (II.C) (has shifted production to a foreign country) have not been met.

TA–W–55,478; Ingersoll Cutting Tool Co., Rockford, IL.

TA–W–55,533; Johnson Electric, including leased workers of Select Staff, Staff Force and Link Staffing Services, Brownsville, TX.

The investigation revealed that criteria (a)(2)(A)(I.B) The sales or production, or both, of such firm or subdivision have decreased absolutely and (II.C) (has shifted production to a foreign country) have not been met.

TA–W–55,586; Monarch Services, Employed at IBM Corporation, Durham, NC.

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of (a)(2)(A) (increased imports) of section 222 have been met.

TA–W–55,532; Primavera Manufacturing Corporation, Philadelphia, PA: August 24, 2003.

TA–W–55,554; AMG Instore, Inc., Hartland Division of Array Marketing Group, including leased workers of Staffing Inc., Hartland, WI: September 2, 2003.

TA–W–55,608; Loring Coat, Inc., Newburgh, NY: August 25, 2003.

TA–W–55,480; Conduit Pipe Products Company, West Jefferson, OH: August 9, 2003.

TA–W–55,442; Ocean Star International, Snowville, UT: August 16, 2003.

TA–W–55,507; Aerus, LLC, formally Electrolux, LLC, Bristol, VA: August 24, 2003.

TA–W–55,649; Remington Industries, Benton, TN: September 10, 2003.

TA–W–55,526; IQE, Inc., a subsidiary of IQE, PLC, Bethlehem, PA.

TA–W–55,574; Philips Lighting Company, a subsidiary of Royal Philips Electronics, Paris, TX: September 2, 2003.

TA–W–55,560; Lacey Manufacturing Company, MCA Product Line, including leased workers of Adecco Staffing Services, Bridgeport, CT: September 2, 2003.

TA–W–55,561; NIBCO, Inc., Eastside Plant, Elkhart, IN: August 18, 2003.

TA–W–55,522; ACE Electrical Acquisition, LLC, Columbus, KS: August 27, 2003.

TA–W–55,448; Sheaffer Manufacturing Co., LLC, Fort Madison, IA: August 9, 2003.

TA–W–55,524; Franklin Burlington Plastics TA, AS Spartech VY-Cal, Conshohocken, PA: August 27, 2003.

TA–W–55,623; Superior Printing Company, Warren, OH: September 14, 2003.

TA–W–55,577; Resources Conservation, Inc., Stamford, CT: September 8, 2003.

TA–W–55,550; Owen Manufacturing, Inc., Owen, WI: August 26, 2003.

TA–W–55,529; Plastek Industries, Inc., Plastek Group Division (EPD), Including Leased Workers of Career Concepts, Erie, PA: August 23, 2003.

TA–W–55,563; Marsilli North America, Inc., Headquarters, a subsidiary of Marsilli & Company, S.P.A., Owings Mills, MD, National Sales and Service Division, a subsidiary of Marsilli & Company, S.P.A., Rolling Meadows, IL: September 5, 2003.

TA–W–55,559; Chatham Borgstena Automotive Textiles, Mt. Airy, NC: August 25, 2003.

TA–W–55,660; Toledo Commutator, Owosso, MI: September 13, 2003.

TA–W–55,659; GL&V USA, Inc., a subsidiary of GL&V, Inc., Research and Development Lab, Watertown, NY: September 13, 2003.

TA–W–55,652; Eljer Plumbingware, Inc., Ford City, PA: September 15, 2003.

TA–W–55,464; RPM Technology, including leased workers from Staffmark, Fort Collins, CO: August 11, 2003.

TA–W–55,539; Clover Garments, Inc., San Francisco, CA: August 30, 2003.

TA–W–55,512; Kimble Glass, Inc., a division of Gerresheimer Glas, Warsaw, IN: August 25, 2003.

TA–W–55,627; Allied Healthcare Products, Inc., Stuyvesant Falls, NY: September 7, 2003.

TA–W–55,502; Schott North America, Plant Duryea, Duryea, PA: August 22, 2003.

TA–W–55,496; Honeywell Aerospace, Division of Honeywell International, Boyne City, MI: August 16, 2003.

TA–W–55,624; Irwin Manufacturing Corporation, Ocilla, GA: September 10, 2003.

TA–W–55,471; Schweiger Furniture, a division of KCS International, Inc., Jefferson, WI: August 18, 2003.

TA–W–55,513; Peerless Pottery, Inc., Rockport, IN: August 24, 2003.

TA–W–55,540 & A, B; American Uniform Company, Conasauga Plant, Conasauga, TN, Hartford Warehouse, South Windsor, CT and Middleton Warehouse, Middleton, WI: August 24, 2003.

TA–W–55,564; Haeger Industries, Inc., Macomb Division, Macomb, IL: September 3, 2003.

TA–W–55,555; American Offset Printing Ink, Inc., Charlotte, NC: August 25, 2003.

The following certifications have been issued. The requirements of (a)(2)(B) (shift in production) of section 222 have been met.

TA–W–55,500; Arlee Home Fashions, Inc., Mountain Grove, MO: August 18, 2003.

TA–W–55,553; Honeywell International, Inc., Honeywell Video Systems Division, Falls Church, VA: August 27, 2003.

TA–W–55,645; Montrose/CDT, Auburn, MA: September 15, 2003.
TA–W–55,489; Brite Star Manufacturing Co., Philadelphia, PA: August 13, 2003.
TA–W–55,509; Friday Services, Inc., Workers at Continental Teves, Asheville, NC: August 23, 2003.
TA–W–55,635; SRC Devices, Inc., Earth City, MO: September 14, 2003.
TA–W–55,552; Nu-Kote International, Laser Cartridge, Chatsworth, CA: August 25, 2003.
TA–W–55,558; Emerson Appliance Controls, Sparta, TN: September 26, 2004.
TA–W–55,640; Owens Corning, OEM Solutions Group Division, including leased workers of Procure Personnel, Inc., West Hazleton, PA: September 16, 2003.
TA–W–55,510; Fey Automotive Products, Inc., a subsidiary of Wedgestone Corp., Irwindale, CA: August 17, 2003.
TA–W–55,628; Anaheim Manufacturing Company, Anaheim, CA: August 23, 2003.
TA–W–55,505; Belden CDT, Electronics Div., Essex Junction, VT: August 17, 2003.
TA–W–55,584; Pompeii Furniture, Inc., a division of Brown Jordan International, Miami, FL: September 9, 2003.
TA–W–55,579; Cozzini, Inc., San Leandro, CA: August 31, 2003.
TA–W–55,664; Weavexx Corp., a Division of Xerium, Inc., Greeneville, TN: March 28, 2004.
TA–W–55,613; Asmus Acquisition Company d/b/a Asmus Spice Company, a subsidiary of Pacific Holdings, Inc., a subsidiary of GB Seasonings, Inc., a subsidiary of Kerry Holding Company, Clinton Twp, MI: September 10, 2003.
TA–W–55,684; Madison Square Furniture, Inc., Hanover, PA: September 23, 2003.
TA–W–55,535; Kemet Electronics Corp., Brownsville Distribution Center, Brownsville, TX: August 31, 2003.
TA–W–55,633; Beverly Creations, Inc., Passaic, NJ: September 15, 2003.
TA–W–55,617; Levi Strauss and Company, San Francisco Sewing Room, San Francisco, CA: September 14, 2003.
TA–W–55,576; Hammer Metals, Conover, NC: September 8, 2003.
TA–W–55,609; Chicago Miniature Opto Electronics Technologies, Inc., Newton, NJ: September 14, 2003.
TA–W–55,602; Flexfab LLC, Flexfab Horizon International, Albion, IN: September 13, 2003.
TA–W–55,575; Duncan Parking Technologies, Inc., Harrison, AR: September 8, 2003.
TA–W–55,597 & A, B, C; VF Jeanswear Limited Partnership, subsidiary of VF Corp., Sewing Division, El Paso, TX, Cutting and Parts Division, Fabens, TX, Administrative Division, El Paso, TX and Laundry and Finishing Division, El Paso, TX: September 10, 2003.
TA–W–55,588; Zellweger Analytics, Inc., Miramar, FL: September 9, 2003.
TA–W–55,621; Southern Mills, Inc., a subsidiary of Royal Ten Cate USA, Inc., Cabletex Div., Newnan, GA: August 30, 2003.
TA–W–55,519; Pinehurst Manufacturing, Albemarle, NC: August 26, 2003.
TA–W–55,556; Aeronca, Inc., a subsidiary of Magellan Aerospace, Corp., Middletown, OH: August 27, 2003.
TA–W–55,525; Pacific Precision Metals, Inc., Azusa, CA: August 25, 2003.
TA–W–55,699; Gear Research, Grand Rapids, MI: September 27, 2003.
TA–W–55,441 & A; Resistance Technology, Inc., Behind-The-Ear Assembly Division, a subsidiary of Selas Corporation of America, Arden Hills, MN and Hybrid Integrated Circuit Division, a subsidiary of Selas Corp., of America, Arden Hills, MN: August 10, 2003.
TA–W–55,643; A.O. Smith Electrical Products Company, including On-Site Leased Workers from Kelley Services, Owosso, MI: September 13, 2003.
TA–W–55,631; Custom Finishers, Inc., High Point, NC: September 16, 2003.
TA–W–55,538; Amerock Corp., Rockford, IL: October 2, 2004.
TA–W–55,534A; Collins Tool Corp., formerly known as Mann Edge Tool Company, Old Stage Road, Lewistown, PA: August 31, 2003.
TA–W–55,290; Butler Manfuacturing Company, subsidiary of Bluescope Steel Ltd, Buildings Division, Fabricated Frames Production, Galesburg, IL: July 16, 2003.

The following certifications have been issued. The requirement of upstream supplier to a trade certified primary firm has been met.

TA–W–55,543; Clifford Tool and Manufacturing Co., Inc., Chatsworth, CA: September 1, 2003.
TA–W–55,508; EDM Corp., Piqua, OH: August 25, 2003.

Negative Determinations for Alternative Trade Adjustment Assistance

In order for the Division of Trade Adjustment Assistance to issued a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of section 246(a)(3)(A)(ii) of the Trade Act must be met.

In the following cases, it has been determined that the requirements of section 246(a)(3)(ii) have not been met for the reasons specified.

The Department as determined that criterion (2) of section 246 has not been met. Workers at the firm possess skills that are easily transferable.

TA–W–55,524; Franklin Burlington Plastics TA, AS Spartech VY-Cal, Conshohocken, PA.
TA–W–55,448; Sheaffer Manufacturing Co., LLC, Fort Madison, IA.
TA–W–55,522; Ace Electrical Acquisition, LLC, Columbus, Kansas.
TA–W–55,561; NIBCO, Inc., Eastside Plant, Elkhart, IN.
TA–W–55,560; Lacey Manufacturing Co., MCA Product Line, including leased workers of Adecco Staffing Services, Bridgeport, CT.
TA–W–55,574; Philips Lighting Co., a subsidiary of Royal Philips Electronics, Paris, TX.
TA–W–55,664; Weavexx Corp., a div. of Xerium, Inc., Greeneville, TN.
TA–W–55,579; Cozzini, Inc., San Leandro, CA.
TA–W–55,635; SRC Devices, Inc., Earth City, MO.
TA–W–55,584; Pompeii Furniture, Inc., a div. of Browne Jordan International, including on-site leased workers from Manpower International, Miami, FL.
TA–W–55,505; Belden CDT, Electronics Div., Essex Junction, VT.
TA–W–55,628; Anaheim Manufacturing Company, Anaheim, CA.
TA–W–55,510; Fey Automotive Products, Inc., a subsidiary of Wedgestone Corporation, Irwindale, CA.
TA–W–55,640; Owens Corning, OEM Solutions Group Division, including leased workers of Procure Personnel, Inc., West Hazleton, PA.
TA–W–55,558; Emerson Appliance Controls, Sparta, TN.
TA–W–55,552; Nu-Kote International, Laser Cartridge, Chatsworth, CA.
TA–W–55,543; Clifford Tool and Manufacturing Co., Inc., Chatsworth, CA.

Since the workers are denied eligibility to apply for TAA, the workers cannot be certified eligible for ATAA.

TA–W–55,468; Teleflex Automotive Group, a division of Teleflex, Inc., Lebanon, VA.
TA–W–55,474; Ecodyne MRM, Inc., Massillon, OH.

TA–W–55,452; U.S. Gypsum Company, Alabaster Plant, Tawas, MI.
TA–W–55,592; Advantek, Inc., a subsidiary of Siegel-Robert, Inc., Minnetonka, MN.
TA–W–55,472; Schneider Electric/ Square D, Monroe, NC.
TA–W–55,495; Tesco Technologies, LLC, Headquarters Office, Auburn Hills, MI.
TA–W–55,551; Corra-Board Products, a division of Timbar Packaging & Display, Hanover, PA.
TA–W–55,475; Synthetic Thread Co., Inc., Bethlehem, PA.
TA–W–55,549; Engineering Service, Inc., Troy, MI.
TA–W–55,612; Tally Genicom, LP, Waynesboro, VA.
TA–W–55,665; Waltonen Engineering, Inc., Warren, MI.
TA–W–55,686; Electronic Data Systems Corporation (EDS), Coraopolis, PA.
TA–W–55,601; California Cedar Products Co., Stockton, CA.
TA–W–55,593; Kingsberg Automotive, Inc., Farmington Hills, MI.
TA–W–55,572; Down River, LLC, White City, OR.
TA–W–55,455; Innovex, Inc., Maple Plain, MN.
TA–W–55,632; Turck, Inc., including leased workers of Doherty, Plymouth, MN.
TA–W–55,408; Kokoku Wire Industries, South Bend, IN.
TA–W–55,465; Diolen Industrial Fibers, Inc., Industrial Fibers, Scottsboro, AL.
TA–W–55,516; Invista, Inc., Performance Fibers Div., Kinston, NC.
TA–W–55,610 &A; Broyhill Furniture Industries, Inc., Harper Furniture Plant, Lenoir, NC and Pacemaker Furniture Plant, Lenoir, NC.
TA–W–55,518; BASF Corp., Freeport, TX.
TA–W–55,478; Ingersoll Cutting Tool Company, Rockford, IL.
TA–W–55,533; Johnson Electric, including leased workers of Select Staff, Staff Force and Link Staffing Services, Brownsville, TX.
TA–W–55,290A, B, C, D, E; Butler Manufacturing Company, subsidiary of Bluescope Steel, Ltd, Buildings Division, Panels Production, Galesburg, IL, Trim and Components Production, Galesburg, IL, Secondaries Production, Galesburg, IL, Delta Joist Production, Galesburg, IL and Truss Purlins Production, Galesburg, IL.

Affirmative Determinations for Alternative Trade Ajdustment Assistance

In order for the Division of Trade Adjustment Assistance to issue a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of section 246(a)(3)(A)(ii) of the Trade Act must be met.

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determinations.

In the following cases, it has been determined that the requirements of section 246(a)(3)(ii) have been met.

I. Whether a significant number of workers in the workers' firm are 50 years of age or older.

II. Whether the workers in the workers' firm possess skills that are not easily transferable.

III. The competitive conditions within the workers' industry (*i.e.*, conditions within the industry are adverse).

TA–W–55,538; Amerock Corporation, Rockford, IL: October 2, 2004.
TA–W–55,555; American Offset Printing Ink, Inc., Charlotte, NC: August 25, 2003.
TA–W–55,631; Custom Finishers, Inc., High Point, NC: September 16, 2003.
TA–W–55,643; A.O. Smith Electrical Products Co., including On-Site Leased Workers from Kelley Services, Owosso, MI: September 13, 2003.
TA–W–55,441 & A; Resistance Technology, Inc., Behind-The Ear Assembly Division, a subsidiary of Selas Corp. of America, Arden Hills, MN and Hybrid Integrated Circuit Div., Arden Hills, MN: August 10, 2003.
TA–W–55,290; Butler Manufacturing Company, subsidiary of Bluescope Steel, Ltd, Buildings Division, Fabricated Frames Production, Galesburg, IL: July 16, 2003.
TA–W–55,699; Gear Research, Grand Rapids, MI: September 27, 2003.
TA–W–55,525; Pacific Precision Metals, Inc., Azusa, CA: August 25, 2003.
TA–W–55,576; Hammer Metals, Conover, NC: September 8, 2003.
TA–W–55,556; Aeronca, Inc., a subsidiary of Magellan Aerospace, Corp., Middletown, OH: August 27, 2003.
TA–W–55,564; Haeger Industries, Inc., Macomb Div., Macomb, IL: September 3, 2003.
TA–W–55,540 & A, B; American Uniform Co., Conasauga Plant, Conasauga, TN, Hartford Warehouse, South Windsor, CT and Middleton Warehouse, Middleton, WI: August 24, 2003.
TA–W–55,513; Peerless Pottery, Inc., Rockport, IN: August 24, 2003.
TA–W–55,519; Pinehurst Manufacturing, Albemarle, NC: August 26, 2003.
TA–W–55,520 & A; Galey & Lord Industries, Inc., New York, NY, Greensboro Corporate Office, Greensboro, NC: August 24, 2003.
TA–W–55,471; Schweiger Furniture, a div. of KCS International, Inc., Jefferson, WI: August 18, 2003.
TA–W–55,621; Southern Mills, Inc., a subsidiary of Royal Ten Cate USA, Inc., Cabletex Div., Newnan, GA: August 30, 2003.
TA–W–55,624; Irwin Manufacturing Corp., Ocilla, GA: September 10, 2003.
TA–W–55,588; Zellweger Analytics, Inc., Miramar, FL: September 9, 2003.
TA–W–55,597 & A, B, C; VF Jeanswear Limited Partnership, subsidiary of VF Corp., Sewing Division, El Paso, TX, Cutting and Parts Div., Fabens, TX, Administrative Div., El Paso, TX and Laundry and Finishing Div., El Paso, TX: September 10, 2003.
TA–W–55,496; Honeywell Aerospace, div. of Honeywell International, Boyne City, MI: August 16, 2003.
TA–W–55,502; Schott North America, Plant Duryea, Duryea, PA: August 22, 2003.
TA–W–55,575; Duncan Parking Technologies, Inc., Harrison, AR: September 8, 2003.
TA–W–55,602; Flexfab LLC, Flexfab Horizon International, Albion, IN: September 13, 2003.
TA–W–55,609; Chicago Miniature Opto Electronics Technologies, Inc., Newton, NJ: September 14, 2003.
TA–W–55,617; Levi Strauss and Company, San Francisco Sewing Room, San Francisco, CA: September 14, 2003.
TA–W–55,627; Allied Healthcare Products, Inc., Stuyvesant Falls, NY: September 7, 2003.
TA–W–55,633; Beverly Creations, Inc., Passaic, NJ: September 15, 2003.
TA–W–55,508; EDM Corp., Piqua, OH: August 25, 2003.
TA–W–55,512; Kimble Glass, Inc., a division of Gerresheimer Glas, Warsaw, IN: August 25, 2003.
TA–W–55,535; Kemet Electronics Corp., Brownsville Distribution Center, Brownsville, TX: August 31, 2003.
TA–W–55,539; Clover Garments, Inc., San Francisco, CA: August 30, 2003.
TA–W–55,464; RPM Technology, including leased workers from Staffmark, Fort Collins, CO: August 11, 2003.
TA–W–55,684; Madison Square Furniture, Inc., Hanover, PA: September 23, 2003.

TA–W–55,652; Eljer Plumbingware, Inc., Ford City, PA: September 15, 2003.

TA–W–55,659; GL&V USA, Inc., a subsidiary of GL&V, Inc., Research and Development Lab, Watertown, NY: September 13, 2003.

TA–W–55,660; Toledo Commutators, Owosso, MI: September 13, 2003.

TA–W–55,559; Chatham Borgstena Automotive Textiles, Mt. Airy, NC: August 25, 2003.

TA–W–55,563 & A; Marsilli North America, Inc., Headquarters, a subsidiary of Marsilli & Company, S.P.A., Owings Mills, MD and National Sales and Service Division, a subsidiary of Marsilli & Company, S.P.A., Rolling Meadows, IL: September 5, 2003.

TA–W–55,613; Asmus Acquisition Company D/B/A Asmus Spice Co., a subsidiary of Pacific Holdings, Inc., a subsidiary of GB Seasonings, Inc., a subsidiary of Kerry Holding Company, Clinton Twp., MI: September 10, 2003.

TA–W–55,529; Plastek Industries, Inc., Plastek Group Division (EPD), including leased workers of Career Concepts, Erie, PA: August 23, 2003.

TA–W–55,550; Owen Manufacturing, Inc., Owen, WI: August 26, 2003.

TA–W–55,577; Resources Conservation, Inc., Stamford, CT: September 8, 2003.

TA–W–55,623; Superior Printing Co., Warren, OH: September 14, 2003.

TA–W–55,534A; Collins Tool Corporation, formerly known as Mann Edge Tool Company, Old Stage Road, Lewistown, PA: August 31, 2003.

I hereby certify that the aforementioned determinations were issued during the months of September and October 2004. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: October 20, 2004.

Timothy Sullivan,

Director, Division of Trade Adjustment Assistance.

[FR Doc. E4–2845 Filed 10–25–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–55,676]

The Longaberger Company, Hartville, OH; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on September 23, 2004, in response to a petition filed on behalf of workers at The Longaberger Company, Hartville, Ohio.

The petitioners have requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 6th day of October, 2004.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E4–2850 Filed 10–25–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–55,644]

Modine Manufacturing Company, Emporia, KS; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on September 21, 2004, in response to a petition filed by a company official on behalf of workers at Modine Manufacturing Company, Emporia, Kansas.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington DC this 12th day of October, 2004.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E4–2849 Filed 10–25–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,798]

Mohican Mills, Inc., Lincolnton, NC; Notice of Revised Determination on Remand

The United States Court of International Trade (USCIT) granted the Secretary of Labor's motion for voluntary remand for further investigation of the negative determination in *Former Employees of Mohican Mills, Inc.* v. *U.S. Secretary of Labor* (Court No. 04–00255).

The Department's denial of the initial petition (filed on December 11, 2003) was issued on February 2, 2004. The Notice of determination was published in the **Federal Register** (69 FR 11891) on March 12, 2004. The denial was based on the facts that imports of warp knit fabric did not contribute importantly to worker separations at the subject firm and that the subject firm did not shift production abroad during the relevant time period.

By letter dated February 22, 2004, the petitioner requested administrative reconsideration, alleging that workers producing lace are separately identifiable from workers producing other types of warp knit fabric. The Notice of Affirmative Determination Regarding Application for Reconsideration was issued on April 16, 2004, and published in the **Federal Register** on April 30, 2004 (69 FR 23818).

A Negative Determination on Reconsideration was issued on May 7, 2004, and published in the **Federal Register** on May 24, 2004 (69 FR 29580). During the reconsideration investigation, the Department found that lace is a type of warp knit fabric, that lace production constitute a small percentage of subject firm production, and that lace workers are not separately identifiable from other warp knit fabric producers. A new customer survey was not conducted since the survey appeared to be adequate.

By letter dated June 24, 2004, the petitioner filed an appeal with the USCIT, alleging that lace is a product distinct from other types of warp knit fabric, that lace production constituted about 20% to 25% of overall production, and that lace workers are separately identifiable from workers producing other types of warp knit fabric.

On August 16, 2004, the USCIT remanded the matter to the Department for further investigation.

During the remand investigation, the Department confirmed that while lace is a distinct type of warp knit fabric, workers producing lace are not separately identifiable from workers producing other types of warp knit fabric.

The Department conducted an expanded sample survey of the subject firm's major declining customers regarding purchases of warp knit fabric, circular knit fabrics and lace knit fabric during the relevant period. The survey revealed that a meaningful portion of the respondents increased their reliance on imports during the relevant period.

Workers at the subject firm possess skills that are not easily transferable to jobs in the local commuting area and at least five percent of the workers at the subject firm is at least fifty years of age. Competitive conditions within the industry are adverse.

Conclusion

After careful review of the additional facts obtained on remand, I conclude that there were increased imports of articles like or directly competitive with those produced by the subject firm that contributed importantly to the worker separations and sales or production declines at the subject facility. In accordance with the provisions of the Trade Act, I make the following certification:

All workers of Mohican Mills, Inc., Lincolnton, North Carolina who became totally or partially separated from employment on or after December 11, 2002, through two years from the issuance of this revised determination, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed in Washington, DC, this 13th day of October 2004.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E4–2843 Filed 10–25–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W–55,599]

Olympia Limited, Inc., Hoboken, NJ; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on September 13, 2004, in response to a worker petition filed by a company official on behalf of workers at Olympia Limited, Inc., Hoboken, New Jersey.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation would serve no purpose and the investigation has been terminated.

Signed in Washington, DC, this 6th day of October, 2004.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E4–2847 Filed 10–25–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,957]

Union Carbide Corporation, A Subsidiary of The Dow Chemical Company, West Virginia Operations, South Charleston, WV; Amended Notice of Revised Determination on Reopening

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Revised Determination on Reopening on July 26, 2004, applicable to workers of Union Carbide Corporation, a subsidiary of The Dow Chemical Company, West Virginia Operations, South Charleston, West Virginia. The notice was published in the **Federal Register** on August 4, 2004 (68 FR 62834).

At the request of the State agency, the Department reviewed the revised determination for workers of the subject firm. The workers at the West Virginia Operations, South Charleston, West Virginia, are engaged in the production of chemicals or derivatives thereof.

The State agency reports that some workers wages at the subject firm have been reported to the Unemployment Insurance (UI) tax account for the parent company, The Dow Chemical Company. Therefore, to clarify worker group coverage, the revised determination is being amended to include the workers at the West Virginia Operations, South Charleston, West Virginia, whose wages are reported to The Dow Chemical Company UI account.

The intent of the Department's certification is to include all workers of Union Carbide Corporation, a subsidiary of The Dow Chemical Company, West Virginia Operations, South Charleston, West Virginia, who were adversely affected by increased imports.

The amended notice applicable to TA–W–54,957 is hereby issued as follows:

All workers of Union Carbide Corporation, a subsidiary of The Dow Chemical Company, West Virginia Operations, including those workers whose unemployment insurance wages were reported to The Dow Chemical Company, South Charleston, West Virginia, who became totally or partially separated from employment on or after September 9, 2002, through October 17, 2005, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed in Washington, DC, this 19th day of October, 2004.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E4–2844 Filed 10–25–04; 8:45 am]

BILLING CODE 4510–30–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Meeting of the Subcommittee on Plant License Renewal; Notice of Meeting

The ACRS Subcommittee on Plant License Renewal will hold a meeting on November 3, 2004, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, November 3, 2004—1:30 p.m.–5 p.m.

The purpose of this meeting is to review the License Renewal Application and associated Draft Safety Evaluation Report (SER) related to the License Renewal of the Joseph M. Farley Nuclear Station. The Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff, Southern Nuclear Operating Company, and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official, Mr. Cayetano Santos (telephone 301/415–7270) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted.

Further information regarding this meeting can be obtained by contacting the Designated Federal Official between

7:30 a.m. and 4:15 p.m. (e.t.). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes to the agenda.

Dated: October 19, 2004.

John H. Flack,

Acting Branch Chief, ACRS/ACNW.

[FR Doc. 04–23901 Filed 10–25–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Subcommittee Meeting on Safeguards and Security; Notice of Meeting

The ACRS Subcommittee on Safeguards and Security will hold a closed meeting on November 3, 2004, Room T–8E8, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be closed to public attendance to protect information classified as national security information and safeguards information pursuant to 5 U.S.C. 552b(c)(1) and (3).

The agenda for the subject meeting shall be as follows:

Wednesday, November 3, 2004—8:30 a.m. until 11:30 a.m.

The Subcommittee will hear presentations from the NRC staff, NRC staff consultants, and representatives of the industry regarding safeguards and security issues. The purpose of this meeting is to gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

FOR FURTHER INFORMATION CONTACT: Mr. Richard K. Major (telephone: 301–415–7366) or Dr. Richard P. Savio (telephone: 301–415–7362) between 7:30 a.m. and 4:15 p.m. (e.t.).

Dated: October 19, 2004.

John H. Flack,

Acting Branch Chief, ACRS/ACNW.

[FR Doc. 04–23902 Filed 10–25–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Meeting Notice

In accordance with the purposes of sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards (ACRS) will hold a meeting on November 4–6, 2004, 11545 Rockville Pike, Rockville, Maryland. The date of this meeting was previously published in the **Federal Register** on Monday, November 21, 2003 (68 FR 65743).

Thursday, November 4, 2004, Conference Room T–2B3, Two White Flint North, Rockville, Maryland

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 a.m.–10:30 a.m.: Proposed Rule for Risk-Informing 10 CFR 50.46. (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the proposed rule for risk-informing 10 CFR 50.46, ''Acceptance Criteria for Emergency Core Cooling Systems for Light-Water Nuclear Power Reactors,'' and related matters.

10:45 a.m.–12:15 p.m.: Proactive Materials Degradation Assessment Program (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the status of the Proactive Materials Degradation Assessment Program.

1:15 p.m.–2:45 p.m.: Proposed Rule on Post-Fire Operator Manual Actions (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the proposed rule on post-fire operator manual actions and related matters.

3 p.m.–4:30 p.m.: Grid Reliability Issues and Related Significant Operating Events (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding their activities associated with grid reliability, significant operating events related to grid stability, and other related matters.

4:45 p.m.–7 p.m.: Preparation of ACRS Reports (Open/Closed)—The Committee will discuss proposed ACRS reports on matters considered during this meeting. In addition, the Committee will discuss proposed reports on: Response to the August 25, 2004, EDO response to the May 21, 2004, ACRS Letter on Resolution of Certain Items Identified by the ACRS in NUREG–1740, ''Voltage-Based Alternative Repair Criteria;'' AP1000 Lessons Learned Report; and Safeguards and Security Matters (Closed).

Friday, November 5, 2004, Conference Room T–2B3, Two White Flint North, Rockville, Maryland

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 a.m.–10 a.m.: Status of Early Site Permit Reviews (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the status of the staff's review of the early site permit applications.

10:15 a.m.–11:45 a.m.: Assessment of the Quality of Selected NRC Research Projects (Open)—The Committee will discuss the preliminary results of the cognizant ACRS members' assessment of the quality of the NRC research projects on Sump Blockage and on MACCS code.

12:45 p.m.–1 p.m.: Plant License Renewal Subcommittee Report (Open)—The Committee will hear a report by the Chairman of the ACRS Subcommittee on Plant License Renewal regarding interim review of the license renewal application for the Farley Nuclear Plant.

1 p.m.–2 p.m.: Future ACRS Activities/Report of the Planning and Procedures Subcommittee (Open)—The Committee will discuss the recommendations of the Planning and Procedures Subcommittee regarding items proposed for consideration by the full Committee during future meetings. Also, it will hear a report of the Planning and Procedures Subcommittee on matters related to the conduct of ACRS business, including anticipated workload and member assignments.

2 p.m.–2:15 p.m.: Reconciliation of ACRS Comments and Recommendations (Open)—The Committee will discuss the responses from the NRC Executive Director for Operations (EDO) to comments and recommendations included in recent ACRS reports and letters. The EDO responses are expected to be made available to the Committee prior to the meeting.

2:30 p.m.–7 p.m.: Preparation of ACRS Reports (Open/Closed)—The Committee will discuss proposed ACRS reports.

Saturday, November 6, 2004, Conference Room T–2B3, Two White Flint North, Rockville, Maryland

8:30 a.m.–12:30 p.m.: Preparation of ACRS Reports (Open/Closed)—The Committee will continue its discussion of proposed ACRS reports.

12:30 p.m.–1 p.m.: Miscellaneous (Open)—The Committee will discuss matters related to the conduct of Committee activities and matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 5, 2004 (69 FR 59620). In accordance with those procedures, oral or written views may be presented by members of the public, including representatives of the nuclear industry. Electronic recordings will be permitted only during the open portions of the meeting. Persons desiring to make oral statements should notify the Cognizant ACRS staff named below five days before the meeting, if possible, so that appropriate arrangements can be made to allow necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during the meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by contacting the Cognizant ACRS staff prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the Cognizant ACRS staff if such rescheduling would result in major inconvenience.

In accordance with subsection 10(d) Pub. L. 92–463, I have determined that it is necessary to close portions of this meeting noted above to discuss and protect information classified as national security information as well as safeguard information pursuant to 5 U.S.C. 552b(c)(1) and (3).

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, as well as the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting Mr. Sam Duraiswamy, Cognizant ACRS staff (301–415–7364), between 7:30 a.m. and 4:15 p.m., e.t.

ACRS meeting agenda, meeting transcripts, and letter reports are available through the NRC Public Document Room at *pdr@nrc.gov,* or by calling the PDR at 1–800–397–4209, or from the Publicly Available Records System (PARS) component of NRC's document system (ADAMS) which is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* or *http://www.nrc.gov/reading-rm/doc-collections/* (ACRS & ACNW Mtg schedules/agendas).

Videoteleconferencing service is available for observing open sessions of ACRS meetings. Those wishing to use this service for observing ACRS meetings should contact Mr. Theron Brown, ACRS Audio Visual Technician (301–415–8066), between 7:30 a.m. and 3:45 p.m., e.t., at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the videoteleconferencing link. The availability of videoteleconferencing services is not guaranteed.

Dated: October 20, 2004.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 04–23903 Filed 10–25–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Federal Register Notice

DATES: Weeks of October 25, November 1, 8, 15, 22, 29, 2004.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of October 25, 2004

There are no meetings scheduled for the week of October 25, 2004.

Week of November 1, 2004—Tentative

There are no meetings scheduled for the week of November 1, 2004.

Week of November 8, 2004—Tentative

Monday, November 8, 2004

9 a.m. Briefing on Plant Aging and Material Degradation Issues—Part One (Public Meeting) (Contact: Steve Koenick, 301–415–1239)

1:30 p.m. Briefing on Plant Aging and Material Degradation Issues—Part Two (Public Meeting) (Contact: Steve Koenick, 301–415–1239)

This meeting (both parts) will be webcast live at the Web address—*http://www.nrc.gov.*

Week of November 15, 2004—Tentative

Tuesday, November 16, 2004

1:30 p.m. Briefing on Threat Environment Assessment (Closed—Ex. 1) (New time)

Thursday, November 18, 2004

1:30 p.m. Discussion of Security Issues (Closed—Ex. 1) (New date and time)

Week of November 22, 2004—Tentative

There are no meetings scheduled for the week of November 22, 2004.

Week of November 29, 2004—Tentative

There are no meetings scheduled for the week of November 29, 2004.

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: Dave Gamberoni, (301) 415–1651.

''Briefing on Reactor Safety and Licensing Activities (Public Meeting),'' originally scheduled for 9:30 a.m. on Tuesday, November 9, 2004, is being rescheduled for a later date.

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/what-we-do/policy-making/schedule.html.*

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.* braille, large print), please notify the NRC's Disability Program Coordinator, August Spector, at 301–415–7080, TDD: 301–415–2100, or by e-mail at *aks@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov.*

Dated: October 21, 2004.

Dave Gameroni,

Office of the Secretary.

[FR Doc. 04–24010 Filed 10–22–04; 10:12 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to section 189a.(2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. The Act requires the Commission publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from October 1, 2004 through October 14, 2004. The last biweekly notice was published on October 12, 2004 (69 FR 60677).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* If a request for a hearing or petition for leave to intervene is filed within 60 days, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also set forth the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner/requestor intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner/requestor intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner/requestor to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; (2) courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff; (3) e-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, *HEARINGDOCKET@NRC.GOV;* or (4) facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff at (301) 415–1101, verification number is (301) 415–1966. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov.* A copy of the request for hearing and petition for leave to intervene should also be sent to the attorney for the licensee.

Nontimely requests and/or petitions and contentions will not be entertained absent a determination by the Commission or the presiding officer of the Atomic Safety and Licensing Board that the petition, request and/or the contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309(a)(1)(i)–(viii).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov.*

AmerGen Energy Company, LLC, Docket No. 50–461, Clinton Power Station, Unit 1, DeWitt County, Illinois

Date of amendment request: April 30, 2004.

Description of amendment request: The proposed change allows entry into a mode or other specified condition in the applicability of a technical specification (TS), while in a condition statement and the associated required actions of the TS, provided the licensee performs a risk assessment and manages risk consistent with the program in place for complying with the requirements of title 10 of the Code of Federal Regulations (10 CFR), part 50, Section 50.65(a)(4). Limiting Condition for Operation (LCO) 3.0.4 exceptions in individual TS would be eliminated, several notes or specific exceptions are revised to reflect the related changes to LCO 3.0.4, and Surveillance Requirement (SR) 3.0.4 is revised to reflect the LCO 3.0.4 allowance.

This change was proposed by the industry's Technical Specification Task Force (TSTF) and is designated TSTF–359. The Nuclear Regulatory Commission (NRC) staff issued a notice of opportunity for comment in the **Federal Register** on August 2, 2002 (67 FR 50475), on possible amendments concerning TSTF–359, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on April 4, 2003 (68 FR 16579). The licensee affirmed the applicability of the following NSHC determination in its application dated April 30, 2004.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of NSHC is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed change allows entry into a mode or other specified condition in the applicability of a TS, while in a TS condition statement and the associated required actions of the TS. Being in a TS condition and the associated required actions is not an initiator of any accident previously evaluated. Therefore, the probability of an accident previously evaluated is not significantly increased. The consequences of an accident while relying on required actions as allowed by proposed LCO 3.0.4, are no different than the consequences of an accident while entering and relying on the required actions while starting in a condition of applicability of the TS. Therefore, the consequences of an accident previously evaluated are not significantly affected by this change. The addition of a requirement to assess and manage the risk introduced by this change will further minimize possible concerns. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluatedty.

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed). Entering into a mode or other specified condition in the applicability of a TS, while in a TS condition statement and the associated required actions of the TS, will not introduce new failure modes or effects and will not, in the absence of other unrelated failures, lead to an accident whose consequences exceed the consequences of accidents previously evaluated. The addition of a requirement to assess and manage the risk introduced by this change will further minimize possible concerns. Thus, this change does not create the possibility of a new or different kind of accident from an accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in a Margin of Safety

The proposed change allows entry into a mode or other specified condition in the applicability of a TS, while in a TS condition statement and the associated required actions of the TS. The TS allow operation of the plant without the full complement of equipment through the conditions for not meeting the TS LCO. The risk associated with this allowance is managed by the imposition of required actions that must be performed within the prescribed completion times. The net effect of being in a TS condition on the margin of safety is not considered significant. The proposed change does not alter the required actions or completion times of the TS. The proposed change allows TS conditions to be entered, and the associated required actions and completion times to be used in new circumstances. This use is predicated upon the licensee's performance of a risk assessment and the management of plant risk. The change also eliminates current allowances for utilizing required actions and completion times in similar circumstances, without assessing and managing risk. The net change to the margin of safety is insignificant. Therefore, this change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Attorney for licensee: Mr. Thomas S. O'Neill, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60666.

NRC Section Chief: Gene Y. Suh.

Calvert Cliffs Nuclear Power Plant, Inc., Docket Nos. 50–317 and 50–318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of amendment request: December 9, 2003.

Description of amendment request: The proposed amendment would revise Technical Specification 3.7.1, ''Main Steam Safety Valves (MSSVs),'' to increase the maximum allowable lift setting on two MSSVs on each unit. In addition, the proposed amendment would increase the completion time for reducing the Power Level-High Trip setpoint.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Would not involve a significant increase in the probability or consequences of an accident previously evaluated.

This license amendment request proposes to increase the upper range of the relief setting of the first two Main Steam Safety Valves (MSSVs) by 10 psi [pounds per square-inch]. The MSSVs are not accident initiators. They are credited with relieving secondary system pressure and act as a heat sink for the Reactor Coolant System (RCS) when the preferred heat sink is not available. Increasing the upper end of the setpoint for the first two MSSVs to lift does not affect the steam relieving capacity of the total or any combination of MSSVs that lift. This proposed amendment does not install any new components or change the physical characteristics of the MSSVs. Therefore, the change does not involve a significant increase in the probability of an evaluated accident.

The Updated Final Safety Analysis Report Chapter 14 safety analyses were reviewed considering the change to the upper end of the lift settings range of the first two MSSVs. The analyses show that increasing the upper end of the lift setting range does not exceed the pressure limits of the reactor coolant or main steam systems, nor the radiological consequences anticipated by the safety analyses. Therefore, the change will not involve a significant increase in the consequences of an evaluated accident.

This proposed amendment will also increase the Technical Specification Completion Time to reset the Power Level-High Trip from 12 hours to 36 hours. The purpose of the Power Level-High Trip is to trip the reactor if reactor power exceeds a set value, and is required by Technical Specifications to be reset according to the number of MSSVs remaining operable. The trip is not an accident initiator but is a signal that responds to an accident condition. Therefore, the change does not involve a significant increase in the probability of an evaluated accident.

Reducing the setpoint of the Power Level-High Trip within the time allotted by Technical Specifications provides additional assurance that the MSSVs will be able to perform their design function by keeping the reactor power within the ability of the MSSVs to relieve steam volume. There is low probability of a transient that could result in steam generator overpressure during the proposed 36 hours to reset the Power Level-High Trip. Therefore, this change does not involve a significant increase in the consequences of an evaluated accident.

Therefore, this proposed license amendment does not significantly increase the probability or consequences of an accident previously evaluated.

2. Would not create the possibility of a new or different [kind] of accident from any accident previously evaluated.

The proposed amendment will increase the upper end of the lift pressure for the first two MSSVs and increase the Technical Specification Completion Time to reset the Power Level-High Trip setpoint.

The proposed amendment does not involve a physical alteration of the plant or change the plant configuration. It does not require any new or unusual operator actions. The amendment does not alter the way any structure, system, or component functions and does not alter the manner in which the plant is operated. It does not introduce any new failure modes.

Therefore, this proposed license amendment does not create the possibility of a new or different [kind] of accident from any accident previously evaluated.

3. Would not involve a significant reduction in [a] margin of safety.

The margin of safety in this case is that the MSSVs release sufficient steam to relieve pressure in the secondary system and to act as a heat sink to prevent over-pressurization of the RCS when the preferred heat sink is not available. Increasing the upper end of the setpoint for the first two MSSVs to lift does not affect the steam relieving capacity of the total or any combination of MSSVs that lift. Potential delay in the opening of the first two MSSVs does not result in exceeding the pressure limits of the reactor coolant or main steam systems.

Reducing the Power Level-High Trip setpoint within the specified time limit provides additional assurance that the MSSVs will be able to perform their design function by keeping the reactor power within the ability of the MSSVs to relieve steam volume. A completion time of 36 hours to lower the Power Level-High Trip setpoint is based on a reasonable time to correct the MSSV inoperability, operating experience in resetting all channels of a protective function, and on the low probability of the occurrence of a transient that could result in steam generator overpressure during this period.

Therefore, this proposed license amendment does not involve a significant reduction in [a] margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: James M. Petro, Jr., Esquire, Counsel, Constellation Energy Group, Inc., 750 East Pratt Street, 5th floor, Baltimore, MD 21202.

NRC Section Chief: Richard J. Laufer.

Carolina Power & Light Company, Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of amendments request: August 16, 2004.

Description of amendments request: The proposed change adds topical report NEDE–32906P–A, ''TRACG Application for Anticipated Operational Occurrences (AOO) Transient Analyses,'' to the documents listed in Technical Specification (TS) 5.6.5 describing the approved methodologies used to determine the core operating limits. Unit 2 will be unable to resume power operation following Refueling Outage 16 without NRC approval for inclusion of the TRACG methodology in TS 5.6.5.b.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change to TS 5.6.5.b will add General Electric Nuclear Energy topical report NEDE–32906P–A, ''TRACG Application for Anticipated Operational Occurrences (AOO) Transient Analyses,'' to the list of documents describing approved methodologies for determining core operating limits. NRC review and acceptance of the TRACG methodology is documented in an October 22, 2001, letter and associated safety evaluation issued to General Electric Nuclear Energy (*i.e.*, refer to ADAMS Accession Numbers ML012740390 and ML012740161). Analyzed events are assumed to be initiated by the failure of plant structures, systems, or components. The core operating limits, which are developed using the topical report being added, ensure that the integrity of the fuel will be maintained during normal operations and that design requirements will continue to be met. The proposed change does not involve physical changes to any plant structure, system, or component. Therefore, the probability of occurrence for a previously analyzed accident is not significantly increased.

The consequences of a previously analyzed accident are dependent on the initial conditions assumed for the analysis, the behavior of the fuel during the analyzed accident, the availability and successful functioning of the equipment assumed to operate in response to the analyzed event, and the setpoints at which these actions are initiated. Use of the analytical methodologies described in the topical report being added to TS 5.6.5.b will ensure that applicable design and safety analyses acceptance criteria are met. Use of these NRC-approved methodologies does not affect the performance of any equipment used to mitigate the consequences of an analyzed accident. As a result, no analysis assumptions are violated and there are no adverse effects on the factors that contribute to offsite or onsite dose as the result of an accident. Use of the approved methodologies described in the topical report being added to TS 5.6.5.b ensures that plant structures, systems, or components are maintained consistent with the safety analysis and licensing bases. Based on this evaluation, there is no significant increase in the consequences of a previously analyzed event.

Therefore, the proposed change adding General Electric Nuclear Energy licensing topical report NEDE–32906P–A to the TS 5.6.5.b list of documents describing approved methodologies for determining core operating limits does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change adding licensing topical report NEDE–32906P–A to TS 5.6.5.b, and the use of the analytical methods described therein, does not involve any physical alteration of plant systems, structures, or components, other than allowing for fuel and core designs in accordance with NRC approved methodologies. The proposed methodology continues to meet applicable criteria for core operating limit analysis. No new or different equipment is being installed. No installed equipment is being operated in a different manner. There is no alteration to the parameters within which the plant is normally operated or in the setpoints that initiate protective or mitigative actions. As a result no new failure modes are being introduced.

Therefore, the proposed change adding General Electric Nuclear Energy licensing topical report NEDE–32906P–A to the TS 5.6.5.b list of documents describing approved methodologies for determining core operating limits does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The margin of safety is established through the design of the plant structures, systems, and components, through the parameters within which the plant is operated, through the establishment of the setpoints for the actuation of equipment relied upon to respond to an event, and through margins contained within the safety analyses. The proposed change adding General Electric Nuclear Energy licensing topical report NEDE–32906P–A to the TS 5.6.5.b list of documents describing approved methodologies for determining core operating limits does not impact the condition or performance of structures, systems, setpoints, and components relied upon for accident mitigation. The proposed change does not significantly impact any safety analysis assumptions or results. Therefore, the proposed change adding topical report NEDE–32906P–A to the TS 5.6.5.b list of documents describing approved methodologies for determining core operating limits does not result in a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Steven R. Carr, Associate General Counsel—Legal Department, Progress Energy Service Company, LLC, Post Office Box 1551, Raleigh, North Carolina 27602.

NRC Section Chief (Acting): Michael L. Marshall.

Energy Northwest, Docket No. 50–397, Columbia Generating Station, Benton County, Washington

Date of amendment request: September 22, 2004.

Description of amendment request: The proposed change will revise Columbia Generating Station's licensing basis by replacing the current plant-specific reactor pressure vessel (RPV) material surveillance program with the Boiling Water Reactor Vessels and Internals Project (BWRVIP) Integrated Surveillance Program (ISP). Specifically, the proposed amendment would revise Columbia's Final Safety Analysis Report (FSAR) to include participation in the ISP as described in the program document BWRVIP–86–A, ''BWR Vessel and Internals Project Updated BWR Integrated Surveillance Program (ISP) Implementation Plan,'' dated October 2002.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated

The proposed change implements an ISP program that meets the requirements of 10 CFR 50, Appendix H, Paragraph III.C, ''Requirements for an Integrated Surveillance Program.'' The proposed ISP program ensures the same level of RPV integrity as Columbia's current material surveillance program. Implementation of the proposed ISP is not a precursor or initiator of any previously evaluated accident. No physical changes to Columbia Generating Station are involved with the proposed change. The proposed change will not cause the RPV or interfacing systems to be operated outside of any design limit or testing limit, and will not alter any assumptions or initial conditions previously used in evaluating the radiological consequences of an accident.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change revises the licensing basis for Columbia Generating Station to reflect participation in the BWRVIP ISP. The NRC has approved the ISP as an acceptable material surveillance program pursuant to 10 CFR 50, Appendix H, paragraph III.C. No physical changes to the plant are associated with the proposed change. No changes in design or operation of any system, structure, or component will be made as a result of the proposed change. The ISP is an alternative monitoring program and cannot create a new failure mode or a new or different kind of accident from any previously evaluated.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

Compliance with RPV material surveillance program requirements specified in 10 CFR 50, Appendix H and the fracture toughness requirements contained in 10 CFR

50, Appendix G ensure an adequate margin of safety exists in the fracture toughness of RPV beltline ferritic materials during any condition of normal operation, anticipated operational occurrence, and system hydrostatic tests. Implementation of the proposed ISP has been evaluated to meet the requirements of 10 CFR 50, Appendix H and this margin of safety is not impacted. Compliance with the requirements of 10 CFR 50, Appendix G will not be affected by this proposed change.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Thomas C. Poindexter, Esq., Winston & Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Robert A. Gramm.

Energy Northwest, Docket No. 50–397, Columbia Generating Station, Benton County, Washington

Date of amendment request: September 27, 2004.

Description of amendment request: The proposed amendment would delete Technical Specification (TS) 5.6.1, ''Occupational Radiation Exposure Report,'' and TS 5.6.4, ''Monthly Operating Reports.''

The NRC staff issued a notice of availability of a model no significant hazards consideration (NSHC) determination for referencing in license amendment applications in the **Federal Register** on June 23, 2004 (69 FR 35067). The licensee affirmed the applicability of the model NSHC determination in its application dated September 27, 2004.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The proposed change eliminates the TS reporting requirements to provide a monthly operating report of shutdown experience and operating statistics if the equivalent data is submitted using an industry electronic database. It also eliminates the TS reporting requirement for an annual occupational radiation exposure report, which provides information beyond that specified in NRC regulations. The proposed change involves no changes to plant systems or accident analyses. As such, the change is administrative in nature and does not affect initiators of analyzed events or assumed mitigation of accidents or transients. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Accident Previously Evaluated

The proposed change does not involve a physical alteration of the plant, add any new equipment, or require any existing equipment to be operated in a manner different from the present design. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in a Margin of Safety

This is an administrative change to reporting requirements of plant operating information and occupational radiation exposure data, and has no effect on plant equipment, operating practices or safety analyses assumptions. For these reasons, the proposed change does not involve a significant reduction in the margin of safety.

Based upon the reasoning presented above, the requested change does not involve significant hazards consideration.

Attorney for licensee: Thomas C. Poindexter, Esq., Winston & Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Robert A. Gramm.

Energy Northwest, Docket No. 50–397, Columbia Generating Station, Benton County, Washington

Date of amendment request: September 30, 2004.

Description of amendment request: The proposed license amendment request would change the technical specifications and the Final Safety Analysis Report to revise the Columbia Generating Station's licensing and design bases to reflect the application of the alternative source term (AST) methodology with an exception. That exception is TID–14844, ''Calculation of Distance Factors for Power and Test Reactor Sites,'' which will continue to be used as the radiation dose basis for equipment qualification, and radiation zone maps/shielding calculations.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The alternative source term does not affect the design or operation of the facility in a manner that would impact the probability of an accident previously evaluated. Assumed performance requirements of the system structures and components are within existing design capability. The manner in which the systems are required to operate has not changed.

Once the occurrence of an accident has been postulated, the new source term is an input to evaluate the consequences. The implementation of the alternative source term methodology has been evaluated in revisions to the analyses of the following limiting design basis accidents at Columbia Generating Station:

- Control Rod Drop Accident
- Fuel Handling Accident
- Main Steam Line Break Accident
- Loss of Coolant Accident

This amendment request includes changes to the Technical Specifications based on assumptions in the accident analyses. The results of these analyses demonstrate that, with the requested changes, the dose consequences of these limiting events are within the regulatory limits provided by the NRC for use with the alternative source term.

A new license and design basis analysis on secondary containment drawdown is provided to resolve a Justification for Continued Operation. The consequences, based on alternative source term methodology, remain within regulatory limits. This change to the licensing and design basis does not result in a significant increase in consequences.

Alternative source term methodology has been applied to resolve the Unresolved Safety Question on control room unfiltered air inleakage. The accident analyses results show, with the increased unfiltered air inleakage, the control room operator doses remain within regulatory limits.

Therefore, approval of the proposed amendment request does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The requested changes are based on accident analyses. System[,] structure and component performance assumptions included in the accident analyses result in doses within regulatory limits. Use of these performance assumptions does not:

- Require the installation of any new equipment,
- Require the modification of any existing equipment,
- Change the manner in which the equipment is required to be operated,
- Assume equipment performance outside existing design capabilities, or
- Require new operator actions.

Therefore Energy Northwest application of the alternative source term methodology does not create any new accident initiators or precursors of a new or different kind of accident.

3. The proposed change does not involve a significant reduction in a margin of safety.

The changes proposed are associated with the implementation of a new licensing basis for Columbia Generating Station. Approval of a basis change from the original source term developed in accordance with TID–14844 to a new alternative source term as described in RG [Regulatory Guide] 1.183 is requested. The results of the accident analyses revised in support of this submittal, and the requested Technical Specification changes, are subject to revised acceptance criteria. These analyses have been performed using conservative methodologies.

Safety margins and analytical conservatisms have been evaluated and are satisfied. The analyzed accidents has been carefully selected and margin has been retained to ensure that the analyses adequately bound postulated event scenarios. The dose consequences of these limiting design basis accidents are within the acceptance criteria found in the applicable regulatory requirements and guidance. These requirements and guidance are presented in 10 CFR 50, App. A, 10 CFR 50.67, GDC [General Design Criterion] 19, and RG 1.183.

The proposed changes can be made while still satisfying regulatory requirements and review criteria, with margin. The changes continue to ensure that the doses at the exclusion area and low population zone boundaries, as well as the control room, are within the corresponding regulatory limits. Therefore, operation of Columbia Generating Station in accordance with the requested amendment does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Thomas C. Poindexter, Esq., Winston & Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Robert A. Gramm.

Entergy Nuclear Operations, Inc., Docket No. 50–293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of amendment request: April 14, 2004.

Description of amendment request: The proposed amendment would revise Technical Specifications (TSs) to allow a one-time interval extension of no more than five years for the Type A, Integrated Leakage Rate Test (ILRT) of the primary containment. The proposed amendment would also correct the TSs to remove a reference to an obsolete alphanumeric identifier in TS 4.7.A.2.a, and reformat existing text on TS Pages 3/4.7–4 and 3/4.7–5 to improve consistency in its presentation.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The Nuclear Regulatory Commission (NRC) staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below.

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed changes do not modify the design or operation of the containment. Therefore, the proposed changes, therefore, will not increase the probability of accidents previously evaluated.

The proposed extension to Type A, ILRT testing does not involve a significant increase in the consequences of an accident. Research documented in NUREG–1493 has found that Type A tests identify only a few potential containment leakage paths that also cannot be identified by Type B and C tests. The leaks that have been found by Type A tests have only been marginally above existing requirements. The NUREG then concluded that reducing the Type A testing frequency to once every 20 years was found to lead to an imperceptible increase in risk. These generic conclusions were confirmed by a plant-specific risk analysis performed using the current Pilgrim individual plant examination (IPE) internal events model that concluded the radiological consequences are low to negligible, and remain below regulatory limits. Therefore, any potential change in the radiological consequences is not considered significant.

The proposed correction to remove the alphanumeric identifier (*i.e.*, definition 1.U), which is no longer used in the TSs, from the statements regarding the applicability of surveillance frequency to leak rate tests is editorial in nature. Likewise, the proposed formatting changes to existing information to improve its presentation are also editorial in nature. Since these changes are administrative in nature, they cannot increase the probability or consequences of previously analyzed accidents.

Therefore, since the radiological consequences are below the regulatory limits and the probability of an accident is unchanged, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

There are no new plant operation modes or physical modifications being proposed. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously analyzed.

3. Does the change involve a significant reduction in a margin of safety?

The proposed revisions to the TSs add a one-time, 5-year extension to the current interval of 10 years from the last Type A test. The NUREG–1493 generic study of the effects of extending containment leakage testing found that a 20-year extension in Type A leakage testing resulted in an imperceptible increase in risk to the public. The NUREG also found that, generically, the design containment leakage rate contributes about 0.1 percent to the individual risk, and that the decrease in Type A testing frequency would have a minimal affect on this risk since 95 percent of the potential leakage paths are detected by Type C testing. This was further confirmed by a plant-specific risk assessment using the current Pilgrim IPE internal events model. Therefore, by meeting applicatory regulatory limits, any potential decrease in margin of safety would not be considered significant.

The proposed correction to remove the alphanumeric identifier (*i.e.*, definition 1.U), which is no longer used in Pilgrim TSs, from the statements regarding the applicability of surveillance frequency to leak rate tests is editorial in nature. Likewise, the proposed formatting changes to existing information to improve its presentation are also editorial in nature. As these changes are administrative in nature, the proposed changes do not involve a significant reduction in the margin of safety.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: J. M. Fulton, Esquire, Assistant General Counsel, Pilgrim Nuclear Power Station, 600 Rocky Hill Road, Plymouth, Massachusetts, 02360–5599.

NRC Section Chief: Daniel Collins, Acting.

Exelon Generation Company, LLC, Docket Nos. STN 50–454 and STN 50–455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois

Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Docket Nos. 50–237 and 50–249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois

Docket Nos. 50–373 and 50–374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Docket Nos. 50–254 and 50–265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of amendment request: April 30, 2004.

Description of amendment request: The proposed change allows entry into a mode or other specified condition in the applicability of a technical specification (TS), while in a condition statement and the associated required actions of the TS, provided the licensee performs a risk assessment and manages risk consistent with the program in place for complying with the requirements of Title 10 of the Code of Federal Regulations (10 CFR), Part 50, Section 50.65(a)(4). Limiting Condition for Operation (LCO) 3.0.4 exceptions in individual TS would be eliminated, several notes or specific exceptions are revised to reflect the related changes to LCO 3.0.4, and Surveillance Requirement (SR) 3.0.4 is revised to reflect the LCO 3.0.4 allowance.

This change was proposed by the industry's Technical Specification Task Force (TSTF) and is designated TSTF–359. The Nuclear Regulatory Commission (NRC) staff issued a notice of opportunity for comment in the **Federal Register** on August 2, 2002 (67 FR 50475), on possible amendments concerning TSTF–359, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on April 4, 2003 (68 FR 16579). The licensee affirmed the applicability of the following NSHC determination in its application dated April 30, 2004.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of NSHC is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed change allows entry into a mode or other specified condition in the applicability of a TS, while in a TS condition statement and the associated required actions of the TS. Being in a TS condition and the associated required actions is not an initiator of any accident previously evaluated. Therefore, the probability of an accident previously evaluated is not significantly increased. The consequences of an accident while relying on required actions as allowed by proposed LCO 3.0.4, are no different than the consequences of an accident while entering and relying on the required actions while starting in a condition of applicability of the TS. Therefore, the consequences of an accident previously evaluated are not significantly affected by this change. The addition of a requirement to assess and manage the risk introduced by this change will further minimize possible concerns. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed). Entering into a mode or other specified condition in the applicability of a TS, while in a TS condition statement and the associated required actions of the TS, will not introduce new failure modes or effects and will not, in the absence of other unrelated failures, lead to an accident whose consequences exceed the consequences of accidents previously evaluated. The addition of a requirement to assess and manage the risk introduced by this change will further minimize possible concerns. Thus, this change does not create the possibility of a new or different kind of accident from an accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in a Margin of Safety

The proposed change allows entry into a mode or other specified condition in the applicability of a TS, while in a TS condition statement and the associated required actions of the TS. The TS allow operation of the plant without the full complement of equipment through the conditions for not meeting the TS LCO. The risk associated with this allowance is managed by the imposition of required actions that must be performed within the prescribed completion times. The net effect of being in a TS condition on the margin of safety is not considered significant. The proposed change does not alter the required actions or completion times of the TS. The proposed change allows TS conditions to be entered, and the associated required actions and completion times to be used in new circumstances. This use is predicated upon the licensee's performance of a risk assessment and the management of plant risk. The change also eliminates current allowances for utilizing required actions and completion times in similar circumstances, without assessing and managing risk. The net change to the margin of safety is insignificant. Therefore, this change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Attorney for licensee: Mr. Thomas S. O'Neill, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.

NRC Section Chief: Gene Suh.

Exelon Generation Company, LLC, Docket Nos. 50–352 and 50–353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of amendment request: May 20, 2004.

Description of amendment request: The proposed changes would modify the Limerick Generating Station (LGS), Units 1 and 2, Technical Specifications (TSs) to support activation of the trip outputs of the previously-installed Oscillation Power Range Monitor (OPRM) portion of the Power Range Neutron Monitoring (PRNM) system. Specifically, the proposed changes would revise LGS TS 2.2.1, ''Reactor Protection System Instrumentation Setpoints,'' TS 3/4.3.1, ''Reactor Protection System Instrumentation,'' TS 3/4.3.6, ''Control Rod Block Instrumentation,'' TS 3/4.4.1, ''Recirculation System'' and their associated Bases.

The proposed changes would also revise TS 6.9.1, ''Routine Reports,'' and delete interim corrective action requirements from the Recirculation System TS.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No. This modification has no impact on any of the previously installed PRNM functions. Plant operation in portions of the former restricted zone may potentially cause a marginal increase in the probability of occurrence of an instability event. This potential increase in probability is acceptable because the OPRM Upscale Function will automatically detect the condition and initiate a reactor scram before the Minimum Critical Power Ratio (MCPR) Safety Limit is reached. Consequences of the potential instability event are reduced because of the more reliable automatic detection and suppression of an instability event, and elimination of dependence on the manual operator actions.

The change to align the operability requirements for the Intermediate Range Monitor (IRM) rod block function with those for the corresponding IRM Reactor Protection System (RPS) functions affects only the rod block function. The justification for the change to IRM RPS function (done with the original PRNM modification) concluded that the RPS change would not increase the probability of occurrence of an accident previously evaluated; therefore, changing the associated rod block to align with those requirements would not do so either.

Therefore, the proposed changes do not involve a significant increase in the probability of consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No. The modification replaces procedural actions that were established to avoid operating conditions where reactor instabilities might occur with an NRC approved automatic detect and suppress function.

Potential failures in the OPRM Upscale Function could result in either failure to take the required mitigating action or an unintended reactor scram. These are the same potential effects of failure of the operator to take the appropriate action under the current procedural directions. The net effect of the modification changes the method by which an instability event is detected and by which mitigating action is initiated, but does not change the type of stability event that could occur. The effects of failure of the OPRM equipment are limited to reduced or failed mitigation, but such failure cannot cause an instability event or other type of accident.

The change to align the operability requirements for the IRM rod block function with those for the corresponding IRM RPS functions affects only the rod block function. The justification for the change to IRM RPS function (done with the original PRNM modification) concluded that the RPS change could not create the possibility of a new type of accident; therefore, changing the associated rod block to align with those requirements would not do so either.

Therefore, since no radiological barrier will be challenged as a result of activating the OPRM Upscale Function, it is concluded that the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No. The current safety analysis assumes that the existing procedural actions are adequate to prevent an instability event. As a result, there is currently no quantitative or qualitative assessment of an instability event with respect to its impact on the MCPR Safety Limit.

The OPRM Upscale function is being implemented to automate the detection (via direct measurement of neutron flux) and subsequent suppression (via scram) of an instability event prior to exceeding the MCPR Safety Limit. The OPRM Upscale function provides a trip output of the same type as currently used for the Average Power Range Monitor (APRM). Its failure modes and types are identical to those for the present APRM output. Currently, the MCPR Safety Limit is not challenged by an instability event since the event is ''mitigated'' by manual means via the procedural actions, which prevent plant operating conditions where an instability event is possible. In both methods of mitigation (manual and automated), the margin of safety associated with the MCPR Safety Limit is still maintained.

Therefore, based on the fact that the MCPR Safety Limit will still be enforced, implementation of the OPRM Upscale function in place of the existing manual actions does not reduce the margin of safety.

The IRM rod block function is not considered in any safety analysis. As a result, its failure will not affect the margin of safety.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. Thomas S. O'Neill, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.

NRC Section Chief: Daniel S. Collins, Acting.

Exelon Generation Company, LLC, Docket Nos. 50–352 and 50–353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of amendment request: June 1, 2004.

Description of amendment request: The proposed changes would relocate the operability and surveillance requirements for the reactor coolant system safety/relief valve position instrumentation from the Limerick Generating Station (LGS) Technical Specifications (TSs) to the LGS Technical Requirements Manual (TRM) and plant procedures. Specifically, the changes would relocate TSs 3.4.2.c, 4.4.2.1, and the associated footnotes to the TRM. Additionally, the ''Safety/Relief Valve Position Indicators'' instrumentation would be relocated from Tables 3.3.7.5–1 and 4.3.7.5–1 of TSs 3.3.7.5 and 4.3.7.5, respectively to the TRM.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No. The failure of the safety/relief valve (SRV) position instrumentation is not assumed to be an initiator of any analyzed event in the [Updated Final Safety Analysis Report] UFSAR. The proposed changes do not alter the physical design of the SRVs or any other plant structure, system, or component. The changes would remove the [SRV] position indicator operability and surveillance requirements from the LGS [TSs], and incorporate requirements verbatim for this instrumentation into a licensee-controlled document under the control of 10 CFR 50.59.

The proposed changes conform to NRC regulatory guidance regarding the content of plant [TSs] as identified in regulation 10 CFR 50.36, and NRC publication NUREG–1433, ''Standard Technical Specifications—General Electric Plants, BWR/4.''

Therefore, this proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No. The proposed changes do not alter the physical design, safety limits, or safety analysis assumptions, associated with the operation of the plant. Accordingly, the proposed changes do not introduce any new accident initiators, nor do they reduce or adversely affect the capabilities of any plant structure or system in the performance of their safety function.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No. This instrumentation is not needed for manual operator actions necessary for safety systems to accomplish their safety function for the design basis accident events. The instrumentation provides only alarm and SRV position indication, and does not provide an input to any automatic trip function. Several diverse means are available to monitor SRV position, and operability and surveillance requirements will be established in a licensee-controlled document to assure the reliability of SRV position monitoring capability. Changes to these requirements will be subject to the controls of regulation 10 CFR 50.59, providing the appropriate level of regulatory control.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. Thomas S. O'Neill, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.

NRC Section Chief: Daniel S. Collins, Acting.

Exelon Generation Company, LLC, and PSEG Nuclear LLC, Docket Nos. 50–277 and 50–278, Peach Bottom Atomic Power Station, Units 2 and 3, York and Lancaster Counties, Pennsylvania

Date of application for amendments: June 24, 2004.

Description of amendment request: The proposed amendment would revise Technical Specification 3.1.8, ''Scram Discharge Volume (SDV) Vent and Drain Valves,'' to allow a vent or drain line with one inoperable valve to be isolated instead of requiring the valve to be restored to Operable status within 7 days. Other changes included in the application are addressed in a separate notice.

The NRC staff issued a notice of opportunity for comment in the **Federal Register** on February 24, 2003 (68 FR 8637), on possible amendments to revise the action for one or more SDV vent or drain lines with an inoperable valve, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line-item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on April 15, 2003 (68 FR 18294). The licensee affirmed the applicability of the model NSHC determination in its application dated June 24, 2004.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

A change is proposed to allow the affected SDV vent and drain line to be isolated when there are one or more SDV vent or drain lines with one valve inoperable instead [of] requiring the valve to be restored to operable status within 7 days. With one SDV vent or drain valve inoperable in one or more lines, the isolation function would be maintained since the redundant valve in the affected line would perform its safety function of isolating the SDV. Following the completion of the required action, the isolation function is fulfilled since the associated line is isolated. The ability to vent and drain the SDVs is maintained and controlled through administrative controls. This requirement assures the reactor protection system is not adversely affected by the inoperable valves. With the safety functions of the valves being maintained, the probability or consequences of an accident previously evaluated are not significantly increased.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Accident Previously Evaluated

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. Thus, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

The proposed change ensures that the safety functions of the SDV vent and drain valves are fulfilled. The isolation function is maintained by redundant valves and by the required action to isolate the affected line. The ability to vent and drain the SDVs is maintained through administrative controls. In addition, the reactor protection system will prevent filling of an SDV to the point that it has insufficient volume to accept a full scram. Maintaining the safety functions related to isolation of the SDV and insertion of control rods ensures that the proposed change does not involve a significant reduction in the margin of safety.

Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for Licensee: Thomas S. O'Neill, Associate and General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.

NRC Section Chief: Daniel Collins, Acting.

Indiana Michigan Power Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Units 1 and 2, Berrien County, Michigan

Date of amendment requests: September 21, 2004.

Description of amendment requests: The proposed amendments would extend the allowed outage times from 72 hours to 14 days for an inoperable emergency diesel generator, an inoperable component cooling water system loop, an inoperable essential service water system loop, or an inoperable alternate offsite power circuit (69 kilovolt circuit). The proposed amendments would also change formats of the affected technical specification pages to improve their appearance but not alter any requirements.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated?

Response: No.

The proposed changes to the Technical Specifications (TS) will extend the allowed outage time (AOT) for a single inoperable emergency diesel generator (EDG), one inoperable component cooling water (CCW) or essential service water (ESW) loop, or an inoperable 69 kilovolt (kV) offsite circuit from the current limit of 72 hours to 14 days. An independent alternating current (AC) power source consisting of two supplemental diesel generators (SDGs) will be installed to support the extended AOTs for the EDGs and the CCW and ESW systems. The SDGs will supply power to required safe shutdown loads in the affected unit.

The EDGs are backup AC power sources designed to power safe shutdown systems in the event of a loss of offsite power. As such, the EDGs are not initiators for any accident previously evaluated. The CCW and ESW systems provide cooling water to safety-related components. This is a support function, and malfunctions of the CCW and ESW systems are not initiators of any accidents previously analyzed. The 69 kV circuit is an alternate offsite power supply that must be manually connected by the control room operators to provide power to safety-related buses upon loss of the preferred 34.5 kV offsite power source. As such, the 69 kV circuit is not an initiator for any accident previously evaluated. The AOT extension for an inoperable EDG, a CCW or ESW loop, or 69 kV circuit does not introduce any failure mechanisms that would initiate a previously analyzed accident. Therefore, the proposed change permitting extension of the AOTs for the EDG, ESW, CCW, and 69 kV systems do not result in a significant increase in the probability of a previously evaluated accident.

The potential effect of the proposed change on the consequences of a previously evaluated accident has been considered. There are two EDGs per unit, and only one EDG per unit is required to fulfill the onsite AC power system safety function. During the extended AOT, the redundant EDG will be available to provide AC power to safety-related components. There are two CCW loops per unit, and only one CCW loop per unit is required to fulfill the CCW system safety function. During the extended AOT, the redundant CCW loop will be available to provide cooling water to safety-related components. There are two ESW loops per unit, and only one ESW loop per unit is required to fulfill the ESW system safety function for the affected unit. During the extended AOT, the redundant ESW loop will be available to provide cooling water to the safety-related components. The 69 kV offsite circuit is the alternate offsite power source. Only one offsite power source is required to fulfill the offsite power system safety function. During an extended AOT, the preferred offsite source will be available. Thus, the systems affected by the proposed amendment will still be capable of performing the safety functions needed to mitigate the consequences of an accident as previously evaluated.

The format changes improve appearance, but do not affect any requirements.

Therefore, the proposed change will not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change consists of increasing the AOTs allowed by TS for the EDG, CCW, ESW, and 69 kV systems. Extending existing AOTs, does not result in operation of the plant in any new or different manner, nor does it create any new accident precursors. The format changes improve appearance, but do not affect any requirements.

Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The margins of safety are established through design parameters, operating parameters, and the setpoints at which automatic actions are initiated. The proposed change does not adversely affect any design or operating parameter or any setpoint used in the deterministic accident analyses to establish the margin of safety. Probabilistic risk assessment methods were used to evaluate the risked-based margins of safety for the proposed change. The results of these evaluations indicated the proposed AOT extensions combined with installation of additional on-site electrical power supplies results in a net risk reduction. The format changes improve appearance, but do not affect any requirements.

Therefore, the proposed change will not create a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: David W. Jenkins, Esq., 500 Circle Drive, Buchanan, MI 49107.

NRC Section Chief: L. Raghavan.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: September 7, 2004.

Description of amendment request: The proposed amendment would delete Technical Specification (TS) 5.9.1b, ''Annual Occupational Exposure Report,'' and TS 5.9.1c, ''Monthly Operating Reports.''

The NRC staff issued a notice of availability of a model no significant hazards consideration (NSHC) determination for referencing in license amendment applications in the **Federal Register** on June 23, 2004 (69 FR 35067). The licensee affirmed the applicability of the model NSHC determination in its application dated September 7, 2004.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed change eliminates the TS reporting requirements to provide a monthly operating report of shutdown experience and operating statistics if the equivalent data is submitted using an industry electronic database. It also eliminates the TS reporting requirement for an annual occupational radiation exposure report, which provides information beyond that specified in NRC regulations. The proposed change involves no changes to plant systems or accident analyses. As such, the change is administrative in nature and does not affect initiators of analyzed events or assumed mitigation of accidents or transients. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From any Accident Previously Evaluated

The proposed change does not involve a physical alteration of the plant, add any new equipment, or require any existing equipment to be operated in a manner different from the present design. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in a Margin of Safety

This is an administrative change to reporting requirements of plant operating information and occupational radiation exposure data, and has no effect on plant equipment, operating practices or safety analyses assumptions. For these reasons, the proposed change does not involve a significant reduction in the margin of safety.

Based upon the reasoning presented above, the requested change does not involve significant hazards consideration.

Attorney for licensee: James R. Curtiss, Esq., Winston & Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Robert A. Gramm.

STP Nuclear Operating Company, Docket No. 50–498, South Texas Project, Unit 1, Matagorda County, Texas

Date of amendment request: September 30, 2004.

Description of amendment request: The amendment would change Technical Specification 4.4.4.2 to expand the range of conditions under which quarterly testing of block valves for the pressurizer power operated relief valves would be unnecessary.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The block valve for the pressurizer power operated relief valve is not a potential accident initiator. Therefore, not requiring a surveillance of the block valve while it is being used to isolate its associated power operated relief valve will not increase the probability of an accident previously evaluated. Not requiring the surveillance of the block valve may slightly reduce the probability of a loss of coolant accident from a stuck open power operated relief valve since it will eliminate the challenge to the power operated relief valve from the pressure transient that results from cycling the block valve.

If pressurizer spray is not available or is not effective, either one of the two pressurizer power operated relief valves may be manually actuated to depressurize the reactor coolant system to mitigate the consequences of a steam generator tube rupture. Not performing the surveillance on the block valve is not relevant to the primary system for depressurizing the reactor coolant system (pressurizer spray). The block valves have been demonstrated by operating experience to be reliable and are also subject to the motor-operated valve testing program. Consequently, the proposed change does not significantly reduce the confidence that the block valve can be opened to permit manual actuation of the power operated relief valve to depressurize the reactor coolant system to mitigate an accident. Therefore, the proposed change does not involve a significant increase in the consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different accident from any accident previously evaluated?

Response: No.

The proposed change only affects the performance of the surveillance test for the block valve and does not introduce any operating configurations not previously evaluated.

Therefore, STPNOC concludes the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change to the surveillance requirement for the block valve for the pressurizer power operated relief valve does not affect the assumptions in any accident analyses. There are no changes in plant performance parameters associated with the proposed change to the surveillance requirement for the block valve. Therefore, STPNOC concludes the proposed changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendment involves no significant hazards consideration.

Attorney for licensee: A. H. Gutterman, Esq., Morgan, Lewis & Bockius, 1111 Pennsylvania Avenue, NW., Washington, DC 20004.

NRC Section Chief: Michael K. Webb, Acting.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: September 27, 2004.

Description of amendment request: The proposed amendment would change the Technical Specifications (TS) to provide consistency between Surveillance Requirement (SR) 4.7.1.6 and TS 3.3.5.1 regarding atmospheric steam relief valve instrumentation controls. The proposed amendment would also correct editorial errors in TS 3.7.1.6.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change does not involve a significant increase in the probability or consequences of a previously evaluated accident. The first proposed change only clarifies when SR 4.7.1.6 for the automatic controls of the atmospheric steam relief valve is applicable. The applicability is already established in TS 3.3.5.1 and meets the safety analysis. The second proposed change is editorial.

2. Does the proposed change create the possibility of a new or different accident from any accident previously evaluated?

Response: No.

The first proposed change does not create the possibility of a new or different accident from any previously evaluated. The proposed change only clarifies when SR 4.7.1.6 for the automatic controls of the atmospheric steam relief valve is applicable. The applicability is already established in TS 3.3.5.1 and meets the safety analysis. The second proposed change is editorial.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The first proposed change does not involve a significant reduction in the margin of safety. The proposed change only clarifies when SR 4.7.1.6 for the automatic controls of the atmospheric steam relief valve is applicable. The applicability is already established in TS 3.3.5.1 and meets the safety analysis. The second proposed change is editorial.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Attorney for licensee: A. H. Gutterman, Esq., Morgan, Lewis & Bockius, 1111 Pennsylvania Avenue, NW., Washington, DC 20004.

NRC Section Chief: Michael K. Webb, Acting.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: September 30, 2004.

Description of amendment request: The proposed amendment would delete Technical Specification (TS) 6.9.1.2, "Occupational Radiation Exposure Report," and TS 6.9.1.5, "Monthly Operating Reports."

The NRC staff issued a notice of availability of a model no significant hazards consideration (NSHC) determination for referencing in license amendment applications in the **Federal Register** on June 23, 2004 (69 FR 35067). The licensee affirmed the applicability of the model NSHC determination in its application dated September 30, 2004.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—Does the Proposed Change Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated?

The proposed change eliminates the TS reporting requirements to provide a monthly operating report of shutdown experience and operating statistics if the equivalent data is submitted using an industry electronic database. It also eliminates the TS reporting requirement for an annual occupational radiation exposure report, which provides information beyond that specified in NRC regulations. The proposed change involves no changes to plant systems or accident analyses. As such, the change is administrative in nature and does not affect initiators of analyzed events or assumed mitigation of accidents or transients. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—Does the Proposed Change Create the Possibility of a New or Different Kind of Accident From Any Accident Previously Evaluated?

The proposed change does not involve a physical alteration of the plant, add any new equipment, or require any existing equipment to be operated in a manner different from the present design. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3—Does the Proposed Change Involve a Significant Reduction in a Margin of Safety?

This is an administrative change to reporting requirements of plant operating information and occupational radiation exposure data, and has no effect on plant equipment, operating practices or safety analyses assumptions. For these reasons, the proposed change does not involve a significant reduction in the margin of safety.

Based upon the reasoning presented above, the requested change does not involve significant hazards consideration.

Attorney for licensee: A. H. Gutterman, Esq., Morgan, Lewis & Bockius, 1111 Pennsylvania Avenue, NW., Washington, DC 20004.

NRC Section Chief: Michael K. Webb, Acting.

TXU Generation Company LP, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station, Units 1 and 2, Somervell County, Texas

Date of amendment request: September 9, 2004.

Brief description of amendments: The proposed change will revise the surveillance requirement (SR) 3.6.6.8

frequency of every 10 years. Instead, the proposed change to SR 3.6.6.8 will require verification that spray nozzles are unobstructed following maintenance that could result in nozzle blockage.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the Licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The Containment Spray System is not considered an initiator of any analyzed event. The proposed change does not have a detrimental impact on the integrity of any plant structure, system, or component that may initiate an analyzed event. The proposed change will not alter the operation or otherwise increase the failure probability of any plant equipment that can initiate an analyzed accident. This change does not affect the plant design. There is no increase in the likelihood of formation of significant corrosion products. Due to their location at the top of the containment, introduction of foreign material into the spray headers is unlikely. Foreign material introduced during maintenance activities would be the most likely source for obstruction, and verification following such maintenance would confirm the nozzles remain unobstructed.

Consequently, there is no significant increase in the probability of an accident previously evaluated.

The Containment Spray System is designed to address the consequences of a LOCA [loss-of-coolant accident]. The Containment Spray System is capable of performing its function effectively with the single failure of any active component in the system, any of its subsystems, or any of its support systems. A plugged nozzle would have negligible impact on the capability of the Containment Spray System to respond to a Loss of Coolant Accident.

Therefore, the consequences of an accident previously evaluated are not significantly affected by the proposed change.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change will not physically alter the plant (no new or different type of equipment will be installed) or change the methods governing normal plant operation.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

Response: No.

The system is not susceptible to corrosion-induced obstruction or obstruction from sources external to the system. Maintenance activities that could introduce foreign material into the system would require subsequent verification to ensure there is no nozzle blockage. The spray header nozzles are expected to remain unblocked and available in the event that the safety function is required. Therefore, the capacity of the system would remain unaffected.

Therefore the proposed change does not involve a reduction in a margin of safety.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: George L. Edgar, Esq., Morgan, Lewis and Bockius, 1800 M Street, NW., Washington, DC 20036.

NRC Section Chief: Mohan Thadani, Acting Chief.

TXU Generation Company LP, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station, Units 1 and 2, Somervell County, Texas

Date of amendment request: September 10, 2004.

Brief description of amendments: The proposed amendment would delete Technical Specification (TS) 5.6.1, "Occupational Radiation Exposure Report," and TS 5.6.4, "Monthly Operating Reports."

The NRC staff issued a notice of availability of a model no significant hazards consideration (NSHC) determination for referencing in license amendment applications in the **Federal Register** on June 23, 2004 (69 FR 35067). The licensee affirmed the applicability of the model NSHC determination in its application dated September 10, 2004.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change eliminates the Technical Specifications (TSs) reporting requirements to provide a monthly operating report of shutdown experience and operating statistics if the equivalent data is submitted using an industry electronic database. It also eliminates the TS reporting requirement for an annual occupational radiation exposure report, which provides information beyond that specified in NRC regulations. The proposed change involves no changes to plant systems or accident analyses. As such, the change is administrative in nature and does not affect initiators of analyzed events or assumed mitigation of accidents or transients. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not involve a physical alteration of the plant, add any new equipment, or require any existing equipment to be operated in a manner different from the present design. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

This is an administrative change to reporting requirements of plant operating information and occupational radiation exposure data, and has no effect on plant equipment, operating practices or safety analyses assumptions. For these reasons, the proposed change does not involve a significant reduction in the margin of safety.

Based upon the reasoning presented above, the requested change does not involve significant hazards consideration.

Attorney for licensee: George L. Edgar, Esq., Morgan, Lewis and Bockius, 1800 M Street, NW., Washington, DC 20036.

NRC Section Chief: Michael Webb, Acting.

Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Detroit Edison Company, Docket No. 50–341, Fermi 2, Monroe County, Michigan

Date of amendment request: April 1, 2004.

Brief description of amendment request: The proposed amendment would allow entry into a mode or other specified condition in the applicability of a technical specification (TS), while in a condition statement and the associated required actions of the TS, provided the licensee performs a risk assessment and manages risk consistent with the program in place for complying with the requirements of Title 10 of the Code of Federal Regulations, Part 50, Section 50.65(a)(4). Limiting Condition for Operation (LCO) 3.0.4 exceptions in individual TSs would be eliminated, and Surveillance Requirement 3.0.4 revised to reflect the LCO 3.0.4 allowance.

*Date of publication of individual notice in **Federal Register:*** August 24, 2004 (69 FR 52037).

Expiration date of individual notice: October 23, 2004.

Florida Power and Light Company, et al., Docket Nos. 50–335, and 50–389, St. Lucie Plant, Unit No. 1, and Unit No. 2, St. Lucie County, Florida

Date of amendment request: November 21, 2003.

Description of amendment request: Revise Technical Specifications to eliminate certain pressure sensor response time testing requirements as discussed in the Combustion Engineering Owners Group Topical Report NPSD–1167, Revision 2, Elimination of Pressure Sensor Response Time Testing Requirements.''

*Date of publication of individual notice in the **Federal Register:*** September 28, 2004 (69 FR 57975).

Expiration date of individual notice: November 29, 2004.

STP Nuclear Operating Company, Docket No. 50–499, South Texas Project, Unit 2, Matagorda County, Texas

Date of amendment request: September 30, 2004.

Description of amendment request: The amendment changes TS 4.4.4.2 to expand the range of conditions under which quarterly testing of block valves for the pressurizer power operated relief valves would be unnecessary.

*Date of publication of individual notice in **Federal Register:*** October 6, 2004 (69 FR 59969).

Expiration date of individual notice: October 20, 2004 (Comment); December 6, 2004 (Hearing).

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, (301) 415–4737 or by e-mail to *pdr@nrc.gov.*

AmerGen Energy Company, LLC, et al., Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of application for amendment: February 27, 2004, as supplemented by letter dated August 11, 2004.

Brief description of amendment: The amendment revised the Technical Specifications, relocating the average power range monitor flux scram setting and rod block setting from the to the Core Operating Limits Report.

Date of Issuance: October 4, 2004.

Effective date: October 4, 2004 and shall be implemented within 60 days of issuance.

Amendment No.: 248.

Facility Operating License No. DPR–16: Amendment revised the Technical Specifications.

*Date of initial notice in **Federal Register:*** April 13, 2004 (69 FR 19563).

The supplement dated August 11, 2004, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the Nuclear Regulatory Commission (NRC) staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated October 4, 2004.

No significant hazards consideration comments received: No.

AmerGen Energy Company, LLC, et al., Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of application for amendment: March 19, 2004.

Brief description of amendment: The amendment revised the Technical Specifications, changing the surveillance requirements associated with control rod scram time testing. Specifically, the amendment modified the conditions under which scram time testing of control rods is required, and added a requirement to perform such testing on a defined portion of control rods at a specified frequency during the operating cycle.

Date of Issuance: October 4, 2004.

Effective date: October 4, 2004 and shall be implemented within 60 days of issuance.

Amendment No.: 249.

Facility Operating License No. DPR–16: Amendment revised the Technical Specifications.

*Date of initial notice in **Federal Register:*** April 27, 2004 (69 FR 22878).

The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated October 4, 2004.

No significant hazards consideration comments received: No.

Carolina Power & Light Company, et al., Docket No. 50–400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of application for amendment: May 5, 2004, as supplemented August 6, 2004.

Brief description of amendment: This amendment adds a reference to the American Society of Mechanical Engineers Code for Operation and Maintenance of Nuclear Power Plants in Technical Specification Surveillance Requirement 4.0.5.a for the snubbers.

Date of issuance: October 1, 2004.

Effective date: October 1, 2004.

Amendment No. 117.

Facility Operating License No. NPF–63. Amendment revises the Technical Specifications.

Date of initial notice in ***Federal Register:*** June 22, 2004 (69 FR 34697). The August 6, 2004, supplement contained clarifying information only and did not change the initial proposed no significant hazards consideration determination or expand the scope of the initial application.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 1, 2004.

No significant hazards consideration comments received: No.

Detroit Edison Company, Docket No. 50–341, Fermi 2, Monroe County, Michigan

Date of application for amendment: February 13, 2003, as supplemented July 8, 2003, December 12, 2003, June 4, 2004, July 30, 2004, and September 16, 2004.

Brief description of amendment: The amendment approves the use of an alternative source term methodology in accordance with Title 10 of the Code of Federal Regulations, Part 50, Section 50.67, based on a reevaluation of the design-basis loss-of-coolant and fuel handling accidents. In addition to related design-basis changes, the amendment revises the Technical Specifications to (1) permit an increase in the allowable leak rate for the main steam isolation valves (MSIVs), (2) increase the allowable secondary containment bypass leakage, (3) delete the MSIV leakage control system, and (4) increase the allowed secondary containment draw-down time.

Date of issuance: September 28, 2004.

Effective date: As of the date of issuance and shall be implemented within 90 days.

Amendment No.: 160.

Facility Operating License No. NPF–43: Amendment revises the Technical Specifications and authorizes changes to the Updated Final Safety Analysis Report.

Date of initial notice in ***Federal Register:*** May 27, 2003 (68 FR 28847).

The July 8, 2003, December 12, 2003, June 4, 2004, July 30, 2004, and September 16, 2004, supplemental letters provided additional clarifying information that was within the scope of the original application and did not change the Nuclear Regulatory Commission staff's initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 28, 2004.

No significant hazards consideration comments received: No.

Detroit Edison Company, Docket No. 50–341, Fermi 2, Monroe County, Michigan

Date of application for amendment: January 30, 2004.

Brief description of amendment: The amendment revises technical specification 3.3.6.2, ''Secondary Containment Isolation Instrumentation, Condition C, to add the words ''not met'' to the end of the phrase, ''Required Action and associated Completion Time.'' The omission of the words ''not met'' was an oversight during the change to Improved Standard Technical Specifications, NUREG 1433.

Date of issuance: January 30, 2004.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment No.: 161.

Facility Operating License No. NPF–43: Amendment revises the Technical Specifications.

Date of initial notice in ***Federal Register:*** June 22, 2004, (69 FR 34698).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 7, 2004.

No significant hazards consideration comments received: No.

Entergy Gulf States, Inc., and Entergy Operations, Inc., Docket No. 50–458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: March 4, 2004, as supplemented by letter dated June 16, 2004.

Brief description of amendment: The amendment revises the Technical Specification requirements by eliminating the requirements associated with hydrogen recombiners and hydrogen monitors. These changes support implementation of the revisions to Title 10 of the Code of Federal Regulations (10 CFR), Section 50.44, ''Standards for Combustible Gas Control System In Light-Water-Cooled Power Reactors.'' A notice of availability of this TS improvement was published in the **Federal Register** on September 25, 2003 (68 FR 55416).

Date of issuance: October 4, 2004.

Effective date: As of the date of issuance and shall be implemented within 120 days of Issuance.

Amendment No.: 142.

Facility Operating License No. NPF–47: The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** May 11, 2004 (69 FR 26187). The supplement dated June 16, 2004, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 4, 2004.

No significant hazards consideration comments received: No.

Entergy Nuclear Operations, Inc., Docket No. 50–333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of application for amendment: July 28, 2003, as supplemented on May 20, 2004.

Brief description of amendment: The amendment revised Technical Specification 5.5.6, ''Primary Containment Leakage Rate Testing Program,'' to allow a one-time extension of the interval between the Type A, integrated leakage rate tests, from 10 years to no more than 15 years. Therefore, the first Type A test performed after the March 7, 1995, test shall be performed no later than March 7, 2010.

Date of issuance: September 28, 2004.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 279.

Facility Operating License No. DPR–59: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** July 27, 2004 (69 FR 44696).

The supplement dated May 20, 2004, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a

Safety Evaluation dated September 28, 2004.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. STN 50–454 and STN 50–455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois.

Date of application for amendments: May 21, 2004.

Brief description of amendments: The amendments revise the technical specifications to add an additional reference as an acceptable method for determining the reactor pressure vessel pressure-temperature limits.

Date of issuance: October 4, 2004.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment Nos.: 139/139, 132/132.

Facility Operating License Nos. NPF–37, NPF–66, NPF–72 and NPF–77: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** August 3, 2004.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 4, 2004.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. 50–237 and 50–249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois

Date of application for amendments: January 15, 2004, and supplemented on June 22, 2004.

Brief description of amendments: The amendments allow for a one-time deferral of the Dresden, Units 2 and 3, Appendix J, Type A, Integrated Leakage Rate Test (ILRT) to no later than February 27, 2011, and July 13, 2009, respectively.

Date of issuance: October 13, 2004.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment Nos.: 210/202.

Facility Operating License Nos. DPR–19 and DPR–25: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** March 16, 2004.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 13, 2004.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. 50–373 and 50–374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois; Docket Nos. 50–237 and 50–249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois; Docket Nos. 50–254 and 50–265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of application for amendments: November 3, 2003.

Brief description of amendments: The amendments revised Technical Specification (TS) 3.4.1, ''Recirculation Loops Operating,'' by adding a limiting condition for operation requirement that the linear heat generation rate (LHGR) limits shall be modified for single recirculation loop operation as specified in the Core Operating Limits Report. The associated TS Bases are also revised to reflect the new LHGR limit requirement.

Date of issuance: October 4, 2004.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment Nos.: 167, 153, 209, 201, 221, 216.

Facility Operating License Nos. NPF–11, NPF–18, DPR–19, DPR–25, DPR–29 and DPR–30: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** January 6, 2004 (69 FR 694).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 4, 2004.

No significant hazards consideration comments received: No.

FirstEnergy Nuclear Operating Company, et al., Docket No. 50–334, Beaver Valley Power Station, Unit No. 1, Beaver County, Pennsylvania

Date of application for amendment: January 27, 2004, as supplemented May 27, 2004.

Brief description of amendment: The amendment revised TS 3.4.5 to allow a one-cycle use of Westinghouse leak-limiting Alloy 800 SG tube sleeves as an acceptable SG tube repair. Specifically, surveillance requirements 4.4.5.4.a.6 and 4.4.5.4.a.9 are revised to list the Westinghouse leak-limiting Alloy 800 sleeves as an acceptable SG tube sleeving method in addition to the currently approved Westinghouse laser welded sleeves and the former ABB Combustion Engineering tungsten inert gas welded sleeves.

Date of issuance: October 5, 2004.

Effective date: Within 60 days of the date of issuance and shall include the licensee commitments contained in the licensee letters of January 27 and May 27, 2004. The commitments shall remain in effect for the authorized period of sleeving with Westinghouse Alloy 800 tubes, *i.e.*, Cycle 17.

Amendment No: 260.

Facility Operating License No. DPR–66: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** March 16, 2004 (69 FR 12369).

The supplement dated May 27, 2004, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the Nuclear Regulatory Commission (NRC) staff's original proposed no significant hazards consideration determination as published in the **Federal Register** on March 16, 2004 (69 FR 12369).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 5, 2004.

No significant hazards consideration comments received: No.

FirstEnergy Nuclear Operating Company, et al., Docket Nos. 50–334 and 50–412, Beaver Valley Power Station, Unit Nos. 1 and 2 (BVPS–1 and 2), Beaver County, Pennsylvania

Date of application for amendments: October 17, 2003.

Brief description of amendments: These amendments revised the action requirements in TS 3/4 6.3 to more clearly define the action requirements for inoperable containment isolation valves (CIVs). The amendments also allowed under administrative control, the intermittent unisolating of penetration flow paths which have previously been isolated per the action requirements. The amendments also allowed the use of check valves as an isolation device, and an increase in the allowed outage time to 72 hours for CIVs associated with closed systems inside containment. The amendments also deleted existing surveillance requirements (SRs) and provided new SRs similar to those in the Improved Standard Technical Specifications.

Date of issuance: October 5, 2004.

Effective date: As of date of issuance and shall be implemented within 60 days.

Amendment Nos.: 261 and 143.

Facility Operating License Nos. DPR–66 and NPF–73: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** November 25, 2003 (68 FR 66136).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 5, 2004.

No significant hazards consideration comments received: No.

Florida Power and Light Company, et al., Docket Nos. 50–335 and 50–389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida

Date of application for amendments: October 29, 2003.

Brief description of amendments: These amendments relocate specific pressure and flow values associated with the high pressure safety injection, low pressure safety injection, boric acid makeup, and containment spray pumps from the Technical Specification to the St. Lucie Units 1 and 2 Updated Final Safety Analysis Reports.

Date of Issuance: October 6, 2004.

Effective Date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendment Nos.: 194, 136.

Renewed Facility Operating License Nos. DPR–67 and NPF–16: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** January 6, 2004 (69 FR 697).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 6, 2004.

No significant hazards consideration comments received: No.

Nuclear Management Company, LLC, Docket No. 50–305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of application for amendment: July 6, 2004.

Brief description of amendment: The amendment revises technical specification 3.3.a.2.B, by extending the completion time from 1 hour to 24 hours for an accumulator that is inoperable for any reason other than failure to meet minimum boron concentration requirements.

Date of issuance: October 5, 2004.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment No.: 178.

Facility Operating License No. DPR–43: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** August 31, 2004 (69 FR 53111).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 5, 2004.

No significant hazards consideration comments received: No.

Pacific Gas and Electric Company, Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of application for amendments: November 1, 2002, and its supplement dated April 2, 2004.

Brief description of amendments: The amendments (1) change the allowances for bypassing and tripping tested channels, (2) remove a surveillance requirement for reactor trip system (RTS) turbine trip-turbine stop valve closure, (3) revise the nominal trip setpoint for RTS turbine trip-turbine stop valve closure, (4) revise the allowable value and nominal trip setpoint for RTS interlock, (5) and remove and relocate the turbine trip function from engineered safety feature actuation system turbine trip and feedwater isolation to other licensee-controlled documents.

Date of issuance: September 24, 2004.

Effective date: September 24, 2004, and shall be implemented within 120 days from the date of issuance.

Amendment Nos.: Unit 1–173; Unit 2–175.

Facility Operating License Nos. DPR–80 and DPR–82: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** January 7, 2003 (68 FR 810).

The April 2, 2004, supplemental letter provided additional clarifying information, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 24, 2004.

No significant hazards consideration comments received: No.

Pacific Gas and Electric Company, Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of application for amendments: May 29, 2003, as supplemented by letter dated December 23, 2003, and May 7, 2004.

Brief description of amendments: The amendments revise several surveillance requirements (SRs) in Technical Specification (TS) 3.8.1 on alternating current sources for plant operation. The revised SRs have notes deleted or modified to adopt in part Staff-approved TSTF–283, Revision 3, which will allow these revised SRs to be performed, or partially performed, in reactor modes that previously were not allowed by the TSs. The proposed changes to SRs 3.8.4.7 and 3.8.4.8 for direct current sources were withdrawn in the licensee's letter dated May 7, 2004.

Date of issuance: September 28, 2004.

Effective date: September 28, 2004, and shall be implemented within 60 days of the date of issuance including the incorporation of the changes to the Technical Specification Bases for Technical Specification 3.8.1 as described in the licensee's letters dated May 29 and December 23, 2003, and May 7, 2004, and the NRC safety evaluation attached to the amendments. This includes the revision of procedures to instruct operator action to be taken to manually reset the emergency diesel generator, as discussed in Section 4.3 of the licensee's May 29, 2003, letter.

Amendment Nos.: Unit 1–174; Unit 2–176.

Facility Operating License Nos. DPR–80 and DPR–82: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** July 8, 2003 (68 FR 40715).

The December 23, 2003, and May 7, 2004, supplemental letters provided additional clarifying information, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 28, 2004.

No significant hazards consideration comments received: No.

Pacific Gas and Electric Company, Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of application for amendments: October 22, 2003.

Brief description of amendments: The amendments revise Section 3.6.3 of the Diablo Canyon Power Plant Technical Specifications to extend the local leakage rate testing intervals for the containment purge and vent valves with resilient seals from 184 days to 24 months.

Date of issuance: October 6, 2004.

Effective date: October 6, 2004, and shall be implemented within 60 days from the date of issuance.

Amendment Nos.: Unit 1–175; Unit 2–177.

Facility Operating License Nos. DPR–80 and DPR–82: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** November 25, 2003 (68 FR 66139).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 6, 2004.

No significant hazards consideration comments received: No.

Pacific Gas and Electric Company, Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of application for amendments: December 19, 2003, and its supplement dated May 13, 2004.

Brief description of amendments: The amendments change Technical Specification 5.5.9, ''Steam Generator (SG) Tube Surveillance Program,'' to revise the wedge region exclusion zones for outside diameter stress corrosion cracking alternate repair criteria (ARC) at tube support plate (TSP) intersections and for primary water stress corrosion cracking ARC at dented TSP intersections. The new wedge region exclusion zones are based on new analyses of loss-of-coolant accident plus safe shutdown earthquake loads completed in 2003 using plant-specific accident loads.

Date of issuance: October 6, 2004.

Effective date: October 6, 2004, and shall be implemented within 60 days of issuance.

Amendment Nos.: Unit 1–176; Unit 2–178.

Facility Operating License Nos. DPR–80 and DPR–82: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** February 3, 2004 (69 FR 5205).

The May 13, 2004, supplemental letter provided additional clarifying information, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 6, 2004.

No significant hazards consideration comments received: No.

PSEG Nuclear LLC, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey

Date of application for amendment: November 17, 2003, as supplemented July 15, and August 23, 2004.

Brief description of amendment: The amendment revised the Technical Specifications (TSs) to delete the primary containment isolation valves and instrumentation associated with the permanent removal of the reactor vessel head spray piping.

Date of issuance: October 5, 2004.

Effective date: As of the date of issuance, to be implemented prior to restart from the fall 2004 refueling outage.

Amendment No.: 152.

Facility Operating License No. NPF–57: This amendment revised the TSs.

Date of initial notice in ***Federal Register:*** January 20, 2004 (69 FR 2746). The supplements dated July 15, and August 23, 2004, contained clarifying information and did not change the staff's proposed finding of no significant hazards consideration.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 5, 2004.

No significant hazards consideration comments received: No.

PSEG Nuclear LLC, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey

Date of application for amendment: October 24, 2003, as supplemented by letter dated June 29, 2004.

Brief description of amendment: The amendment revised the Surveillance Requirements (SRs) associated with reactor protection system instrumentation. Specifically, the amendment revised the SRs associated with the control rod block instrumentation, source range monitors, and power distribution limits by removing unnecessary testing requirements.

Date of issuance: October 13, 2004.

Effective date: As of the date of issuance, to be implemented within 60 days.

Amendment No.: 153.

Facility Operating License No. NPF–57: This amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** December 9, 2003 (68 FR 68672). The June 29, 2004 letter provided clarifying information that did not change the initial proposed no significant hazards consideration determination or expand the application beyond the scope of the original **Federal Register** notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 13, 2004.

No significant hazards consideration comments received: No.

R.E. Ginna Nuclear Power Plant, LLC, Docket No. 50–244, R. E. Ginna Nuclear Power Plant, Wayne County, New York

Date of application for amendment: March 1, 2004.

Brief description of amendment: The amendment extends the completion time (CT) from 1 hour to 24 hours for Condition B of Technical Specification (TS) 3.5.1, which defines requirements for the emergency core cooling system accumulators. Condition B of TS 3.5.1 specifies a CT to restore an accumulator to operable status when it has been declared inoperable for a reason other than the boron concentration of the water in the accumulator not being within the required range.

Date of issuance: October 4, 2004.

Effective date: As of the date of issuance to be implemented within 60 days.

Amendment No.: 86.

Renewed Facility Operating License No. DPR–18: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** June 22, 2004 (69 FR 34706).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 4, 2004.

No significant hazards consideration comments received: No.

Southern Nuclear Operating Company, Inc., Docket Nos. 50–348, Joseph M. Farley Nuclear Plant, Unit 1, Houston County, Alabama

Date of amendments request: September 19, 2003, as supplemented by letters dated March 31, June 18, and August 6, 2004.

Brief Description of amendments: This amendment revised Technical Specifications (TS) Limiting Conditions for Operation 3.8.4, ''DC Sources—Operating,'' for the remainder of operating cycle 19. Specifically, the TS change increased the Completion Time for the 1B Auxiliary Building DC electrical power system inoperability due to an inoperable battery to allow for on-line replacement of individual cells.

Date of issuance: September 30, 2004.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: 164.

Facility Operating License Nos. NPF–2: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** November 12, 2003 (68 FR 64137).

The supplements dated March 31, June 18 and August 6, 2004, provided clarifying information that did not change the scope of the September 19, 2003, application, nor the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 29, 2004.

No significant hazards consideration comments received: No.

Southern Nuclear Operating Company, Inc., Docket Nos. 50–348 and 50–364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama

Date of amendments request: August 29, 2003, as supplemented by letters dated November 11, 2003, and May 5, June 10, August 5, August 25, and September 27, 2004.

Brief Description of amendments: The amendments revised Technical Specifications Limiting Condition of Operation 3.9.3, ''Containment Penetrations.'' The changes allow the equipment hatch to be open during core alterations and/or during movement of irradiated fuel assemblies within containment.

Date of issuance: September 30, 2004.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: 165 and 157.

Facility Operating License Nos. NPF–2 and NPF–8: Amendments revise the Technical Specifications.

Date of initial notice in ***Federal Register:*** November 12, 2003 (68 FR 64137).

The supplements dated November 11, 2003, and May 5, June 10, August 5, August 25, and September 27, 2004, provided clarifying information that did not change the scope of the August 29, 2003, application nor the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 30, 2004.

No significant hazards consideration comments received: No.

Southern Nuclear Operating Company, Inc., Docket Nos. 50–348 and 50–364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama

Date of amendments request: August 25, 2004, as supplemented by letter dated September 27, 2004.

Brief Description of amendments: The amendments address the control room habitability guidance of Regulatory Guide 1.196, ''Control Room Habitability at Light-Water Nuclear Power Reactors,'' by revising Limiting Condition for Operation 3.7.10, ''Control Room Emergency Filtration/ Pressurization System (CREFS)'' and TS 5.5.11, ''Ventilation Filter Testing Program. The amendments also add a new section, TS 5.5.18, ''Control Room Integrity Program (CRIP).''

Date of issuance: September 30, 2004.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: 166, 158.

Facility Operating License Nos. NPF–2 and NPF–8: Amendments revise the Technical Specifications.

Date of initial notice in ***Federal Register:*** August 31, 2004 (69 FR 53095). The supplement dated September 27, 2004, provided clarifying information that did not change the scope of the August 25, 2004, application nor the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 30, 2004.

No significant hazards consideration comments received: No.

Union Electric Company, Docket No. 50–483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application for amendment: April 8, 2004, as supplemented by letter dated September 24, 2004.

Brief description of amendment: The amendment revises requirements in the technical specifications to adopt the provisions of Industry/Technical Specification Task Force (TSTF) change TSTF–359, ''Increase Flexibility in Mode Restraints.'' The availability of TSTF–359 for adoption by licensees was announced in the **Federal Register** on April 4, 2003 (68 FR 16579).

Date of issuance: October 8, 2004.

Effective date: October 8, 2004, and shall be implemented within 90 days of the date of issuance.

Amendment No.: 164.

Facility Operating License No. NPF–30: The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** May 11, 2004 (69 FR 26194).

The additional information provided in the supplemental letter dated September 24, 2004, does not expand the scope of the application as noticed and does not change the NRC staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 8, 2004.

No significant hazards consideration comments received: No.

Wolf Creek Nuclear Operating Corporation, Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: February 9, 2004, as supplemented by the letter dated September 14, 2004.

Brief description of amendment: The amendment revises requirements in the technical specifications to adopt the provisions of Industry/Technical Specification Task Force (TSTF) change TSTF–359, ''Increase Flexibility in Mode Restraints.''

Date of issuance: October 7, 2004.

Effective date: October 7, 2004, and shall be implemented within 90 days of the date of issuance.

Amendment No.: 155.

Facility Operating License No. NPF–42. The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** March 16, 2004 (69 FR 12373).

The additional information provided in the supplemental letter dated September 14, 2004, does not expand the scope of the application as noticed and does not change the NRC staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 7, 2004.

No significant hazards consideration comments received: No.

Dated in Rockville, Maryland, this 18th day of October 2004.

For the Nuclear Regulatory Commission.

Ledyard B. Marsh,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 04–23664 Filed 10–25–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NUREG–1600]

Revision of the NRC Enforcement Policy

AGENCY: Nuclear Regulatory Commission.

ACTION: Policy Statement: revision.

SUMMARY: The Nuclear Regulatory Commission (NRC or Commission) is publishing a revision to its General Statement of Policy and Procedure for NRC Enforcement Actions (NUREG–1600) (Enforcement Policy or Policy) to address the requirements of the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996. The Act requires Federal agencies to adjust civil monetary penalties to reflect inflation.

DATES: This action is effective on November 26, 2004. Comments on this revision should be submitted on or before December 27, 2004, and will be considered by the NRC before the next

Enforcement Policy revision. The Commission will apply the modified Policy to violations that occur after the effective date.

ADDRESSES: Submit written comments to: Michael T. Lesar, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Mail Stop: T6D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m., Federal workdays. Copies of comments received may be examined at the NRC Public Document Room, Room O1F21, 11555 Rockville Pike, Rockville, MD. You may also e-mail comments to *nrcrep@nrc.gov.*

The NRC maintains the current Enforcement Policy on its Web site at *http://www.nrc.gov,* select What We Do, Enforcement, then Enforcement Policy.

FOR FURTHER INFORMATION CONTACT: Renée Pedersen, Senior Enforcement Specialist, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, (301) 415–2742, e-mail *rmp@nrc.gov.*

SUPPLEMENTARY INFORMATION: Section 234 of the Atomic Energy Act of 1954, as amended, (AEA) limits the maximum civil penalty amount that the NRC may issue for violations of the AEA at $100,000 per violation, per day. The Federal Civil Monetary Penalties Inflation Adjustment Act of 1990 (as amended by the Debt Collection Improvement Act of 1996 (the Act)) requires that the head of each agency adjust by regulation the civil monetary penalties (CMPs) provided by law within the jurisdiction of the agency for inflation at least once every four years. On November 3, 2000 (*See* 65 FR 59270; October 4, 2000), the NRC adjusted the aforementioned maximum civil penalty amount to $120,000. Thus, the NRC is required to adjust this civil penalty by November 3, 2004.

The inflation adjustment mandated by the Act results in a seven percent increase to the maximum CMPs.[1] Increases are to be rounded to the nearest multiple of $10,000 in the case of penalties greater than $100,000, but less than or equal to $200,000.

After this mandatory adjustment for inflation and the rounding mandated by statute, the new maximum civil penalty amount will be $130,000 per violation, per day. Concurrent with this change, the NRC is publishing a change to 10 CFR 2.205 in the **Federal Register** to reflect the new maximum CMP mandated by the Act. The new maximum civil penalty applies only to violations that occur after the date that the increase takes effect.

The changes mandated by the Act apply to the maximum CMP. This is also the amount that, under the Enforcement Policy approved by the Commission, is assigned as the base civil penalty for power reactors and gaseous diffusion plants for a Severity Level I violation (considered the most significant severity level). Also as a matter of policy, the Commission has approved use of lesser amounts for other types of licensees, primarily materials licensees, and for violations that are assessed at lower severity levels. This approach is set out in Tables 1A and 1B of the Enforcement Policy. Although the 1996 Act does not mandate changes to these lesser civil penalty amounts, the NRC is modifying Table 1A of the Enforcement Policy by increasing each amount to maintain the same proportional relationships between the penalties. These changes apply to violations occurring after the effective date of this Policy Statement.

Paperwork Reduction Act

This final policy statement does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget, approval number 3150–0136.

Public Protection Notification

If a means used to impose an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a ‘‘major’’ rule and has verified this determination with the Office of Information and Regulatory Affairs, Office of Management and Budget.

Accordingly, the NRC Enforcement Policy is revised to read as follows:

General Statement of Policy and Procedure for NRC Enforcement Actions

VI. Disposition of Violations

C. Civil Penalty

1. Base Civil Penalty

TABLE 1A.—BASE CIVIL PENALTIES

a. Power reactors and gaseous diffusion plants	$130,000
b. Fuel fabricators authorized to possess Category I or II quantities of SNM	65,000
c. Fuel fabricators, industrial processors,[1] and independent spent fuel and monitored retrievable storage installations	32,500
d. Test reactors, mills and uranium conversion facilities, contractors, waste disposal licensees, industrial radiographers, and other large material users	13,000
e. Research reactors, academic, medical, or other small material users[2]	6,500
f. Loss, abandonment, or improper transfer or disposal of a sealed source or device, regardless of the use or type of licensee:[3]	
1. Sources or devices with a total activity greater than $3.7 \times 10_4$ MBq (1 Curie), excluding hydrogen-3 (tritium)	50,000
2. Other sources or devices containing the materials and quantities listed in 10 CFR 31.5(c)(13)(i)	16,000
3. Sources and devices not otherwise described above	6,500

[1] Large firms engaged in manufacturing or distribution of byproduct, source, or special nuclear material.

[2] This applies to nonprofit institutions not otherwise categorized in this table, mobile nuclear services, nuclear pharmacies, and physician offices.

[3] These base civil penalty amounts have been determined to be approximately three times the average cost of disposal. For specific cases, NRC may adjust these amounts to correspond to three times the actual expected cost of authorized disposal.

[1] Adjustment for inflation = Consumer Price Index (CPI) for June 2003—CPI for June 2000.

2. Civil Penalty Assessment

d. Exercise of Discretion

As provided in Section VII, ''Exercise of Discretion,'' discretion may be exercised by either escalating or mitigating the amount of the civil penalty determined after applying the civil penalty adjustment factors to ensure that the proposed civil penalty reflects all relevant circumstances of the particular case. However, in no instance will a civil penalty for any one violation exceed $130,000 per day.

VII. Exercise of Discretion

A. Escalation of Enforcement Sanctions

The NRC considers violations categorized at Severity Level I, II, or III to be of significant regulatory concern. The NRC also considers violations associated with findings that the Reactor Oversight Process's Significance Determination Process evaluates as having low to moderate, or greater safety significance (*i.e.*, white, yellow, or red) to be of significant regulatory concern. If the application of the normal guidance in this policy does not result in an appropriate sanction, with the approval of the Deputy Executive Director and consultation with the EDO and Commission, as warranted, the NRC may apply its full enforcement authority where the action is warranted. NRC action may include: (1) escalating civil penalties; (2) issuing appropriate orders; and (3) assessing civil penalties for continuing violations on a per day basis, up to the statutory limit of $130,000 per violation, per day.

3. Daily Civil Penalties

In order to recognize the added significance for those cases where a very strong message is warranted for a significant violation that continues for more than one day, the NRC may exercise discretion and assess a separate violation and attendant civil penalty up to the statutory limit of $130,000 for each day the violation continues. The NRC may exercise this discretion if a licensee was aware of or clearly should have been aware of a violation, or if the licensee had an opportunity to identify and correct the violation but failed to do so.

Dated in Rockville, Maryland, this 6th day of October 2004.

For the Nuclear Regulatory Commission.

Luis A. Reyes,

Executive Director for Operations.

[FR Doc. 04–23900 Filed 10–25–04; 8:45 am]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

Submission of Information Collection for OMB Review; Comment Request; Disclosure to Participants

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of request for extension of OMB approval.

SUMMARY: The Pension Benefit Guaranty Corporation (''PBGC'') is requesting that the Office of Management and Budget (''OMB'') extend approval, under the Paperwork Reduction Act, of a collection of information in its regulation on Disclosure to Participants (29 CFR part 4011) (OMB control number 1212–0050). This notice informs the public of the PBGC's request and solicits public comment on the collection of information.

DATES: Comments should be submitted by November 26, 2004.

ADDRESSES: Comments should be mailed to the Office of Information and Regulatory Affairs of the Office of Management and Budget, Attention: Desk Officer for Pension Benefit Guaranty Corporation, Washington, DC 20503.

Copies of the request for extension (including the collection of information) may be obtained by writing to the PBGC's Communications and Public Affairs Department, suite 240, 1200 K Street, NW., Washington, DC 20005–4026, or by visiting that office or calling 202–326–4040 during normal business hours. (TTY and TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4040.) The regulation on Disclosure to Participants can be accessed on the PBGC's Web site at *http://www.pbgc.gov.*

FOR FURTHER INFORMATION CONTACT: Catherine B. Klion, Attorney, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, 202–326–4024. (For TTY and TDD, call 800–877–8339 and request connection to 202–326–4024).

SUPPLEMENTARY INFORMATION: Section 4011 of the Employee Retirement Income Security Act of 1974 requires plan administrators of certain underfunded single-employer pension plans to provide an annual notice to plan participants and beneficiaries of the plan's funding status and the limits on the PBGC's guarantee.

The PBGC's regulation implementing this provision (29 CFR part 4011) prescribes which plans are subject to the notice requirement, who is entitled to receive the notice, and the time, form, and manner of issuance of the notice. The notice provides recipients with meaningful, understandable, and timely information that will help them become better informed about their plans and assist them in their financial planning.

The collection of information under the regulation has been approved by OMB under control number 1212–0050 (expires November 30, 2004). The PBGC is requesting that OMB extend its approval for three years. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The PBGC estimates that an average of 3,917 plan administrators per year will respond to this collection of information. The PBGC further estimates that the average annual burden of this collection of information is 2.15 hours and $148 per plan administrator, with an average total annual burden of 8,428 hours and $579,425.

Issued in Washington, DC, this 20th day of October, 2004.

Stuart A. Sirkin,

Director, Corporate Policy and Research Department.

[FR Doc. 04–23937 Filed 10–25–04; 8:45 am]

BILLING CODE 7708–01–P

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application of AmNet Mortgage, Inc., To Withdraw Its Common Stock, $.01 Par Value, From Listing and Registration on the American Stock Exchange LLC File No. 1–13485

October 20, 2004.

On September 23, 2004, AmNet Mortgage, Inc., a Maryland corporation (''Issuer'') filed an application with the Securities and Exchange Commission (''Commission''), pursuant to section 12(d) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 12d2–2(d) thereunder,[2] to withdraw its common stock, $.01 par value (''Security''), from listing and registration on the American Stock Exchange LLC (''Amex'' or ''Exchange'').

The Board of Directors (''Board'') of the Issuer approved resolutions on January 22, 2004, to withdraw the Security from listing and registration on the Amex and to list the Security on the Nasdaq National Market System

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

(''Nasdaq''). The Board states that moving the Security to Nasdaq better files with the Issuer's recent strategies and focus as a growth oriented, mortgage banking enterprise.

The Issuer stated in its application that it has met the requirements of Amex Rule l8 by complying with all applicable laws in the State of Maryland, in which it is incorporated, and with the Amex's rules governing an issuer's voluntary withdrawal of a security from listing and registration.

The Issuer's application relates solely to the withdrawal of the Security from listing on the Amex and from registration under section 12(b) of the Act [3] and shall not affect its obligation to be registered under section 12(g) of the Act.[4]

Any interested person may, on or before November 16, 2004, comment on the facts bearing upon whether the application has been made in accordance with the rules of the Amex, and what terms, if any, should be imposed by the Commission for the protection of investors. All comment letters may be submitted by either of the following methods:

Electronic Comment

- Send an e-mail to *rule-comments@sec.gov.* Please include the File Number 1–13485 or;

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number 1–13485. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site *(http://www.sec.gov/rules/delist.shtml).* Comments are also available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. E4–2853 Filed 10–25–04; 8:45 am]

BILLING CODE 8010–01–P

[3] 15 U.S.C. 78*l*(b).

[4] 15 U.S.C. 78*l*(g).

[5] 17 CFR 200.30–3(a)(1).

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application of Ryder System, Inc. To Withdraw Its Common Stock, $.50 Par Value, From Listing and Registration on the Archipelago Exchange (a Facility of the Pacific Exchange, Inc.) File No. 1–04364

October 20, 2004.

On September 28, 2004, Ryder System, Inc., a Florida corporation (''Issuer''), filed an application with the Securities and Exchange Commission (''Commission''), pursuant to section 12(d) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 12d2–2(d) thereunder,[2] to withdraw its common stock, $.50 par value (''Security''), from listing and registration on the Archipelago Exchange (''ArcaEx''), a facility of the Pacific Exchange, Inc. (''PCX'').

The Board of Directors of the Issuer approved a resolution on July 16, 2004, to withdraw the Issuer's Security from listing on the ArcaEx. The Issuer states that the reason for its decision to withdraw its Security from the ArcaEx is the historically modest trading activity, the annual expense, and administrative burden of trading on the ArcaEx. The Issuer states that the Security is currently listed, and will continue to list, on the New York Stock Exchange (''NYSE'').

The Issuer stated in its application that it has complied with applicable rules of the ArcaEx, including PCX Rule 5.4(b), by complying with all applicable laws in effect in the State of Florida and by providing the ArcaEx with the required documents governing the removal of securities from listing and registration on the ArcaEx. The Issuer's application relates solely to the withdrawal of the Security from listing on the ArcaEx and shall not affect its continued listing on the NYSE or its obligation to be registered under section 12(b) of the Act.[3]

Any interested person may, on or before November 16, 2004, comment on the facts bearing upon whether the application has been made in accordance with the rules of the ArcaEx, and what terms, if any, should be imposed by the Commission for the protection of investors. All comment letters may be submitted by either of the following methods:

Electronic Comments

- Send an e-mail to *rule-comments@sec.gov*. Please include the File Number 1–04364 or;

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number 1–04364. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/delist.shtml*). Comments are also available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Jonathan G. Katz,

Secretary.

[FR Doc. E4–2854 Filed 10–25–04; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78*l*(b).

[4] 17 CFR 200.30–3(a)(1).

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–26641; 812–13089]

Strong Capital Management, Inc., et al., Notice of Application and Temporary Order

October 20, 2004.

AGENCY: Securities and Exchange Commission (the ''Commission'').

ACTION: Temporary order and notice of application for relief under section 9(c) of the Investment Company Act of 1940 (the ''1940 Act'').

SUMMARY: Applicants have received a temporary order exempting them from section 9(a) of the 1940 Act, with respect to injunctions contained in a consent order entered by the Supreme Court of the State of New York (''New York Supreme Court'') on October 20, 2004, until the earlier of October 20, 2006, or the date the Commission takes final action on the application for a permanent order. Applicants also have requested a permanent order.

Applicants:

Strong Capital Management, Inc. (''SCM'') and Strong Investments, Inc. (''SII,'' and together, the ''Applicants'').

Filing Date:

The application was filed on May 24, 2004.

Hearing or Notification of Hearing:

An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving the Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on November 15, 2004, and should be accompanied by proof of service on the Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, 100 Heritage Reserve, Menomonee Falls, Wisconsin 53051.

FOR FURTHER INFORMATION CONTACT: Todd F. Kuehl, Branch Chief, or Nadya B. Roytblat, Assistant Director, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a temporary order and a summary of the application. The complete application may be obtained for a fee by contacting the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (tel. 202–942–8090).

Applicants' Representations

1. SCM, a Wisconsin corporation and a wholly owned subsidiary of Strong Financial Corporation (''SFC''), is registered as an investment adviser under the Investment Advisers Act of 1940. Richard S. Strong (''Mr. Strong''), a resident of Brookfield, Wisconsin, co-founded SCM in 1974. Mr. Strong beneficially owns more than 25% of the outstanding voting securities of SFC. SCM has approximately 1,000 employees, and serves as investment adviser to 27 registered open-end management investment companies, consisting of 71 portfolios (the ''Strong Funds''). SCM also serves as subadviser to four other registered open-end management investment companies (the ''Sub-Advised Funds''). SII, a Wisconsin corporation and a wholly owned subsidiary of SFC, is registered as a broker-dealer under the Securities Exchange Act of 1934. SII serves as principal underwriter to the Strong Funds.

2. On May 20, 2004, the Attorney General of the State of New York (''NYAG'') filed an action in the New York Supreme Court against Mr. Strong, the Applicants, and certain other persons (together, ''Strong Entities'') relating to market timing abuses involving the Strong Funds (the ''Complaint''). The Complaint alleges misconduct and fraudulent and deceptive acts and practices related to, among other matters: (1) SCM's express agreement to allow Canary Capital Partners hedge funds to market time certain Strong Funds and to trade improperly, while at the same time implementing procedures and policies to prevent other investors from market timing the Strong Funds; (2) the frequent and undisclosed trading of certain Strong Funds by Mr. Strong on behalf of himself, his family and his friends; (3) SCM's failure to disclose to the boards of directors of the Strong Funds (each, a ''Board,'' and together, the ''Boards'') and regulators the agreement relating to the Canary hedge funds and Mr. Strong's involvement in frequent trading; and (4) SII's facilitation of the violations of SCM by allowing the Canary hedge funds to execute frequent trades in the Strong Funds. The Applicants and the other Strong Entities have executed a consent to entry of the judgment by the New York Supreme Court (''Judgment''). The Judgment contains, among other things, permanent injunctions against Mr. Strong, the Applicants and the other Strong Entities (''Injunctions'').

3. On May 20, 2004, Mr. Strong, the Applicants and the other Strong Entities also submitted offers of settlement and consented to the entry by the Commission of an Order Instituting Administrative and Cease-and-Desist Proceedings, Making Findings, and Imposing Remedial Sanctions and Cease-and-Desist Orders Pursuant to Sections 15(b)(4), 15(b)(6), 15B(c)(4), 17A(c)(3) and 17A(c)(4)(C) of the Securities Exchange Act of 1934, sections 203(e), 203(f) and 203(k) of the Investment Advisers Act of 1940, and sections 9(b) and 9(f) of the Investment Company Act of 1940 relating to the same activities (''Commission Order'').[1] Under the Commission Order, the Strong Funds will operate in accordance with the following governance policies and practices:

a. No more than 25 percent of the members of each Board will be persons who either (a) were directors, officers or employees of SCM at any point during the preceding 10 years or (b) are interested persons, as defined in the 1940 Act, of the Strong Fund or of SCM. In the event that a Board fails to meet this requirement at any time due to the death, resignation, retirement or removal of any independent director, the independent directors will take such steps as may be necessary to bring the Board in compliance within a reasonable period of time.

b. No chairman of a Board will either (a) have been a director, officer or employee of SCM at any point during the preceding 10 years or (b) be an interested person, as defined in the 1940 Act, of a Strong Fund or of SCM or any fund advised by SCM.

c. Any person who acts as counsel to the independent directors of any Strong Fund will be an ''independent legal counsel'' as defined by rule 0–1 under the 1940 Act.

d. The Boards will maintain separate committees primarily dedicated to the oversight of the investment operations of particular categories of the Strong Funds. Persons who either (a) were directors, officers or employees of SCM at any point during the preceding 10 years or (b) are interested persons, as defined in the 1940 Act, of the Strong Funds or of SCM will not comprise a majority of, or serve as chairman of, any such committee. Each such committee will, among its duties, identify any compliance issues that are unique to the category of the Strong Funds under its review and work with the appropriate Board committees (*e.g.*, the Audit and Pricing Committee) to ensure that any such issues are properly addressed.

e. No action will be taken by a Board or by any committee thereof unless such action is approved by a majority of the members of the Board or of such committee, as the case may be, who are neither (i) persons who were directors,

[1] *In the Matter of Strong Capital Management, Inc.*, et al., Administrative Proceeding File No. 3–11498, Investment Advisers Act Release No. 2239 (May 20, 2004).

officers or employees of SCM at any point during the preceding 10 years nor (ii) interested persons, as defined in the 1940 Act, of the Strong Fund or of SCM. In the event that any action proposed to be taken by and approved by a vote of a majority of the independent Directors of a Strong Fund is not approved by the full Board, the Strong Fund will disclose such proposal and the related Board vote in its shareholder report for such period.

f. Commencing in 2005 and not less than every fifth calendar year thereafter, each Strong Fund will hold a meeting of shareholders at which the Board will be elected.

g. Each Strong Fund will designate a member of the independent administrative staff reporting to its Board as being responsible for assisting the Board and any of its committees in monitoring compliance by SCM with the federal securities laws, its fiduciary duties to fund shareholders and its Code of Ethics in all matters relevant to the operation of the investment company. The duties of this staff member will include reviewing all compliance reports furnished to the Board or its committees by SCM, attending meetings of SCM's Internal Compliance Controls Committee, serving as liaison between the Board and its committees and the Chief Compliance Officer of SCM, making such recommendations to the Board regarding SCM's compliance procedures as may appear advisable from time to time, and promptly reporting to the Board any material breach of fiduciary duty, breach of the Code of Ethics and/or violation of the federal securities laws of which he or she becomes aware in the course of carrying out his or her duties.

In addition, under the Commission Order, in relevant part,

a. SCM and SII shall retain, within 90 days of the date of entry of the Commission Order, the services of an Independent Compliance Consultant not unacceptable to the Commission and a majority of the independent directors of the Boards. The Independent Compliance Consultant's compensation and expenses shall be borne exclusively by SCM or its affiliates. SCM and SII shall require the Independent Compliance Consultant to conduct a comprehensive review of SCM's and SII's supervisory, compliance, and other policies and procedures designed to prevent and detect breaches of fiduciary duty, breaches of the Code of Ethics and federal securities law violations by SCM and SII and their employees. This review shall include, but shall not be limited to, a review of SCM's and SII's market timing controls across all areas of its business, a review of the Strong Funds' pricing practices that may make those funds vulnerable to market timing, and a review of the Strong Funds' utilization of short term trading fees and other controls for deterring excessive short term trading. SCM and SII shall cooperate fully with the Independent Compliance Consultant and shall provide the Independent Compliance Consultant with access to its files, books, records, and personnel as reasonably requested for the review.

b. SCM and SII shall require that, at the conclusion of the review, which in no event shall be more than 120 days after the date of entry of the Commission Order, the Independent Compliance Consultant shall submit a report to SCM, SII, the Boards, and the Commission. The report shall address the issues described above, and shall include a description of the review performed, the conclusions reached, the Independent Compliance Consultant's recommendations for changes in or improvements to policies and procedures of SCM, SII, and the Strong Funds, and a procedure for implementing the recommended changes in or improvements to SCM's and SII's policies and procedures.

c. SCM and SII shall adopt all recommendations with respect to SCM contained in the report of the Independent Compliance Consultant; provided, however, that within 150 days after the date of entry of the Commission Order, SCM and SII shall in writing advise the Independent Compliance Consultant, the Boards and the Commission of any recommendations that they consider to be unnecessary or inappropriate. With respect to any recommendation that SCM or SII consider unnecessary or inappropriate, SCM or SII need not adopt that recommendation at that time but shall propose in writing an alternative policy, procedure or system designed to achieve the same objective or purpose.

d. As to any recommendation with respect to SCM's (or SII's) policies and procedures on which SCM (or SII) and the Independent Compliance Consultant do not agree, such parties shall attempt in good faith to reach an agreement within 180 days of the date of entry of the Commission Order. In the event SCM (or SII) and the Independent Compliance Consultant are unable to agree on an alternative proposal acceptable to the Commission, SCM (or SII) will abide by the determinations of the Independent Compliance Consultant.

e. SCM and SII (i) shall not have the authority to terminate the Independent Compliance Consultant, without the prior written approval of a majority of the independent directors and the Commission; (ii) shall compensate the Independent Compliance Consultant, and persons engaged to assist the Independent Compliance Consultant, for services rendered pursuant to the Commission Order at their reasonable and customary rates; (iii) shall not be in and shall not have an attorney-client relationship with the Independent Compliance Consultant and shall not seek to invoke the attorney-client or any other doctrine or privilege to prevent the Independent Compliance Consultant from transmitting any information, reports, or documents to the Boards or the Commission.

f. SCM and SII shall require that the Independent Compliance Consultant, for the period of the engagement and for a period of two years from completion of the engagement, shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with Mr. Strong, SCM, SII, Strong Investor Services, Inc. (''SIS'') or any of their present or former affiliates, directors, officers, employees, or agents acting in their capacity as such. Any firm with which the Independent Compliance Consultant is affiliated in performance of his or her duties under the Commission Order shall not, without prior written consent of the independent directors and the Commission, enter into any employment, consultant, attorney-client, auditing or other professional relationship with Mr. Strong, SCM, SII, SIS or any of their present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement.

g. SCM and SII have undertaken that, commencing in 2005, and at least once every other year thereafter, SCM and SII will undergo a compliance review by a third party, who is not an interested person, as defined in the 1940 Act, of SCM or SII. At the conclusion of the review, the third party shall issue a report of its findings and recommendations concerning SCM's and SII's supervisory, compliance, and other policies and procedures designed to prevent and detect breaches of fiduciary duty, breaches of the Code of Ethics and Federal securities law violations by SCM, SII and their employees in connection with their duties and activities on behalf of and related to the Strong Funds. Each such report shall be promptly delivered to SCM's Internal Compliance Controls

Committee and to the Audit Committee of each Board.

h. SCM undertakes to retain, within 30 days of the date of entry of the Commission Order, the services of an Independent Distribution Consultant not unacceptable to the Commission and the independent directors of the Strong Funds. The Independent Distribution Consultant's compensation and expenses shall be borne exclusively by SCM. SCM shall cooperate fully with the Independent Distribution Consultant and shall provide the Independent Distribution Consultant with access to its files, books, records, and personnel as reasonably requested for the review.

i. SCM shall require that the Independent Distribution Consultant develop a Distribution Plan for the distribution of all of the disgorgement and penalties provided for in the Commission Order, and any interest or earnings thereon, according to a methodology developed in consultation with SCM and acceptable to the Commission and the independent directors of the investment company. The Distribution Plan shall provide for investors to receive, in order of priority, (i) their proportionate share of losses from market-timing, and (ii) a proportionate share of advisory fees paid by Strong Funds that suffered such losses during the period of such market timing.

j. SCM shall require that the Independent Distribution Consultant submit a Distribution Plan to SCM and the Commission no more than 100 days after the date of entry of the Order. The Distribution Plan developed by the Independent Distribution Consultant shall be binding unless, within 130 days after the date of entry of the Commission Order, SCM or the Commission advises, in writing, the Independent Distribution Consultant of any determination or calculation from the Distribution Plan that it considers to be inappropriate and states in writing the reasons for considering such determination or calculation inappropriate. With respect to any determination or calculation with which SCM or the Commission do not agree, such parties shall attempt in good faith to reach an agreement within 160 days of the date of entry of the Commission Order. In the event that Mr. Strong or SCM and the Commission are unable to agree on an alternative determination or calculation, the determinations and calculations of the Independent Distribution Consultant shall be binding.

k. SCM shall require that, within 175 days of the date of entry of the Commission Order, the Independent Distribution Consultant submit the Distribution Plan for the administration and distribution of disgorgement and penalty funds pursuant to rule 1101 of the Commission's Rules of Practice. Following a Commission order approving a final plan of disgorgement, as provided in rule 1104 of the Commission's Rules of Practice, SCM shall require that the Independent Distribution Consultant, with SCM, take all necessary and appropriate steps to administer the final plan for distribution of disgorgement and penalty funds.

l. SCM shall require that the Independent Distribution Consultant, for the period of the engagement and for a period of two years from completion of the engagement, not enter into any employment, consultant, attorney-client, auditing or other professional relationship with Mr. Strong, SCM, SII, and SIS, or any of their present or former affiliates, directors, officers, employees, or agents acting in their capacity as such. SCM shall require that any firm with which the Independent Distribution Consultant is affiliated in performance of his or her duties under the Commission Order not, without prior written consent of the independent Directors and the Commission, enter into any employment, consultant, attorney-client, auditing or other professional relationship with SCM or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement.

m. SCM, SII and SIS have undertaken that, no later than twenty-four months after the date of entry of the Commission Order, their chief executive officers shall certify to the Commission in writing that SCM, SII and SIS, respectively, have fully adopted and complied in all material respects with the undertakings set forth in the above paragraphs or, in the event of material non-adoption or non-compliance, shall describe such material non-adoption and non-compliance. For good cause shown, the Commission may extend any of the procedural dates set forth in the above paragraphs.

n. SCM and SII have undertaken to preserve for a period not less than six years from the end of the fiscal year last used, the first two years in an easily accessible place, any record of their compliance with the undertakings set forth in the above paragraphs.

Applicants' Legal Analysis

1. Section 9(a)(2) of the 1940 Act, in pertinent part, prohibits a person who has been enjoined from engaging in or continuing any conduct or practice in connection with the purchase or sale of a security from acting, among other things, as an investment adviser for a registered investment company or principal underwriter for any registered open-end investment company. Section 9(a)(3) of the 1940 Act extends the prohibitions of section 9(a)(2) to a company any affiliated person of which has been disqualified under the provisions of section 9(a)(2). Section 2(a)(3) of the 1940 Act defines an affiliated person to include, among others, any person directly or indirectly controlling, controlled by or under common control with, the other person. The Applicants state that, as a result of the Injunctions contained in the Judgment, the Applicants may be subject to the prohibitions of section 9(a).

2. The Applicants request a temporary and permanent order under section 9(c) of the 1940 Act exempting the Applicants from the disqualification provisions of section 9(a) of the 1940 Act with respect to the Injunctions to allow SCM to serve as investment adviser or sub-adviser to the Strong Funds, the Sub-Advised Funds and any other registered investment company, and SII to serve as principal underwriter to the Strong Funds and any other registered open-end investment company.[2] Section 9(c) of the Act provides that the Commission shall grant an application for exemption from the disqualification provisions of section 9(a) if it is established that these provisions, as applied to the Applicants, are unduly or disproportionately severe or that the Applicants' conduct has been such as not to make it against the public interest or the protection of investors to grant the application.

3. The Applicants state that the prohibitions of section 9(a) as applied to the Applicants would be unduly and disproportionately severe. The Applicants state that the Judgment provides for a series of actions to be taken by the Applicants regarding the Strong Funds in connection with the Applicants' continued relationships with the Strong Funds. In settling their proceedings against the Applicants, neither the NYAG nor the Commission sought to bar the Applicants from providing advisory and distribution services to the Strong Funds or other registered investment companies.

4. The public interest and investor protection concerns underlying section

[2] The Applicants request that the relief also extend to any successors or assigns of the Applicants, to the extent that such successors or assigns may be subject to the Judgment.

9(a) of the 1940 Act are addressed by the measures the Applicants are required to undertake under the Settlements to ensure that the Applicants maintain a high level of compliance, ethics and corporate governance. The Applicants further state that, if they are barred under section 9(a) from providing investment advisory and distribution services to the Strong Funds and investment sub-advisory services to the Sub-Advised Funds, and are unable to obtain the requested exemption, the effect on their businesses and employees will be dramatic. The Applicants have committed substantial resources to establishing their businesses of advising and distributing mutual funds. The Applicants state that prohibiting them from providing advisory and distribution services to the Strong Funds and the Sub-Advised Funds would adversely affect not only the viability of the Applicants' businesses, but also the livelihoods of approximately 1,000 employees of the Applicants. For these reasons, the Applicants believe the prohibitions of section 9(a) as applied to them would be unduly and disproportionately severe.

5. The inability of the Applicants to continue providing advisory and distribution services to the Strong Funds, and to continue providing sub-advisory services to the Sub-Advised Funds, would also unnecessarily disrupt the Strong Funds and the Sub-Advised Funds, and operate to the detriment of the interests of those Funds and their shareholders. The Applicants believe that the policies and purposes that section 9(a) was intended to effect have been adequately addressed by the terms of the Commission Order and the Judgment, and through the continuing oversight of the Boards. The Boards have been actively working with the Applicants to address the matters that are the subject of these proceedings and to resolve them in the best interests of the Strong Funds and their shareholders. Application of the section 9(a) disqualifications would forestall the Boards' actions and responsibilities in this regard, as well as deprive shareholders of the Strong Funds and the Sub-Advised Funds of the investment advisory and other services provided by the Applicants—services which they selected in investing in the Strong Funds or the Sub-Advised Funds. The Applicants also believe that uncertainty resulting from a bar to the Applicants' serving the Strong Funds or the Sub-Advised Funds in an investment advisory, sub-advisory or distribution capacity might result in additional large redemptions of Fund shares and net outflows of cash to the detriment of remaining shareholders. This could adversely affect efforts to manage the Strong Funds' and the Sub-Advised Funds' assets in accordance with their stated principal investment strategies.

6. The Applicants state that, throughout the regulatory investigations, the Boards have been briefed at regular and special meetings regarding the results of SCM's internal investigation into frequent trading by Mr. Strong, Canary and others, and the status of the ongoing regulatory investigations. The Boards also have been apprised of and have contributed to SCM's efforts to strengthen its compliance regime. The Boards were involved in the retention of an independent consultant, and have received and discussed his compliance recommendations. In addition, the independent directors developed the position of independent president of the Strong Funds to serve as the Boards' on-site representative at SCM. Among the independent president's responsibilities are the monitoring of compliance functions by SCM, the implementation of the independent consultant's recommendations, and the review of the Strong Funds' performance, fees and sales. At the Boards' meeting on April 30, 2004, the directors unanimously voted to renew each of the Strong Funds' advisory and distribution contracts for an additional one-year period. As part of this renewal, SCM agreed to implement certain fee and/or expense reductions and to fund a contingent settlement escrow account for the benefit of the Strong Funds' shareholders. In addition, SCM committed to keep the Boards apprised regarding its search for a strategic partner and its ongoing efforts to strengthen SCM's compliance systems and implement the independent consultant's recommendations. SCM has also been in contact with the investment advisers and the boards of directors/trustees of the Sub-Advised Funds regarding the regulatory investigations and related matters.

7. The Applicants will, as soon as reasonably practicable, distribute written materials to and discuss the materials with, the Boards, including the directors who are not ''interested persons,'' as defined in section 2(a)(19) of the 1940 Act, of the Strong Funds and their independent legal counsel, as defined in rule 0–1(a)(6) under the 1940 Act, regarding the Judgment, the Commission Order and the Wisconsin Order, their impact on the Strong Funds, and the application. Applicants will also distribute written materials to, and offer to discuss the materials with, the boards of directors/trustees of the Sub-Advised Funds, including the directors who are not ''interested persons,'' as defined in section 2(a)(19) of the 1940 Act, of the Sub-Advised Funds and their independent legal counsel, as defined in rule 0–1(a)(6) under the 1940 Act, of the Sub-Advised Funds regarding the Judgment, the Commission Order and the Wisconsin Order, their impact on the Sub-Advised Funds, and the application. Applicants also undertake to provide the Boards and the boards of directors/trustees of the Sub-Advised Funds with all information concerning the Judgment, the Commission Order, the Wisconsin Order and the application that is necessary for the Strong Funds and the Sub-Advised Funds to fulfill their disclosure and other obligations under the federal securities laws.

Applicants' Conditions

The Applicants agree that any order granted by the Commission pursuant to the application will be subject to the following conditions:

1. Any temporary exemption granted pursuant to the application shall be without prejudice to, and shall not limit the Commission's rights in any manner with respect to, any Commission investigation of, or administrative proceedings involving or against, the Applicants, including without limitation, the consideration by the Commission of a permanent exemption from section 9(a) of the 1940 Act requested pursuant to the application or the revocation or removal of any temporary exemptions granted under the 1940 Act in connection with the application.

2. The Applicants will comply with the terms and undertakings set forth in the Commission Order.

Temporary Order

The Commission has considered the matter and finds that the Applicants have made the necessary showing to justify granting the temporary exemption.

Accordingly,

It is hereby ordered, pursuant to section 9(c) of the 1940 Act, that the Applicants are granted a temporary exemption from the provisions of section 9(a) of the 1940 Act, effective forthwith, solely with respect to the Judgment, subject to the conditions in the application, until the date the Commission takes final action on their application for a permanent order or, if earlier, October 20, 2006.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E4–2842 Filed 10–25–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50573; File No. SR–NASD–2004–105]

Self-Regulatory Organizations; Order Granting Approval to Proposed Rule Change and Amendment No. 1 Thereto by the National Association of Securities Dealers, Inc. To Amend Rule 4350(n) and IM–4350–7 To Provide Time Frames for Foreign Issuers and Foreign Private Issuers To Disclose Certain Code of Conduct Waivers

October 20, 2004.

On July 8, 2004, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend NASD Rule 4350 and related Interpretive Material to set forth specific time frames within which non-U.S. issuers must disclose any waivers of their codes of conduct for directors or executive officers. On August 23, 2004, Nasdaq filed Amendment No. 1 to the proposed rule change.[3] The proposed rule change, as amended, was published for comment in the **Federal Register** on September 1, 2004.[4] The Commission received no comments on the proposal.

NASD Rule 4350(n) and Interpretive Material IM–4350–7 require issuers listed on Nasdaq to adopt codes of conduct that are applicable to all directors, officers and employees. Each code of conduct must require that any waiver of the code for executive officers or directors may be made only by the board of directors of the issuer and must be promptly disclosed to shareholders, along with the reasons for the waiver. The rule specifies that domestic issuers must disclose such waivers in a Form 8–K within five business days. The proposed rule change would amend the rule and interpretive material to specify that all issuers, other than foreign private issuers, must disclose such waivers in a Form 8–K within five business days, and to establish that foreign private issuers must disclose such waivers either in a Form 6–K or in the next Form 20–F or 40–F.

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association,[5] and, in particular, the requirements of section 15A(b)(6) of the Act.[6] The Commission believes that the proposed method and timing for disclosure of waivers by foreign private issuers is consistent with rules of other exchanges concerning such waivers and with the requirements of the Commission concerning disclosure of waivers by a foreign private issuer for principal executive, financial and accounting officers. In addition, the Commission believes that the proposed rule change appropriately clarifies that non-U.S. issuers that are not foreign private issuers must meet the same disclosure requirements as domestic issuers.

It is therefore ordered, pursuant to section 19(b)(2) of the Act[7], that the proposed rule change, as amended, (File No. SR–NASD–2004–105) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E4–2855 Filed 10–25–04; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] See letter from Mary M. Dunbar, Vice President and General Counsel, Nasdaq, to Katherine England, Assistant Director, Division of Market Regulation, Commission, dated August 20, 2004 (''Amendment No. 1'').

[4] See Securities Exchange Act Release No. 50267 (August 26, 2004), 69 FR 53478 (September 1, 2004).

[5] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78o–3(b)(6).

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50563; File No. SR–Phlx–2004–64]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Change in Weighting Methodology of the Phlx/KBW Bank Index

October 19, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 15, 2004, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in items I and II below, which Items have been prepared by the Exchange. The Exchange has filed the proposal as a ''non-controversial'' rule change pursuant to section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission.[5] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to change the weighting methodology of the Phlx/KBW Bank Index (the ''Bank Index'' or ''Index''), an index developed by Keefe, Bruyette & Woods, Inc. (''KBW''), a registered broker-dealer that specialized in U.S. bank stocks, from capitalization-weighted to modified capitalization weighted. No other changes are being made to the Index. The Exchange seeks continued approval to list and trade options on the Index after it has instituted this change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A.Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

According to the Phlx, the purpose of the proposal is to change the weighting methodology of the Index from

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] The Phlx provided the five day-pre-filing requirement but requested that the Commission waive the 30-day operative delay. *See* Rule 19b–4(f)(6)(iii). 17 CFR 240.19b–4(f)(6)(iii).

capitalization weighted to modified capitalization-weighted, which change has been requested by the Index's sponsor, KBW.[6] The Index is currently a capitalization-weighted index composed of 24 geographically diverse stocks select representing national money center banks and leading regional institutions. The Exchange currently lists and trades European-style, cash-settled options on the Index. The Exchange has been informed that KBW plans, as of Friday, October 15, 2004 (after the close of trading), to begin calculating the Index under a ''modified capitalization-weighted'' methodology. The Exchange commits that all of the terms of the Commission's 1992 approval order for this product remain in place, including but not limited to the description of the composition of the Index, maintenance of the Index and maintenance standards for continued listing of Index options, calculation of the Index, contract specifications, and the Exchange's obligation to provide surveillance of the trading of Index options and KBW's trading activity in the options and related instruments (*i.e.,* stocks included in or deleted from the Index and options on such stocks); only the weighting methodology is being modified.[7] The Index was originally listed in 1992 as a narrow-based (industry) index.[8]

The Index was developed by KBW, a New York investment banking firm, which maintains the Index pursuant to an agreement with the Exchange. The Index is evaluated at least annually by KBW to assure that the composition is highly representative of the banking industry. Options on the Index (''BKX Options'') commenced trading on the Phlx on September 21, 1992.[9]

The Exchange intends to institute this proposed change of weighting methodology for options listed and traded as of October 19, 2004, the Tuesday following October expiration.[10] Prior to October 19, 2004, the Exchange will begin calculating a new Index employing the modified capitalization weighting (the ''Reconstituted Index'').[11] The Reconstituted Index will then be effective for all series of BKX Options outstanding at the open of the market on October 20, 2004. There will be no ''side-by-side'' trading of option series on the old Index and the Reconstituted Index.[12] KBW has stated that the new, modified capitalization weighting methodology is expected to: (1) Retain in general the economic attributes of capitalization weighting; (2) promote portfolio weight diversification (thereby limiting domination of the Index by a few large stocks); (3) reduce Index performance distortion by preserving the capitalization ranking of component companies; and (4) reduce market impact on the smallest component securities from necessary weight rebalancings.

Under the new, modified capitalization weighting methodology, the four largest component stocks,[13] will be assigned maximum initial weights equal to the lesser of their actual capitalization weight or 10% in the Reconstituted Index. All other component stocks with a capitalization weight of more than 4.5% will be assigned initial weights of 4.5% in the Reconstituted Index. All component stocks with capitalization weights under 4.5% will share equally in the weight available for redistribution, but none of these banks will be assigned an initial weight of more than 4.5%.

Based on capitalizations of component securities as of the close on the Monday before the third Saturday of the last month in each calendar quarter, the Index will be rebalanced [14] according to the following rules:

1. If any of the top four banks' index weightings have increased beyond 12.5%, their weighting will be reduced to a maximum of 10% in the quarterly rebalancing.

2. If any of the remaining banks' weightings have increased beyond 5%, their weightings will be reduced to a maximum of 4.5% in the rebalancing.

3. If any of the top four banks' weightings have dropped below 8%, their weightings will be increased to the lesser of their actual capitalization weight or 10% in the rebalancing.

4. If any of the banks with unadjusted capitalization weights greater than 5% have declined in index weighting below 4%, their weightings will be increased to 4.5% in the rebalancing.

5. Any excess weighting available will be reallocated to the smaller banks and any weighting needed to increase weighting in the larger banks will be taken from the smaller banks in the same manner as in the initial allocation at the time of the rebalancing.

The Exchange notified market participants of the decision to modify the weighting methodology of the Index through a notice to members and member organizations in advance of Friday, October 15, 2004.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirement under section 6(b)(5) of the Act [15] in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest by modifying the weighting methodology of the Index from a capitalization-weighted index to a modified capitalization-weighted index that will contribute to the maintenance of fair and orderly markets consistent with investor protection, ensuring that no one component stock or group of component stocks dominate the Index. Moreover, the Exchange believes that the proposal will have the effect of increasing the potential influence of smaller component stocks on the movement of the Index.

[6] Because the Index is maintained by Keefe, Bruyette & Woods, a broker-dealer, Keefe, Bruyette & Woods has represented to Phlx that it has appropriate information barriers around the personnel who have access to information concerning changes and adjustments to the Index, and the Index is calculated by an independent, third-party who is not a broker-dealer. Telephone conference between Mark Salvacion, Director and Counsel, Phlx, and Florence Harmon, Senior Special Counsel, Division, Commission on October 19, 2004.

[7] Telephone conference between Mark Salvacion, Director and Counsel, Phlx, and Florence Harmon, Senior Special Counsel, Division, Commission on October 19, 2004.

[8] *See* Securities Exchange Act Release No. 31145 (September 3, 1992), 57 FR 41531 (September 10, 1992) (File No. SR–Phlx–91–27)(''Approval Order''). Even though the BKX was listed prior to the development of generic listing standards for industry (narrow-based) options in Phlx 1009A, it will be maintained in compliance with such standards, along with criteria set out in the 1992 Approval Order. Telephone conference between Mark Salvacion, Director and Counsel, Phlx, and Florence Harmon, Senior Special Counsel, Division, Commission on October 19, 2004.

[9] *Id.*

[10] Telephone conference between Mark Salvacion, Director and Counsel, Phlx, and Florence Harmon, Senior Special Counsel, Division, Commission on October 19, 2004 (adjusted date of weighting change).

[11] Prior notice of the composition, weighting, and divisor of the Reconstituted Index is necessary so that specialists and other member organizations may rebalance or adjust their hedge positions in accordance with the new weighting methodology.

[12] The divisor of the Reconstituted Index will be adjusted in order to ensure that there is economic equivalence between the old Index and the Reconstituted Index. Therefore, upon the launch of the Reconstituted Index, there will be no change in the index value between the old Index and the Reconstituted Index and, consequently, strike prices for all open interest will not need to be adjusted.

[13] Currently, these are Citigroup, Bank of America, J.P. Morgan-Chase and Wells Fargo.

[14] The rebalancing will be implemented at the close on the Friday before the third Saturday of the last month in each calendar quarter.

[15] 15 U.S.C. 78f(b)(5).

B.Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days (or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest) after the date of the filing, the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act [16] and Rule 19b–4(f)(6) thereunder.[17] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

A proposed rule change filed under Rule 19b–4(f)(6) normally must not become operative prior to 30 days after the date of the filing. In addition, a self-regulatory organization filing a proposed rule change under Rule 19–4(f)(6)(iii) normally must give the Commission written notice of its intent to file the proposed rule change five days prior to the date of filing. However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange provided the five-day pre-filing requirement, but the Exchange has requested that the Commission waive the 30-day operative delay and allow the proposed rule change become operative immediately to promote portfolio weight diversification, reduce Index performance distortion, reduce market impact on the smallest component securities from necessary weight rebalancings, and in general, retain the economic attributes of capitalization weighting.

The Commission believes it is consistent with the protection of investors and the public interest to designate the proposal immediately operative.[18] Accelerating the operative date should permit the Exchange to conform its methodology of the Index to that employed by the sponsor of the Index, KBW. Furthermore, the Commission believes that the proposed change in weighting methodology does not present any new novel regulatory issues, and is similar to proposed rule changes that were approved previously by the Commission.[19] The Commission also finds determinative that the weighting methodology reduces the weighting concentration of components of the Index in a manner similar to that of Phlx Rule 1009A. Accordingly, the Commission designates the proposed rule change to be operative upon filing with the Commission.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2004–64 on the subject line.

Paper Comments

• Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–Phlx–2004–64. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of the Phlx. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2004–64 and should be submitted on or before November 16, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[20]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E4–2841 Filed 10–25–04; 8:45 am]

BILLING CODE 8010–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3629]

State of Georgia (Amendment #2)

In accordance with notices received from the Department of Homeland Security—Federal Emergency Management Agency—effective September 24 and 29, and October 14, 2004, the above numbered declaration is hereby amended to include Clayton and Forsyth Counties as disaster areas due to damages caused by Hurricane Ivan occurring on September 14, 2004, and continuing.

In addition, applications for economic injury loans from small businesses located in the contiguous county of Spalding in the State of Georgia may be filed until the specified date at the previously designated location. All other counties contiguous to the above named primary counties have previously been declared.

In addition, Banks, Carroll, Cherokee, Dade, Dawson, DeKalb, Early, Elbert, Fannin, Forsyth, Franklin, Fulton, Gilmer, Habersham, Harris, Heard, Lumpkin, Madison, Miller, Pickens, Pike, Rabun, Towns, Union, Upson, White, and Wilkes Counties in the State of Georgia are also eligible under Public Assistance and our disaster loan

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 240.19b–4(f)(6).

[18] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[19] *See* Securities Exchange Act Release No. 40642 (November 5, 1998), 63 FR 63759 (November 16, 1998) (SR–CBOE–98–43).

[20] 17 CFR 200.30–3(a)(12).

program is available for private non-profit organizations that provide essential services of a governmental nature in those counties.

The Public Assistance number assigned to Georgia is P07208.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is November 17, 2004, and for economic injury the deadline is June 20, 2005.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: October 19, 2004.

Cheri L. Cannon,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 04–23958 Filed 10–25–04; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3632]

Commonwealth of Pennsylvania (Amendment #4)

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency—effective October 19, 2004, the above numbered declaration is hereby amended to include Elk and Potter Counties as disaster areas due to damages caused by Tropical Depression Ivan occurring on September 17, 2004, and continuing through October 1, 2004.

In addition, applications for economic injury loans from small businesses located in the contiguous county of Allegany in the State of New York may be filed until the specified date at the previously designated location. All other counties contiguous to the above named primary counties have previously been declared.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is November 18, 2004, and for economic injury the deadline is June 20, 2005.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: October 20, 2004.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 04–23959 Filed 10–25–04; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3630]

Commonwealth of Pennsylvania (Amendment #1)

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency—effective October 19, 2004, the above numbered declaration is hereby amended to include Bedford, Butler, Erie, Huntingdon, Lawrence, Warren and Washington Counties as disaster areas due to damages caused by severe storms and flooding associated with Tropical Depression Frances occurring on September 8 and 9, 2004.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Armstrong, Clarion, Elk, Fayette, Forest, Franklin, Fulton, Greene, Juniata, McKean, Mifflin, Somerset, and Westmoreland in the Commonwealth of Pennsylvania; Allegany County in the State of Maryland; Cattaraugus and Chautauqua Counties in the State of New York; and Brooke, Marshall, and Ohio Counties in the State of West Virginia may be filed until the specified date at the previously designated location. All other counties contiguous to the above named primary counties have previously been declared.

The economic injury number assigned to Maryland is 9AH100 and New York is 9AH200.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is November 18, 2004, and for economic injury the deadline is June 20, 2005.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: October 20, 2004.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 04–23961 Filed 10–25–04; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3642]

Commonwealth of Virginia

As a result of the President's major disaster declaration on October 18, 2004, I find that the independent cities of Salem and Roanoke, and the counties of Alleghany, Craig, Floyd, Giles, Montgomery, Patrick, and Roanoke in the Commonwealth of Virginia constitute a disaster area due to damages caused by severe storms and flooding from the remnants of Hurricane Jeanne occurring on September 27, 2004, and continuing. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on December 17, 2004, and for economic injury until the close of business on July 18, 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 Fl., Niagara Falls, NY 14303–1192.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Bath, Bedford, Bland, Botetourt, Carroll, Franklin, Henry, Pulaski, and Rockbridge in the Commonwealth of Virginia; Stokes and Surry Counties in the State of North Carolina; and Greenbrier, Mercer, Monroe, and Summers Counties in the State of West Virginia.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	6.375
Homeowners Without Credit Available Elsewhere	3.187
Businesses With Credit Available Elsewhere	5.800
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	2.900
Others (Including Non-Profit Organizations) With Credit Available Elsewhere	4.875
For Economic Injury:	
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	2.900

The number assigned to this disaster for physical damage is 364206. For economic injury the number is 9AF400 for Virginia; 9AF500 for North Carolina; and 9AF600 for West Virginia.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: October 19, 2004.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 04–23957 Filed 10–25–04; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3633]

State of West Virginia (Amendment #3)

In accordance with a notice received from the Department of Homeland

Security—Federal Emergency Management Agency—effective September 29, 2004, the above numbered declaration is hereby amended to include Mingo and Wayne Counties as disaster areas due to damages caused by severe storms, flooding and landslides occurring on September 16, 2004, and continuing through September 27, 2004.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of McDowell and Wyoming in the State of West Virginia; Boyd, Lawrence, Martin, and Pike in the Commonwealth of Kentucky; and Buchanan County in the Commonwealth of Virginia may be filed until the specified date at the previously designated location. All other counties contiguous to the above named primary counties have previously been declared.

The economic injury number assigned to Kentucky is 9AG900.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is November 19, 2004, and for economic injury the deadline is June 20, 2005.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: October 20, 2004.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 04–23960 Filed 10–25–04; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

Office of the Commissioner; Cost-of-Living Increase and Other Determinations for 2005

AGENCY: Social Security Administration.

ACTION: Notice.

SUMMARY: The Commissioner has determined—

(1) A 2.7 percent cost-of-living increase in Social Security benefits under title II of the Social Security Act (the Act), effective for December 2004;

(2) An increase in the Federal Supplemental Security Income (SSI) monthly benefit amounts under title XVI of the Act for 2005 to $579 for an eligible individual, $869 for an eligible individual with an eligible spouse, and $290 for an essential person;

(3) The student earned income exclusion to be $1,410 per month in 2005 but not more than $5,670 in all of 2005;

(4) The dollar fee limit for services performed as a representative payee to be $32 per month ($61 per month in the case of a beneficiary who is disabled and has an alcoholism or drug addiction condition that leaves him or her incapable of managing benefits) in 2005;

(5) The national average wage index for 2003 to be $34,064.95;

(6) The Old-Age, Survivors, and Disability Insurance (OASDI) contribution and benefit base to be $90,000 for remuneration paid in 2005 and self-employment income earned in taxable years beginning in 2005;

(7) The monthly exempt amounts under the Social Security retirement earnings test for taxable years ending in calendar year 2005 to be $1,000 and $2,650;

(8) The dollar amounts (''bend points'') used in the primary insurance amount benefit formula for workers who become eligible for benefits, or who die before becoming eligible, in 2005 to be $627 and $3,779;

(9) The dollar amounts (''bend points'') used in the formula for computing maximum family benefits for workers who become eligible for benefits, or who die before becoming eligible, in 2005 to be $801, $1,156, and $1,508;

(10) The amount of taxable earnings a person must have to be credited with a quarter of coverage in 2005 to be $920;

(11) The ''old-law'' contribution and benefit base to be $66,900 for 2005;

(12) The monthly amount deemed to constitute substantial gainful activity for statutorily blind individuals in 2005 to be $1,380, and the corresponding amount for non-blind disabled persons to be $830;

(13) The earnings threshold establishing a month as a part of a trial work period to be $590 for 2005; and

(14) Coverage thresholds for 2005 to be $1,400 for domestic workers and $1,200 for election workers.

FOR FURTHER INFORMATION CONTACT: Jeffrey L. Kunkel, Office of the Chief Actuary, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–3013. Information relating to this announcement is available on our Internet site at *http://www.socialsecurity.gov/OACT/COLA/index.html.* For information on eligibility or claiming benefits, call 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet site, Social Security Online, at *http://www.socialsecurity.gov.*

SUPPLEMENTARY INFORMATION: In accordance with the Act, the Commissioner must publish within 45 days after the close of the third calendar quarter of 2004 the benefit increase percentage and the revised table of ''special minimum'' benefits (section 215(i)(2)(D)). Also, the Commissioner must publish on or before November 1 the national average wage index for 2003 (section 215(a)(1)(D)), the OASDI fund ratio for 2004 (section 215(i)(2)(C)(ii)), the OASDI contribution and benefit base for 2005 (section 230(a)), the amount of earnings required to be credited with a quarter of coverage in 2005 (section 213(d)(2)), the monthly exempt amounts under the Social Security retirement earnings test for 2005 (section 203(f)(8)(A)), the formula for computing a primary insurance amount for workers who first become eligible for benefits or die in 2005 (section 215(a)(1)(D)), and the formula for computing the maximum amount of benefits payable to the family of a worker who first becomes eligible for old-age benefits or dies in 2005 (section 203(a)(2)(C)).

Cost-of-Living Increases

General

The next cost-of-living increase, or automatic benefit increase, is 2.7 percent for benefits under titles II and XVI of the Act. Under title II, OASDI benefits will increase by 2.7 percent for individuals eligible for December 2004 benefits, payable in January 2005. This increase is based on the authority contained in section 215(i) of the Act (42 U.S.C. 415(i)).

Under title XVI, Federal SSI payment levels will also increase by 2.7 percent effective for payments made for the month of January 2005 but paid on December 30, 2004. This is based on the authority contained in section 1617 of the Act (42 U.S.C. 1382f).

Automatic Benefit Increase Computation

Under section 215(i) of the Act, the third calendar quarter of 2004 is a cost-of-living computation quarter for all the purposes of the Act. The Commissioner is, therefore, required to increase benefits, effective for December 2004, for individuals entitled under section 227 or 228 of the Act, to increase primary insurance amounts of all other individuals entitled under title II of the Act, and to increase maximum benefits payable to a family. For December 2004, the benefit increase is the percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers from the third quarter of 2003 to the third quarter of 2004.

Section 215(i)(1) of the Act provides that the Consumer Price Index for a cost-of-living computation quarter shall be the arithmetic mean of this index for the 3 months in that quarter. We round the arithmetic mean, if necessary, to the nearest 0.1. The Department of Labor's Consumer Price Index for Urban Wage Earners and Clerical Workers for each month in the quarter ending September 30, 2003, is: for July 2003, 179.6; for August 2003, 180.3; and for September 2003, 181.0. The arithmetic mean for this calendar quarter is 180.3. The corresponding Consumer Price Index for each month in the quarter ending September 30, 2004, is: for July 2004, 184.9; for August 2004, 185.0; and for September 2004, 185.4. The arithmetic mean for this calendar quarter is 185.1. Thus, because the Consumer Price Index for the calendar quarter ending September 30, 2004, exceeds that for the calendar quarter ending September 30, 2003 by 2.7 percent (rounded to the nearest 0.1), a cost-of-living benefit increase of 2.7 percent is effective for benefits under title II of the Act beginning December 2004.

Section 215(i) also specifies that an automatic benefit increase under title II, effective for December of any year, will be limited to the increase in the national average wage index for the prior year if the ''OASDI fund ratio'' for that year is below 20.0 percent. The OASDI fund ratio for a year is the ratio of the combined assets of the Old-Age and Survivors Insurance and Disability Insurance Trust Funds at the beginning of that year to the combined expenditures of these funds during that year. (The expenditures in the ratio's denominator exclude transfer payments between the two trust funds, and reduce any transfers to the Railroad Retirement Account by any transfers from that account into either trust fund.) For 2004, the OASDI fund ratio is assets of $1,530,764 million divided by estimated expenditures of $500,958 million, or 305.6 percent. Because the 305.6-percent OASDI fund ratio exceeds 20.0 percent, the automatic benefit increase for December 2004 is not limited.

Title II Benefit Amounts

In accordance with section 215(i) of the Act, in the case of workers and family members for whom eligibility for benefits (*i.e.*, the worker's attainment of age 62, or disability or death before age 62) occurred before 2005, benefits will increase by 2.7 percent beginning with benefits for December 2004 which are payable in January 2005. In the case of first eligibility after 2004, the 2.7 percent increase will not apply.

For eligibility after 1978, benefits are generally determined using a benefit formula provided by the Social Security Amendments of 1977 (Pub. L. 95–216), as described later in this notice.

For eligibility before 1979, we determine benefits by means of a benefit table. You may obtain a copy of this table by writing to: Social Security Administration, Office of Public Inquiries, Windsor Park Building, 6401 Security Boulevard, Baltimore, MD 21235. The table is also available on the Internet at *http://www.socialsecurity.gov/OACT/ProgData/tableForm.html.*

Section 215(i)(2)(D) of the Act requires that, when the Commissioner determines an automatic increase in Social Security benefits, the Commissioner will publish in the **Federal Register** a revision of the range of the primary insurance amounts and corresponding maximum family benefits based on the dollar amount and other provisions described in section 215(a)(1)(C)(i). We refer to these benefits as ''special minimum'' benefits. These benefits are payable to certain individuals with long periods of relatively low earnings. To qualify for such benefits, an individual must have at least 11 ''years of coverage.'' To earn a year of coverage for purposes of the special minimum benefit, a person must earn at least a certain proportion of the ''old-law'' contribution and benefit base (described later in this notice). For years before 1991, the proportion is 25 percent; for years after 1990, it is 15 percent. In accordance with section 215(a)(1)(C)(i), the table below shows the revised range of primary insurance amounts and corresponding maximum family benefit amounts after the 2.7 percent automatic benefit increase.

SPECIAL MINIMUM PRIMARY INSURANCE AMOUNTS AND MAXIMUM FAMILY BENEFITS PAYABLE FOR DECEMBER 2004

Number of years of coverage	Primary insurance amount	Maximum family benefit 11
11	$31.90	$48.50
12	64.70	97.80
13	97.70	147.10
14	130.40	196.10
15	163.00	245.20
16	195.90	294.80
17	228.90	344.20
18	261.70	393.30
19	294.40	442.60
20	327.30	491.70
21	360.30	541.40
22	392.80	590.40
23	426.20	640.40
24	458.90	689.30
25	491.70	738.00
26	525.00	788.20
27	557.40	837.20
28	590.30	886.30
29	623.00	935.90
30	655.90	984.60

Title XVI Benefit Amounts

In accordance with section 1617 of the Act, maximum SSI Federal benefit amounts for the aged, blind, and disabled will increase by 2.7 percent effective January 2005. For 2004, we derived the monthly benefit amounts for an eligible individual, an eligible individual with an eligible spouse, and for an essential person—$564, $846, and $282, respectively—from corresponding yearly unrounded Federal SSI benefit amounts of $6,772.53, $10,157.65, and $3,394.03. For 2005, these yearly unrounded amounts increase by 2.7 percent to $6,955.39, $10,431.91, and $3,485.67, respectively. Each of these resulting amounts must be rounded, when not a multiple of $12, to the next lower multiple of $12. Accordingly, the corresponding annual amounts, effective for 2005, are $6,948, $10,428, and $3,480. Dividing the yearly amounts by 12 gives the corresponding monthly amounts for 2005—$579, $869, and $290, respectively. In the case of an eligible individual with an eligible spouse, we equally divide the amount payable between the two spouses.

Title VIII of the Act provides for special benefits to certain World War II veterans residing outside the United States. Section 805 provides that ''[t]he benefit under this title payable to a qualified individual for any month shall be in an amount equal to 75 percent of the Federal benefit rate [the maximum amount for an eligible individual] under title XVI for the month, reduced by the amount of the qualified individual's benefit income for the month.'' Thus the monthly benefit for 2005 under this provision is 75 percent of $579, or $434.25.

Student Earned Income Exclusion

A blind or disabled child, who is a student regularly attending school, college, or university, or a course of vocational or technical training, can have limited earnings that are not counted against his or her SSI benefits. The maximum amount of such income that may be excluded in 2004 is $1,370 per month but not more than $5,520 in all of 2004. These amounts increase based on a formula set forth in regulation 20 CFR 416.1112.

To compute each of the monthly and yearly maximum amounts for 2005, we increase the corresponding unrounded amount for 2004 by the latest cost-of-living increase. If the amount so calculated is not a multiple of $10, we round it to the nearest multiple of $10. The unrounded monthly amount for 2004 is $1,370.25. We increase this amount by 2.7 percent to $1,407.25, which we then round to $1,410. Similarly, we increase the unrounded yearly amount for 2004, $5,523.50, by 2.7 percent to $5,672.63 and round this to $5,670. Thus the maximum amount of the income exclusion applicable to a student in 2005 is $1,410 per month but not more than $5,670 in all of 2005.

Fee for Services Performed as a Representative Payee

Sections 205(j)(4)(A)(i) and 1631(a)(2)(D)(i) of the Act permit a qualified organization to collect from an individual a monthly fee for expenses incurred in providing services performed as such individual's representative payee. Currently the fee is limited to the lesser of: (1) 10 percent of the monthly benefit involved; or (2) $31 per month ($59 per month in any case in which the individual is entitled to disability benefits and the Commissioner has determined that payment to the representative payee would serve the interest of the individual because the individual has an alcoholism or drug addiction condition and is incapable of managing such benefits). The dollar fee limits are subject to increase by the automatic cost-of-living increase, with the resulting amounts rounded to the nearest whole dollar amount. Thus we increase the current amounts by 2.7 percent to $32 and $61 for 2005.

National Average Wage Index for 2003

General

Under various provisions of the Act, several amounts increase automatically with annual increases in the national average wage index. The amounts are: (1) The OASDI contribution and benefit base; (2) the exempt amounts under the retirement earnings test; (3) the dollar amounts, or ''bend points,'' in the primary insurance amount and maximum family benefit formulas; (4) the amount of earnings required for a worker to be credited with a quarter of coverage; (5) the ''old-law'' contribution and benefit base (as determined under section 230 of the Act as in effect before the 1977 amendments); (6) the substantial gainful activity amount applicable to statutorily blind individuals; and (7) the coverage threshold for election officials and election workers. Also, section 3121(x) of the Internal Revenue Code requires that the domestic employee coverage threshold be based on changes in the national average wage index.

In addition to the amounts required by statute, two amounts increase automatically under regulatory requirements. The amounts are (1) the substantial gainful activity amount applicable to non-blind disabled persons, and (2) the monthly earnings threshold that establishes a month as part of a trial work period for disabled beneficiaries.

Computation

The determination of the national average wage index for calendar year 2003 is based on the 2002 national average wage index of $33,252.09 announced in the **Federal Register** on October 22, 2003 (68 FR 60437), along with the percentage increase in average wages from 2002 to 2003 measured by annual wage data tabulated by the Social Security Administration (SSA). The wage data tabulated by SSA include contributions to deferred compensation plans, as required by section 209(k) of the Act. The average amounts of wages calculated directly from these data were $31,898.70 and $32,678.48 for 2002 and 2003, respectively. To determine the national average wage index for 2003 at a level that is consistent with the national average wage indexing series for 1951 through 1977 (published December 29, 1978, at 43 FR 61016), we multiply the 2002 national average wage index of $33,252.09 by the percentage increase in average wages from 2002 to 2003 (based on SSA-tabulated wage data) as follows, with the result rounded to the nearest cent.

Amount

Multiplying the national average wage index for 2002 ($33,252.09) by the ratio of the average wage for 2003 ($32,678.48) to that for 2002 ($31,898.70) produces the 2003 index, $34,064.95. The national average wage index for calendar year 2003 is about 2.44 percent greater than the 2002 index.

OASDI Contribution and Benefit Base

General

The OASDI contribution and benefit base is $90,000 for remuneration paid in 2005 and self-employment income earned in taxable years beginning in 2005.

The OASDI contribution and benefit base serves two purposes:

(a) It is the maximum annual amount of earnings on which OASDI taxes are paid. The OASDI tax rate for remuneration paid in 2005 is 6.2 percent for employees and employers, each. The OASDI tax rate for self-employment income earned in taxable years beginning in 2005 is 12.4 percent. (The Hospital Insurance tax is due on remuneration, without limitation, paid in 2005, at the rate of 1.45 percent for employees and employers, each, and on self-employment income earned in taxable years beginning in 2005, at the rate of 2.9 percent.)

(b) It is the maximum annual amount of earnings used in determining a person's OASDI benefits.

Computation

Section 230(b) of the Act provides the formula used to determine the OASDI contribution and benefit base. Under the formula, the base for 2005 shall be the larger of: (1) The 1994 base of $60,600 multiplied by the ratio of the national average wage index for 2003 to that for 1992; or (2) the current base ($87,900). If the resulting amount is not a multiple of $300, it shall be rounded to the nearest multiple of $300.

Amount

Multiplying the 1994 OASDI contribution and benefit base amount ($60,600) by the ratio of the national average wage index for 2003 ($34,064.95 as determined above) to that for 1992 ($22,935.42) produces the amount of $90,006.46. We round this amount to $90,000. Because $90,000 exceeds the current base amount of $87,900, the OASDI contribution and benefit base is $90,000 for 2005.

Retirement Earnings Test Exempt Amounts

General

We withhold Social Security benefits when a beneficiary under the normal retirement age (NRA) has earnings in excess of the applicable retirement earnings test exempt amount. (NRA is the age of initial benefit entitlement for which the benefit, before rounding, is equal to the worker's primary insurance amount. The NRA is age 65 for those born before 1938, and it gradually increases to age 67.) A higher exempt amount applies in the year in which a person attains his/her NRA, but only with respect to earnings in months prior to such attainment, and a lower exempt amount applies at all other ages below NRA. Section 203(f)(8)(B) of the Act, as amended by section 102 of Pub. L. 104–121, provides formulas for determining the monthly exempt amounts. The corresponding annual exempt amounts are exactly 12 times the monthly amounts.

For beneficiaries attaining NRA in the year, we withhold $1 in benefits for every $3 of earnings in excess of the annual exempt amount for months prior to such attainment. For all other beneficiaries under NRA, we withhold $1 in benefits for every $2 of earnings in excess of the annual exempt amount.

Computation

Under the formula applicable to beneficiaries who are under NRA and who will not attain NRA in 2005, the lower monthly exempt amount for 2005 shall be the larger of: (1) the 1994 monthly exempt amount multiplied by the ratio of the national average wage index for 2003 to that for 1992; or (2) the 2004 monthly exempt amount ($970). If the resulting amount is not a multiple of $10, it shall be rounded to the nearest multiple of $10.

Under the formula applicable to beneficiaries attaining NRA in 2005, the higher monthly exempt amount for 2005 shall be the larger of: (1) the 2002 monthly exempt amount multiplied by the ratio of the national average wage index for 2003 to that for 2000; or (2) the 2004 monthly exempt amount ($2,590). If the resulting amount is not a multiple of $10, it shall be rounded to the nearest multiple of $10.

Lower Exempt Amount

Multiplying the 1994 retirement earnings test monthly exempt amount of $670 by the ratio of the national average wage index for 2003 ($34,064.95) to that for 1992 ($22,935.42) produces the amount of $995.12. We round this to $1,000. Because $1,000 is larger than the corresponding current exempt amount of $970, the lower retirement earnings test monthly exempt amount is $1,000 for 2005. The corresponding lower annual exempt amount is $12,000 under the retirement earnings test.

Higher Exempt Amount

Multiplying the 2002 retirement earnings test monthly exempt amount of $2,500 by the ratio of the national average wage index for 2003 ($34,064.95) to that for 2000 ($32,154.82) produces the amount of $2,648.51. We round this to $2,650. Because $2,650 is larger than the corresponding current exempt amount of $2,590, the higher retirement earnings test monthly exempt amount is $2,650 for 2005. The corresponding higher annual exempt amount is $31,800 under the retirement earnings test.

Computing Benefits After 1978

General

The Social Security Amendments of 1977 provided a method for computing benefits which generally applies when a worker first becomes eligible for benefits after 1978. This method uses the worker's ''average indexed monthly earnings'' to compute the primary insurance amount. We adjust the computation formula each year to reflect changes in general wage levels, as measured by the national average wage index.

We also adjust, or ''index,'' a worker's earnings to reflect the change in general wage levels that occurred during the worker's years of employment. Such indexation ensures that a worker's future benefit level will reflect the general rise in the standard of living that will occur during his or her working lifetime. To compute the average indexed monthly earnings, we first determine the required number of years of earnings. Then we select that number of years with the highest indexed earnings, add the indexed earnings, and divide the total amount by the total number of months in those years. We then round the resulting average amount down to the next lower dollar amount. The result is the average indexed monthly earnings.

For example, to compute the average indexed monthly earnings for a worker attaining age 62, becoming disabled before age 62, or dying before attaining age 62, in 2005, we divide the national average wage index for 2003, $34,064.95, by the national average wage index for each year prior to 2003 in which the worker had earnings. Then we multiply the actual wages and self-employment income, as defined in section 211(b) of the Act and credited for each year, by the corresponding ratio to obtain the worker's indexed earnings for each year before 2003. We consider any earnings in 2003 or later at face value, without indexing. We then compute the average indexed monthly earnings for determining the worker's primary insurance amount for 2005.

Computing the Primary Insurance Amount

The primary insurance amount is the sum of three separate percentages of portions of the average indexed monthly earnings. In 1979 (the first year the formula was in effect), these portions were the first $180, the amount between $180 and $1,085, and the amount over $1,085. We call the dollar amounts in the formula governing the portions of the average indexed monthly earnings the ''bend points'' of the formula. Thus, the bend points for 1979 were $180 and $1,085.

To obtain the bend points for 2005, we multiply each of the 1979 bend-point amounts by the ratio of the national average wage index for 2003 to that average for 1977. We then round these results to the nearest dollar. Multiplying the 1979 amounts of $180 and $1,085 by the ratio of the national average wage index for 2003 ($34,064.95) to that for 1977 ($9,779.44) produces the amounts of $627.00 and $3,779.41. We round these to $627 and $3,779. Accordingly, the portions of the average indexed monthly earnings to be used in 2005 are the first $627, the amount between $627 and $3,779, and the amount over $3,779.

Consequently, for individuals who first become eligible for old-age insurance benefits or disability insurance benefits in 2005, or who die in 2005 before becoming eligible for benefits, their primary insurance amount will be the sum of

(a) 90 percent of the first $627 of their average indexed monthly earnings, plus

(b) 32 percent of their average indexed monthly earnings over $627 and through $3,779, plus

(c) 15 percent of their average indexed monthly earnings over $3,779.

We round this amount to the next lower multiple of $0.10 if it is not already a multiple of $0.10. This formula and the rounding adjustment described above are contained in section 215(a) of the Act (42 U.S.C. 415(a)).

Maximum Benefits Payable to a Family

General

The 1977 amendments continued the long established policy of limiting the total monthly benefits that a worker's family may receive based on his or her primary insurance amount. Those amendments also continued the then existing relationship between maximum family benefits and primary insurance amounts but did change the method of computing the maximum amount of benefits that may be paid to a worker's family. The Social Security Disability Amendments of 1980 (Pub. L. 96–265) established a formula for computing the maximum benefits payable to the family of a disabled worker. This formula applies to the family benefits of workers who first become entitled to disability insurance benefits after June 30, 1980, and who first become eligible for these benefits after 1978. For disabled workers initially entitled to disability benefits before July 1980, or whose disability began before 1979, we compute the family maximum payable the same as the old-age and survivor family maximum.

Computing the Old-Age and Survivor Family Maximum

The formula used to compute the family maximum is similar to that used to compute the primary insurance amount. It involves computing the sum of four separate percentages of portions of the worker's primary insurance amount. In 1979, these portions were the first $230, the amount between $230 and $332, the amount between $332 and $433, and the amount over $433. We refer to such dollar amounts in the formula as the ''bend points'' of the family-maximum formula.

To obtain the bend points for 2005, we multiply each of the 1979 bend-point amounts by the ratio of the national average wage index for 2003 to that average for 1977. Then we round this amount to the nearest dollar. Multiplying the amounts of $230, $332, and $433 by the ratio of the national average wage index for 2003 ($34,064.95) to that for 1977 ($9,779.44) produces the amounts of $801.16, $1,156.46, and $1,508.28. We round these amounts to $801, $1,156, and $1,508. Accordingly, the portions of the primary insurance amounts to be used in 2005 are the first $801, the amount between $801 and $1,156, the amount between $1,156 and $1,508, and the amount over $1,508.

Consequently, for the family of a worker who becomes age 62 or dies in 2005 before age 62, we will compute the total amount of benefits payable to them so that it does not exceed

(a) 150 percent of the first $801 of the worker's primary insurance amount, plus

(b) 272 percent of the worker's primary insurance amount over $801 through $1,156, plus

(c) 134 percent of the worker's primary insurance amount over $1,156 through $1,508, plus

(d) 175 percent of the worker's primary insurance amount over $1,508.

We then round this amount to the next lower multiple of $0.10 if it is not already a multiple of $0.10. This formula and the rounding adjustment described above are contained in section 203(a) of the Act (42 U.S.C. 403(a)).

Quarter of Coverage Amount

General

The amount of earnings required for a quarter of coverage in 2005 is $920. A quarter of coverage is the basic unit for determining whether a worker is insured under the Social Security program. For years before 1978, we generally credited an individual with a quarter of coverage for each quarter in which wages of $50 or more were paid, or with 4 quarters of coverage for every taxable year in which $400 or more of self-employment income was earned. Beginning in 1978, employers generally report wages on an annual basis instead of a quarterly basis. With the change to annual reporting, section 352(b) of the Social Security Amendments of 1977 amended section 213(d) of the Act to provide that a quarter of coverage would be credited for each $250 of an individual's total wages and self-employment income for calendar year 1978, up to a maximum of 4 quarters of coverage for the year.

Computation

Under the prescribed formula, the quarter of coverage amount for 2005 shall be the larger of: (1) the 1978 amount of $250 multiplied by the ratio of the national average wage index for 2003 to that for 1976; or (2) the current amount of $900. Section 213(d) further provides that if the resulting amount is not a multiple of $10, it shall be rounded to the nearest multiple of $10.

Quarter of Coverage Amount

Multiplying the 1978 quarter of coverage amount ($250) by the ratio of the national average wage index for 2003 ($34,064.95) to that for 1976 ($9,226.48) produces the amount of $923.02. We then round this amount to $920. Because $920 exceeds the current amount of $900, the quarter of coverage amount is $920 for 2005.

''Old-Law'' Contribution and Benefit Base

General

The ''old-law'' contribution and benefit base for 2005 is $66,900. This is the base that would have been effective under the Act without the enactment of the 1977 amendments. We compute the base under section 230(b) of the Act as it read prior to the 1977 amendments.

The ''old-law'' contribution and benefit base is used by:

(a) the Railroad Retirement program to determine certain tax liabilities and tier II benefits payable under that program to supplement the tier I payments which correspond to basic Social Security benefits,

(b) the Pension Benefit Guaranty Corporation to determine the maximum amount of pension guaranteed under the Employee Retirement Income Security Act (as stated in section 230(d) of the Social Security Act),

(c) Social Security to determine a year of coverage in computing the special minimum benefit, as described earlier, and

(d) Social Security to determine a year of coverage (acquired whenever earnings equal or exceed 25 percent of the ''old-law'' base for this purpose only) in computing benefits for persons who are also eligible to receive pensions based on employment not covered under section 210 of the Act.

Computation

The ''old-law'' contribution and benefit base shall be the larger of: (1) the 1994 ''old-law'' base ($45,000) multiplied by the ratio of the national average wage index for 2003 to that for 1992; or (2) the current ''old-law'' base ($65,100). If the resulting amount is not a multiple of $300, it shall be rounded to the nearest multiple of $300.

Amount

Multiplying the 1994 ''old-law'' contribution and benefit base amount ($45,000) by the ratio of the national average wage index for 2003 ($34,064.95) to that for 1992 ($22,935.42) produces the amount of $66,836.48. We round this amount to $66,900. Because $66,900 exceeds the current amount of $65,100, the ''old-law'' contribution and benefit base is $66,900 for 2005.

Substantial Gainful Activity Amounts

General

A finding of disability under titles II and XVI of the Act requires that a person, except for a title XVI disabled child, be unable to engage in substantial gainful activity (SGA). A person who is earning more than a certain monthly amount (net of impairment-related work expenses) is ordinarily considered to be engaging in SGA. The amount of monthly earnings considered as SGA depends on the nature of a person's disability. Section 223(d)(4)(A) of the Act specifies a higher SGA amount for statutorily blind individuals under title II while Federal regulations (20 CFR 404.1574 and 416.974) specify a lower SGA amount for non-blind individuals. Both SGA amounts increase in accordance with increases in the national average wage index.

Computation

The monthly SGA amount for statutorily blind individuals under title II for 2005 shall be the larger of: (1) such amount for 1994 multiplied by the ratio of the national average wage index for 2003 to that for 1992; or (2) such amount for 2004. The monthly SGA amount for non-blind disabled individuals for 2005 shall be the larger of: (1) such amount for 2000 multiplied by the ratio of the national average wage index for 2003 to that for 1998; or (2) such amount for 2004. In either case, if the resulting amount is not a multiple of $10, it shall be rounded to the nearest multiple of $10.

SGA Amount for Statutorily Blind Individuals

Multiplying the 1994 monthly SGA amount for statutorily blind individuals ($930) by the ratio of the national average wage index for 2003 ($34,064.95) to that for 1992 ($22,935.42) produces the amount of $1,381.29. We then round this amount to $1,380. Because $1,380 is larger than the current amount of $1,350, the monthly SGA amount for statutorily blind individuals is $1,380 for 2005.

SGA Amount for Non-Blind Disabled Individuals

Multiplying the 2000 monthly SGA amount for non-blind individuals ($700) by the ratio of the national average wage index for 2003 ($34,064.95) to that for 1998 ($28,861.44) produces the amount of $826.20. We then round this amount to $830. Because $830 is larger than the current amount of $810, the monthly SGA amount for non-blind disabled individuals is $830 for 2005.

Trial Work Period Earnings Threshold

General

During a trial work period, a beneficiary receiving Social Security disability benefits may test his or her ability to work and still be considered disabled. We do not consider services performed during the trial work period as showing that the disability has ended until services have been performed in at least 9 months (not necessarily consecutive) in a rolling 60-month period. In 2004, any month in which earnings exceed $580 is considered a month of services for an individual's trial work period. In 2005, this monthly amount increases to $590.

Computation

The method used to determine the new amount is set forth in our regulations at 20 CFR 404.1592(b). Monthly earnings in 2005, used to determine whether a month is part of a trial work period, is such amount for 2001 ($530) multiplied by the ratio of the national average wage index for 2003 to that for 1999, or, if larger, such amount for 2004. If the amount so calculated is not a multiple of $10, we round it to the nearest multiple of $10.

Amount

Multiplying the 2001 monthly earnings threshold ($530) by the ratio of the national average wage index for 2003 ($34,064.95) to that for 1999 ($30,469.84) produces the amount of $592.53. We then round this amount to $590. Because $590 is larger than the current amount of $580, the monthly earnings threshold is $590 for 2005.

Domestic Employee Coverage Threshold

General

The minimum amount a domestic worker must earn so that such earnings are covered under Social Security or Medicare is the domestic employee coverage threshold. For 2005, this threshold is $1,400. Section 3121(x) of the Internal Revenue Code provides the formula for increasing the threshold.

Computation

Under the formula, the domestic employee coverage threshold amount for 2005 shall be equal to the 1995 amount of $1,000 multiplied by the ratio of the national average wage index for 2003 to that for 1993. If the resulting amount is not a multiple of $100, it shall be rounded to the next lower multiple of $100.

Domestic Employee Coverage Threshold Amount

Multiplying the 1995 domestic employee coverage threshold amount ($1,000) by the ratio of the national average wage index for 2003 ($34,064.95) to that for 1993 ($23,132.67) produces the amount of $1,472.59. We then round this amount to $1,400. Accordingly, the domestic employee coverage threshold amount is $1,400 for 2005.

Election Worker Coverage Threshold

General

The minimum amount an election worker must earn so that such earnings are covered under Social Security or Medicare is the election worker coverage threshold. For 2005, this threshold is $1,200. Section 218(c)(8)(B) of the Act provides the formula for increasing the threshold.

Computation

Under the formula, the election worker coverage threshold amount for 2005 shall be equal to the 1999 amount of $1,000 multiplied by the ratio of the national average wage index for 2003 to that for 1997. If the amount so determined is not a multiple of $100, it shall be rounded to the nearest multiple of $100.

Election Worker Coverage Threshold Amount

Multiplying the 1999 election worker coverage threshold amount ($1,000) by the ratio of the national average wage index for 2003 ($34,064.95) to that for 1997 ($27,426.00) produces the amount of $1,242.07. We then round this amount to $1,200. Accordingly, the election worker coverage threshold amount is $1,200 for 2005.

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

Dated: October 20, 2004.

Jo Anne B. Barnhart,

Commissioner, Social Security Administration.

[FR Doc. 04–23915 Filed 10–25–04; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Advisory Circular Number AC 23–17B]

Advisory Circular on Systems and Equipment Guide for Certification of Part 23 Airplanes and Airships

AGENCY: Federal Aviation Administration, DOT.

ACTION: Extension of comment period.

SUMMARY: This notice announces the extension of the comment period for the notice of availability and request for comments for Systems and Equipment Guide for Certification of Part 23 Airplanes and Airships.

The FAA is extending the comment period to allow companies and individuals adequate time to complete their comments to the proposed criteria.

DATES: The comment period is being extended from October 29, 2004, to November 29, 2004.

ADDRESSES: Copies of the proposed advisory circular, AC 23–17B, may be requested from the following: Small Airplane Directorate, Standards Office (ACE–110), Aircraft Certification Service, Federal Aviation Administration, 901 Locust Street, Room 301, Kansas City, MO 64106. The proposed advisory circular is also available on the Internet at the following address *http://www.airweb.faa.gov/AC.* Send all comments on this proposed advisory circular to the individual identified under **FOR FURTHER INFORMATION CONTACT.**

FOR FURTHER INFORMATION CONTACT: Leslie B. Taylor, Federal Aviation

Administration, Small Airplane Directorate, Regulations & Policy, ACE–111, 901 Locust Street, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4134; fax: 816–329–4090; e-mail: *leslie.b.taylor@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite your comments on this proposed advisory circular. Send any data or views as you may desire. Identify the proposed Advisory Circular Number AC 23–17B on your comments, and if you submit your comments in writing, send two copies of your comments to the above address. The Small Airplane Directorate will consider all communications received on or before the closing date for comments. We may change the proposal contained in this notice because of the comments received.

Comments sent by fax or the Internet must contain ''Comments to proposed advisory circular AC 23–17B'' in the subject line. You do not need to send two copies if you fax your comments or send them through the Internet. If you send comments over the Internet as an attached electronic file, format it in either Microsoft Word 97 for Windows or ASCII text. State what specific change you are seeking to the proposed advisory circular and include justification (for example, reasons or data) for each request.

Issued in Kansas City, Missouri on October 7, 2004.

David R. Showers,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–23870 Filed 10–25–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Request To Release Airport Property at the City-County Airport, Madras, OR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of request to release airport property.

SUMMARY: The FAA proposes to rule and invite public comment on the release of land at City-County Airport under the provisions of Section 125 of the Wendell H. Ford Aviation Investment Reform Act for the 21st Century (AIR 21), now 49 U.S.C. 47107(h)(2).

DATES: Comments must be received on or before November 26, 2004.

ADDRESSES: Comments on this application may be mailed or delivered to the FAA at the following address: Mr. J. Wade Bryant, Manager, Federal Aviation Administration, Northwest Mountain Region, Airports Division, Seattle Airports District Office, 1601 Lind Avenue, SW., Suite 250, Renton, Washington 98055–4056.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to The Honorable Rick Allen, Mayor of City of Madras, at the following address: The Honorable Rick Allen, Mayor, City of Madras, 71 SE D Street, Madras, OR 97741.

FOR FURTHER INFORMATION CONTACT: Mr. William L. Watson, OR/ID Section Supervisor, Federal Aviation Administration, Northwest Mountain Region, Seattle Airports District Office, 1601 Lind Avenue, SW., Suite 250, Renton, Washington 98055–4056.

The request to release property may be reviewed, by appointment, in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA invites public comment on the request to release property at the City-County Airport under the provisions of the AIR 21 (49 U.S.C. 47107(h)(2)).

On October 15, 2004, the FAA determined that the request to release property at City-County Airport submitted by the airport meets the procedural requirements of the Federal Aviation Administration. The FAA may approve the request, in whole or in part, no later than November 26, 2004.

The following is a brief overview of the request:

City-County Airport is proposing the release of approximately 2.24 acres of airport property so the property can be sold to the businesses wishing to locate in the airport industrial park. The revenue made from this sale will be used toward Airport Capital Improvement.

Any person may inspect, by appointment, the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon appointment and request, inspect the application, notice and other documents germane to the application in person at City-County Airport.

Issued in Renton, Washington on October 15, 2004.

J. Wade Bryant,

Manager, Seattle Airports District Office.

[FR Doc. 04–23869 Filed 10–25–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2004–19400]

Commercial Aviation Safety Team Safety Enhancements

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed order designating information as protected from disclosure.

SUMMARY: The FAA is proposing that information provided to the agency from voluntary compliance with safety enhancements recommended by the Commercial Aviation Safety Team (CAST) be designated by an FAA order as protected from public disclosure in accordance with the provisions of 14 CFR part 193. Under 49 U.S.C. 40123 the FAA is required to protect the information from disclosure to the public, including disclosure under the Freedom of Information Act (5 U.S.C. 552) or other laws, following issuance of such order. The designation is intended to encourage sharing of information between the FAA and operators implementing the CAST safety enhancements.

DATES: Comments must be received on or before November 9, 2004.

ADDRESSES: You may send comments [identified by Docket Number FAA–2004–19400] using any of the following methods:

• *DOT Docket Web Site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.

• *Government-wide Rulemaking Web Site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.

• *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.

• *Fax:* 1–202–493–2251.

• *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For more information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

Privacy: We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. For more information, see the Privacy Act discussion in the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: To read background documents or comments received, go to http://dms.dot.gov at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Margaret Gilligan, Deputy Associate Administrator, Regulation And Certification, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–7804.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested persons to participate by submitting written comments, data, or views. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed order. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also review the docket using the Internet at the Web address in the **ADDRESSES** section.

Privacy Act: Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov.*

Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

If you want the FAA to acknowledge receipt of your comments on this proposal, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it to you.

Availability of Proposed Designation

You can get an electronic copy using the Internet by:

(1) Searching the Department of Transportation's electronic Docket Management System (DMS) Web page (*http://dms.dot.gov/search*);

(2) Visiting the Office of Rulemaking's Web page at *http://www.faa.gov/avr/arm/index.cfm*; or

(3) Accessing the Government Printing Office's Web page at *http://www.access.gpo.gov/su_docs/aces/aces140.html.*

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the docket number, or notice number of this document.

Background

Under 49 U.S.C. 40123, certain voluntarily provided safety information is protected from disclosure in order to encourage persons to provide the information to the FAA. The FAA must first issue an order specifying why the agency finds that the information should be protected in accordance with that section. The FAA's rules for implementing that section are in 14 CFR part 193. If the Administrator issues an order designating information as protected under section 40123, that information will not be disclosed under the Freedom of Information Act (5 U.S.C. 552) or other laws except as provided in section 40123, part 193, and the order designating the information as protected. This proposed order is issued under 14 CFR 193.11, which sets out the notice procedure for designating information as protected.

Description of the Proposed Safety Information To Be Protected

In December 1997, the National Civil Aviation Review Commission recommended that all elements of the Civil Aviation community join together to establish an integrated safety agenda that would continue to drive down the fatal accident rate for commercial aviation. To respond to this recommendation, the Aviation community created the Commercial Aviation Safety Team (CAST). CAST is a voluntary organization made up of government agencies, air operators, manufacturers and aviation labor organizations dedicated to reducing the commercial aviation accident rate by 80% by 2007. The team's work has centered on the analysis of past accidents in particular categories. Based on the analysis, CAST identifies safety enhancements which, if implemented will reduce the risk of these types of accidents happening in the future.

The safety enhancements may call for action by government agencies manufacturers, operators, or aircrew.

CAST has identified 47 safety enhancements in its current plan, and future safety enhancements included in later revisions to the CAST plan, which CAST members have agreed to implement. Because implementation is voluntary, and may be different at various operators or manufacturers, CAST members agree it is important to collect information to evaluate the level of implementation. This information will be invaluable to measuring CAST's effectiveness in reducing the fatal accident rate.

Summary of the Safety Information To Be Protected

A. Who may participate? Air operators, crewmembers and manufacturers who are targeted to implement safety enhancements recommended by CAST.

B. What voluntarily provided information would be protected from disclosure under this proposed designation?

1. All information related to whether an operator, crewmember, or manufacturer has implemented a safety enhancement recommended by CAST that is reported to an FAA inspector or other FAA representative.

2. All information related to the level of implementation, the methods used to implement and the results of implementation provided by an operator, crewmember or manufacturer to an FAA inspector or other FAA representation.

3. All information related to whether an operator, crewmember or manufacturer has implemented a safety enhancement recommended by CAST that is reported to FAA by a CAST member organization.

4. All information related to the level of implementation by an operator, crewmember or manufacturer reported to the FAA by a CAST member organization.

5. Reports prepared by FAA, any CAST member organization, or any team or workgroup established by CAST that is based on information related to the implementation of safety enhancements.

6. Any database containing information related to the implementation of safety enhancements and/or the effectiveness of these safety enhancements in eliminating or mitigating the underlying safety hazard.

C. How persons can participate?

An operator, crewmember or manufacturer can participate by voluntarily providing data related to implementation of safety enhancements to an FAA inspector, to another FAA representative or to CAST through a CAST member organization.

D. Duration of this protection?

Information related to implementation of safety enhancements recommended by CAST will be protected indefinitely.

Proposed Findings

The FAA proposes to designate information received from operators and manufacturers related to implementation of CAST safety enhancements as protected under 49 U.S.C. 40123 and 14 CFR 193.7 based on the following findings:

1. Summary of why FAA finds that the information will be provided voluntarily. The very essence of CAST is voluntary participation. Those who are members of CAST, who take part in the accident analysis, determine the feasibility of safety enhancements, and agree to implement the enhancements do so voluntarily. The key to CAST success now rests on understanding the level and effectiveness of implementation. Operators, crewmembers and manufacturers who have taken part in the program voluntarily to this point can be expected to provide information voluntarily to support achieving a shared goal of improving safety.

2. Description of the type of information that may be voluntarily provided under the program and why FAA finds that the information is safety related.

CAST participants will provide information as to safety enhancements implemented, the method of implementation, the process to evaluate the implementation and any other information, such as best practices related to the implementation of safety enhancements. The FAA finds this information is safety related because it will aid in measuring whether the safety goal—reducing the commercial fatal accident rates by 80% by 2007—is being achieved.

3. Summary of why the FAA finds that the disclosure of the information would inhibit persons from voluntarily providing that type of information.

Because the safety enhancements are not required by regulation, operators, crewmembers and manufacturers have wide discretion when they implement them. Industry is concerned that if disclosed, there is the potential for the information to be used for other than improving aviation safety, which was the primary reason for establishing CAST. Withholding such information from disclosures is consistent with FAA's safety responsibilities because without information on implementation of the safety enhancements, FAA and CAST will not be able to determine the effectiveness of safety enhancements. If FAA and CAST do not receive the information, FAA and the public will be deprived of the opportunity to determine whether the safety goal can be reached.

4. Summary of why receiving the information aids in fulfilling FAA's safety responsibilities.

With this information, FAA and industry will be able to determine whether the safety enhancements are effective. If the data suggests the goal to reduce the fatal accident rate will not be achieved, additional safety enhancements could be identified and implemented.

5. Summary of why withholding the information from disclosure is consistent with FAA safety responsibilities. Summary of when withholding the information from disclosure would not be consistent with FAA safety responsibilities as described in 14 CFR 193.9.

Withholding the information from disclosure is consistent with FAA safety responsibilities because, to reach FAA's safety goal FAA must be able to evaluate the implementation and effectiveness of safety enhancements identified through CAST. FAA will release information, as set forth in part 193, to explain the need for changes in FAA policies, procedures and regulations. FAA may release de-identified, summarized information derived from information reported about implementation of the CAST safety enhancements. When necessary to correct a condition that may compromise safety, or to encourage more complete and timely implementation of safety enhancements, FAA may release information to the members of CAST. The FAA will give information to CAST members who are government agencies only if each agency meets the requirements 14 CFR 193.7(e). FAA will give information to CAST members that are not government agencies only if each member provides adequate assurance that it will protect the information from further release and it will limit access to those with a need to know to carry out safety responsibilities.

6. Summary of how FAA will distinguish information protected under part 193 from information the FAA receives from other sources.

Operators, crewmembers and manufacturers will provide information related to the implementation of CAST safety enhancements directly to FAA inspectors or other FAA employees designated to receive such information. In this way, the information protected under this order will be easily identified and distinguished from other information FAA receives from other sources.

Proposed Designation

Accordingly, the Federal Aviation Administration hereby proposes to designate the above-described information submitted to demonstrate implementation of CAST safety enhancements to be protected under 49 U.S.C. 40123 and 14 CFR part 193.

Issued in Washington, DC, on October 18, 2004.

Nicholas A. Sabatini,

Associate Administrator for Regulation and Certification.

[FR Doc. 04–23864 Filed 10–25–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. ANE–2003–35–1–R0]

Policy for Ice Protection Equipment

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed policy statement; request for comments.

SUMMARY: The Federal Aviation Administration (FAA) announces the availability of proposed policy for Ice Protection Equipment.

DATES: Comments must be received by December 15, 2004.

ADDRESSES: Send all comments on the proposed policy to the individual identified under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Jay Turnberg, FAA, Engine and Propeller Standards Staff, ANE–110, 12 New England Executive Park, Burlington, MA 01803; e-mail: *jay.turnberg@faa.gov*; telephone: (781) 238–7116; fax: (781) 238–7199. The policy statement is available on the Internet at the following address: *http://www.airweb.faa.gov/rgl.* If you do not have access to the Internet, you may request a copy of the policy by contacting the individual listed in this section.

SUPPLEMENTARY INFORMATION:

Comments Invited

The proposed policy statements are available on the Internet at the following address: *http://www.faa.gov/certification/aircraft/*

enginedraftpolicyby.htm. If you do not have access to the Internet, you may request a copy of the proposed policies by contacting the individual listed under **FOR FURTHER INFORMATION CONTACT**. The FAA invites interested parties to comment on the proposed policies. Comments should identify the subject of the proposed policy and be submitted to the individual identified under **FOR FURTHER INFORMATION CONTACT**. The FAA will consider all comments received by the closing date before issuing the final policies.

Background

The certification of the propeller ice protection system involves an overlap between airplane and propeller requirements. The airplane is required to meet the icing requirements of parts 23 or 25, whereas the propeller is required to meet the applicable structural and durability requirements of part 35. This overlap in certification requirements between two certified products, airplanes and propellers, has led to confusion over the configuration and quality control responsibility for the certificate holders. For example a deicing system shown on a propeller type certificate data sheet does not mean that compliance with part 23 icing requirements was shown.

This proposed policy provides guidance for compliance with parts 21, 23, 25, and 35 of Title 14 of the Code of Federal Regulations. The proposed policy clarifies configuration and quality control responsibilities for certificate holders and parts suppliers involved with propeller ice protection systems. This proposed policy does not create any new requirements.

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

Issued in Burlington, Massachusetts, on October 15, 2004.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 04–23860 Filed 10–25–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Oconto & Marinette Counties, Wisconsin

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement (EIS) will be prepared for transportation improvements on the U.S. 41 corridor from Oconto to Peshtigo in Oconto and Marinette Counties, Wisconsin. The environmental impact statement will be prepared in conformance with 40 CFR part 1500 and the FHWA regulations

FOR FURTHER INFORMATION CONTACT: Mr. Johnny M Gerbitz, Field Operations Engineer, Federal Highway Administration, 567 D'Onofrio Drive, Madison, Wisconsin, 53719–2814; telephone: (608) 829–7500. You may also contact Mr. Eugene Johnson, Director, Bureau of Equity & Environmental Services, Wisconsin Department of Transportation, P.O. Box 7965, Madison, Wisconsin, 53707–7965; telephone: number (608) 266–9626.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded by using a computer, modem and suitable communications software from the Government Printing Offices' Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of Federal Register's home page at: *http://www.archives.gov/* and the Government Printing Offices' database at: *http://www.gpoaccess.gov/nara/index.html.*

Background

The FHWA, in cooperation with the Wisconsin Department of Transportation, will prepare a Draft Environmental Impact Statement (EIS) on a proposal to provide capacity, safety and operational improvements on an approximate 21-mile (34-kilometer) portion of U.S. 41 between the cities of Oconto and Peshtigo in Oconto and Marinette Counties, including community bypasses at Oconto and Peshtigo.

FHWA's decision to prepare a draft EIS is based on the initial environmental assessment that indicates the proposed action is likely to have significant impacts on the environment including wetlands. The draft EIS will evaluate the social, economic, and environmental impacts of the alternatives including no build, improvements within the existing highway corridor, and improvements on new location.

Information describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, private agencies and organizations, and citizens who have expressed or are known to have an interest in this proposal.

During environmental assessment activities, agency scoping and coordination was conducted with state and federal review agencies (including an inter-agency meeting in September 2004), and there was extensive coordination with local officials and Native American Tribes. Public information meetings were also conducted from 2002 to 2004 and two open forum public hearings were held in August 1999. Another public information meeting is planned following completion of the draft EIS. Public notice will be given of the time and place of the meeting and the draft EIS will be available for public and agency review and comment prior to the meeting. Coordination with state and federal review agencies will also continue throughout preparation of the draft EIS.

To ensure that the full range of issues related to this proposed action are addressed, and all substantive issues are identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the draft EIS should be directed to FHWA or the Wisconsin Department of Transportation at the addresses provided under the heading **FOR FURTHER INFORMATION CONTACT.**

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 315; 49 CFR 1.48.

Issued on: October 20, 2004.

Johnny M Gerbitz,

Field Operations Engineer, Federal Highway Administration, Madison, Wisconsin.

[FR Doc. 04–23932 Filed 10–25–04; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Waiver Petition Docket Number FRA–2004–18746]

Union Pacific Railroad Company; Notice of Extension of Comment Period

On August 10, 2004, FRA published a notice in the **Federal Register** announcing the Union Pacific Railroad Company's (UP) request to be granted a waiver of compliance from certain provisions of the Brake System Safety Standards for Freight and Other Nonpassenger Trains and Equipment; End of Train Devices, 49 CFR part 232, Freight Car Safety Standards, 49 CFR part 215, and Locomotive Safety Standards, 49 CFR part 299. *See* 69 FR 48558. Specifically, UP requests relief from the requirements of § 232.205 Class I Brake Test-Initial Terminal Inspection, § 232.409 Inspection and Testing of End-of-Train, § 215.13 Pre-departure Inspection, § 229.21 Daily Inspection.

UP requests that the above provisions of the Federal regulations be waived to permit run-through trains, that originate in Mexico and are interchanged with the UP at the Laredo, Texas Gateway, to operate into the interior of the United States without having to perform inspections at the U.S./Mexican border, provided that the trains receive proper inspections in Mexico by Transportacion Ferroviaria Mexicana (TFM), according to the standards prescribed in 49 CFR parts 232, 215, and 229. UP would maintain all records required by applicable regulations for ready access on the U.S. side of the border, for FRA inspections. In addition, TFM has provided written consent for FRA to conduct inspections of their facilities and inspection practices.

In response to comments received on the original notice, FRA issued a notice on August 31, 2004, granting the requests for a public hearing and extending the comment period to October 8, 2004. *See* 69 FR 54177 (September 7, 2004). A public hearing in this matter was conducted on October 1, 2004. Subsequent to the close of the comment period on October 8, 2004, a number of significant documents were added to the public docket. These include: new uncorrupted translation files from TFM; a letter from Congressman James L. Oberstar and 22 other members of Congress opposing the petition; and the transcript from the October 1, 2004, public hearing. FRA currently is in the process of reviewing and evaluating this new information as well as all the other previously submitted material and information. In order to provide interested parties an opportunity to review and potentially comment on this new information, FRA believes it is necessary to reopen the public docket in this matter and extend the comment period for a short period of time.

Accordingly, FRA is extending the comment period in this matter to November 10, 2004. All communications concerning these proceedings should identify the appropriate docket number (*e.g.*, Waiver Petition Docket Number FRA–2004–18746) and must be submitted to the Docket Clerk, DOT Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (volume 65, number 70; pages 19477–78). The Statement may also be found at *http://dms.dot.gov.*

Issued in Washington, DC on October 22, 2004.

Grady C. Cothen, Jr.,

Acting Associate Administrator for Safety.

[FR Doc. 04–24058 Filed 10–25–04; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[FTA Docket No. FTA–2004–19452]

Agency Information Collection Activity Under OMB Review

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of request for comments.

SUMMARY: In accordance 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 approval. The **Federal Register** Notice with a 60-day comment period soliciting comments was published on July 6, 2004.

DATES: Comments must be submitted before November 26, 2004. A comment to OMB is most effective if OMB receives it within 30 days of publication.

FOR FURTHER INFORMATION CONTACT: Sylvia L. Marion, Office of Administration, Office of Management Planning, (202) 366–6680.

SUPPLEMENTARY INFORMATION: *Title:* United We Ride State Coordination Grants (*OMB Number: 2132–0562*).

Abstract: The U.S. Departments of Transportation (DOT), Health and Human Services (HHS), Labor (DOL) and Education (DoED), have launched United We Ride (UWR), a five part initiative to enhance the coordination on human service transportation. UWR intends to break down the barriers between programs and set the stage for local and State partnerships that generate common sense solutions and deliver A-plus performance for those individuals who depend on transportation services to participate fully in community life. The UWR five initiatives include: (1) The Framework for Action, (2) A National Leadership Forum on Human Service Transportation Coordination, (3) State Leadership Awards, (4) State Coordination Grants, and (5) Help Along the Way.

The Congress and the Executive Branch are interested in ensuring that various human service transportation activities funded by various Federal programs are better coordinated. The General Accounting Office (GAO) issued a report on ''Transportation Disadvantaged Populations'' (June 2003) that identified 62 different Federal programs across eight Federal agencies that provide funding that may be used to support community transportation services.

The report points out that there are multiple public and private agencies that provide human service transportation in any one community, and services vary greatly in terms of eligibility requirements, hours or scope of operation, specific destinations and quality.

Given the multiplicity of programs and the significant dollar amounts spent, more effective coordination is needed to ensure better service to more people. This is especially true when Federal, State, and local budgets for human service activities are under extreme financial pressure.

As also indicated by GAO, many objectives have been achieved; however, the fragmentation and lack of coordination within supporting agencies continues to be a challenge. On February 24, 2004, President Bush signed an Executive Order Number 13330 on Human Service Transportation Coordination establishing the Federal Interagency Coordinating Council on Access and Mobility and requiring attention to the obstacles outlined by GAO.

The President's Executive Order requires agencies to identify and implement strategies for enhancing coordinated services within a one-year period. The United We Ride initiative includes a State Coordination Grant that provides support to help States address the issues outlined both by GAO and by the President in the Executive Order.

FTA requested an emergency approval from OMB for the United We Ride State Coordination Grant Initiative in a **Federal Register** notice dated May 21, 2004. OMB approved the request on June 22, 2004. This approval expires on December 31, 2004.

Estimated Total Annual Burden: 500 hours.

ADDRESSES: All written comments must refer to the docket number that appears at the top of this document and be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: FTA 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.

Dated: October 19, 2004.

Ann M. Linnertz,

Deputy Associate Administrator for Administration.

[FR Doc. 04–23873 Filed 10–25–04; 8:45 am]

BILLING CODE 4910–57–M

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Transfer of Federally Assisted Land or Facility

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of intent to transfer federally assisted land or facility.

SUMMARY: Section 5334(g) of the Federal Transit Laws, as codified, 49 U.S.C. 5301 *et seq.,* permits the Administrator of the Federal Transit Administration (FTA) to authorize a recipient of FTA funds to transfer land or a facility to a public body for any public purpose with no further obligation to the Federal Government if, among other things, no Federal agency is interested in acquiring the asset for Federal use. Accordingly, FTA is issuing this notice to advise Federal agencies that the Whatcom Transportation Authority (WTA) intends to transfer a parcel of land with structures to the City of Bellingham, Washington to use in the City's public works division for office space and storage of that division's vehicles and equipment. The parcel was formerly used as WTA's bus maintenance, operations and administrative facility and consists of approximately 29,250 square feet of land on the northeast corner of Nevada Street and Virginia Street in Bellingham, Washington (post office address: 2200 Nevada Street, Bellingham, WA) situated within a heavy commercial and/or light industrial area zoned LM for light manufacturing. The property includes a flex-type building consisting of a front office and/or administration section, a large, attached, multi-purpose shop or warehouse-type rear section and an exterior bus was facility. The total building coverage is approximately 14,966 square feet.

EFFECTIVE DATE: Any Federal agency interested in acquiring the land or facility must notify the FTA Region X Office of its interest by November 22, 2004.

ADDRESSES: Interested parties should notify the Regional Office by writing to Richard F. Krochalis, Regional Administrator, Federal Transit Administration, 915 Second Avenue, Room 3142, Seattle, WA 98174.

FOR FURTHER INFORMATION CONTACT: Theodore Y. Uyeno, Regional Counsel (206) 220–7958.

SUPPLEMENTARY INFORMATION:

Background

49 U.S.C. 5334(g) provides guidance on the transfer of capital assets. Specifically, if a recipient of FTA assistance decides an asset acquired under this chapter at least in part with that assistance is no longer needed for the purpose for which it was acquired, the Secretary of Transportation may authorize the recipient to transfer the asset to a local government authority to be used for a public purpose with no further obligation to the Government. 49 U.S.C. 5334(g)(1).

Determinations

The Secretary may authorize a transfer for a public purpose other than mass transportation only if the Secretary decides:

(A) The asset will remain in public use for at least 5 years after the date the asset is transferred;

(B) There is no purpose eligible for assistance under this chapter for which the asset should be used;

(C) The overall benefit of allowing the transfer is greater than the interest of the Government in liquidation and return of the financial interest of the Government in the asset, after considering fair market value and other factors; and

(D) Through an appropriate screening or survey process, that there is no interest in acquiring the asset for Government use if the asset is a facility or land.

Federal Interest in Acquiring Land or Facility

This document implements the requirements of 49 U.S.C. 5334(G)(1)(D) of the Federal Transit Laws. Accordingly, FTA hereby provides notice of the availability of the land or facility further described below. Any Federal agency interested in acquiring the affected land or facility should promptly notify the FTA. If no Federal agency is interested in acquiring the existing land or facility, FTA will make certain that the other requirements specified in 49 U.S.C. 5334(g)(1)(A) through (C) are met before permitting the asset to be transferred.

Additional Description of Land or Facility

The property is a former bus operations and maintenance site consisting of an approximately 29,250 square foot parcel of land at the corner of Nevada and Virginia Streets in Bellingham, Washington. The property is situated within an area zoned LM for light manufacturing use. The parcel is located in a heavy commercial/light industrial area. The property was previously used as a transit bus operations and maintenance facility. The property contains a flex-type building consisting of a front office and/or administration section and a large attached multi-purpose shop or warehouse rear section for a total building coverage of approximately 14,966 square feet. The property includes a bus wash facility connected to the main building section which includes an enclosed control room servicing an exterior bus wash unit of metal framing with ground level guiding tracks for large vehicles and installed brushing and swiping apparatus with automatic operating system and water lines. The subject lot has perimeter dimensions of 130 feet in width from south to north fronting along the east side of Nevada Street and is 225 feet in depth or length from west to east adjacent to the north side of Virginia Street.

The entire tract is level and at-grade in relation to both Nevada and Virginia Streets, which are fully improved, two-way traffic, local streets serving this part of Bellingham, having parallel concrete curbs and public sidewalks as well as providing curbside vehicular parking. The building improvements consist of concrete foundations, basic concrete slab floors, enameled metal side walls, flat roofs with gutters and downspouts and various entry doors and glass windows. The front office section has exterior dimensions of 26 feet wide and 112 feet long for a total enclosed ground floor area of 2,912 square feet. The interior includes work areas, seven individual offices, several work stations, a lounge, two lavatory rooms and shower room with small closets and storage rooms. The rear building section has exterior dimensions of 80 feet wide by 151 feet long with a ground floor coverage of 12,054 square feet. The space is all open and non-partitioned with a concrete slab floor, exposed metal sidewalls and eleven large metal vehicular size roll-up doors. Miscellaneous site improvements include approximately 12,500 square feet of asphalt surfaced vehicular parking and maneuvering areas and assorted landscaped areas which include shrubberies, trees and ornamentals.

The general condition of the building appears in good overall condition from a structural standpoint and is approximately 26 years old. The bus wash facility is considered obsolete or an unnecessary improvement.

Issued on October 12, 2004.

Richard F. Krochalis,

Regional Administrator.

[FR Doc. 04–23872 Filed 10–25–04; 8:45 am]

BILLING CODE 4910–57–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number 2004 19433]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel ALTAIR.

SUMMARY: As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2004–19433 at *http://dms.dot.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels.

If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments.

Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before November 26, 2004.

ADDRESSES: Comments should refer to docket number MARAD–2004 19433. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th Street, SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone (202) 366–0760.

SUPPLEMENTARY INFORMATION:

As described by the applicant the intended service of the vessel ALTAIR is:

Intended Use: Boat riding and fishing, snorkeling, scuba diving, whale watching.

Geographic Region: Hawaii.

Dated: October 19, 2004.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 04–23894 Filed 10–25–04; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number 2004 19432]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel DARIOS DREAM.

SUMMARY: As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2004–19432 at *http://dms.dot.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before November 26, 2004.

ADDRESSES: Comments should refer to docket number MARAD–2004 19432. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone (202) 366–0760.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel DARIOS DREAM is:

Intended Use: ''Mostly term charters (1 week term) some day charters.''

Geographic Region: ''Eastern U.S. Seaboard and U.S. Virgin Islands.''

Dated: October 19, 2004.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 04–23893 Filed 10–25–04; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number 2004 19431]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel DIVAGUE II.

SUMMARY: As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2004–19431 at *http://dms.dot.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before November 26, 2004.

ADDRESSES: Comments should refer to docket number MARAD–2004 19431. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone (202) 366–0760.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel DIVAGUE II is:

Intended Use: ''Charter service for pleasure cruising and sightseeing. Up to 6 passengers, licensed captain, and perhaps one crew member. No commercial fishing or shrimping. One day or overnight charters.''

Geographic Region: ''North and South Carolina.''

Dated: October 19, 2004.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 04–23892 Filed 10–25–04; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number 2004 19434]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel MONTAGUE.

SUMMARY: As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2004–19434 *http://dms.dot.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels.

If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted.

Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before November 26, 2004.

ADDRESSES: Comments should refer to docket number MARAD–2004 19434. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th Street, SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone (202) 366–0760.

SUPPLEMENTARY INFORMATION:

As described by the applicant the intended service of the vessel MONTAGUE is:

Intended Use: Research charters.

Geographic Region: Gulf of Alaska, Prince William Sound, Alaska.

Dated: October 19, 2004.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 04–23895 Filed 10–25–04; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2004–18556; Notice 2]

General Motors Corporation, Mootness of Petition for Decision of Inconsequential Noncompliance

General Motors Corporation (GM) has determined that certain 2004 model year Saab 9–3 Sport Sedans and Convertibles do not comply with S4.2(b) of 49 CFR 571.114, Federal Motor Vehicle Safety Standard (FMVSS) No. 114, ''Theft protection.'' Pursuant to 49 U.S.C. 30118(d) and 30120(h), GM has petitioned for a determination that this noncompliance is inconsequential to motor vehicle safety and has filed an appropriate report pursuant to 49 CFR part 573, ''Defect and Noncompliance Reports.'' Notice of receipt of a petition was published, with a 30-day comment period, on July 14, 2004, in the **Federal Register** (69 FR 42240). NHTSA received one comment.

Out of a population of approximately 4032 model year 2004 Saab 9–3 Sport Sedans and Convertibles equipped with a manual transmission, approximately 11 are affected. S4.2(b) of FMVSS No. 114 requires that ''[e]ach vehicle shall have a key-locking system which, whenever the key is removed, prevents either steering or forward self-mobility of the vehicle or both.'' The affected vehicles were produced with an ignition key locking system that contains a center spring plate switch that can bind in the closed position. This switch communicates to certain vehicle systems that the ignition key has been inserted or removed. When this switch binds in the closed position, certain systems will read that the ignition key is still in the ignition switch, even after ignition key removal. One of the systems using the input from this switch is the electronic steering column lock to meet the S4.2 requirement of FMVSS No. 114. If a vehicle has the aforementioned condition, the steering column will not lock upon ignition key removal.

However, all Saab 9–3 vehicles are equipped with an electronic engine immobilizer system that prevents engine operation in the absence of the vehicle's ignition key from the ignition switch module. The immobilizer remains fully operational on vehicles with the aforementioned condition present. Although a vehicle could be steered with this condition, the engine could not be started, even through hot-wiring or other vehicle manipulation. The one comment to the **Federal Register** notice was from a private individual and did not address the specific issue concerning S4.2(b).

NHTSA has determined that the vehicles in question are in compliance with the requirements of S4.2(b) because the electronic engine immobilizer system prevents vehicle forward self-mobility when the key is not in the ignition switch module. Therefore, this petition is moot.

Authority: 49 U.S.C. 30118, 30120; delegations of authority at CFR 1.50 and 501.8.

Issued on: October 20, 2004.

Kenneth N. Weinstein,

Associate Administrator for Enforcement.

[FR Doc. 04–23874 Filed 10–25–04; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2004–18972; Notice 2]

Michelin North America, Inc., Grant of Petition for Decision of Inconsequential Noncompliance

Michelin North America, Inc. (Michelin) has determined that the sidewall markings on certain tires that it manufactured in 2000 through 2003 do not comply with S4.2.1(c) of 49 CFR 571.109, Federal Motor Vehicle Safety Standard (FMVSS) No. 109, ''New pneumatic tires.'' Pursuant to 49 U.S.C. 30118(d) and 30120(h), Michelin has petitioned for a determination that this noncompliance is inconsequential to motor vehicle safety and has filed an appropriate report pursuant to 49 CFR part 573, ''Defect and Noncompliance Reports.'' Notice of receipt of a petition was published, with a 30-day comment period, on September 14, 2004, in the **Federal Register** (69 FR 55492). NHTSA received one comment.

A total of approximately 60,729 Michelin Symmetry P195/60R15 87S tires manufactured during 8/29/00 to 10/19/03 and approximately 12,633 Michelin Symmetry P205/60R15 90S tires manufacturing during 8/6/00 to 9/22/00 and 7/27/03 to 8/23/03 are affected. S4.2.1 of FMVSS No. 109 requires that each tire shall conform to the requirement that ''(c) Its load rating shall be that specified in * * * one of the publications described in S4.4.1(b).''

The sidewall markings on the affected tires do not comply with S4.2.1(c) because the sidewall markings understate the actual carrying capacity of the tires. The Max Load value indicated is less than the actual load carry capability of the tires at the marked air pressure value of 240 kPa (35 psi). The P195/60R15 tires are incorrectly marked MAX LOAD 470 kg (1036 Lbs) and should have been marked Max Load 540 kg (1190 Lbs). The P205/60R15 tires are incorrectly marked MAX LOAD 510 kg (1124 Lbs) and should have been marked Max Load 590 kg (1301 Lbs).

Michelin believes that the noncompliance is inconsequential to motor vehicle safety and that no corrective action is warranted. Michelin stated that at the indicated maximum pressure value of 35 psi the P195/60R15 tire will carry an extra 151 pounds per tire and the P205/60R15 tire will carry an additional 177 pounds per tire, thus consumers relying upon the carrying capacity values marked on the tires will put less load on the tires than they are capable of carrying. Michelin further stated that all of the performance requirements of FMVSS No. 109 are met or exceeded, and the tires are marked with the correct maximum pressure value of 35 psi.

NHTSA received one comment on the petition from a private individual that did not address the effect on motor vehicle safety of this noncompliance.

NHTSA agrees that the noncompliance is inconsequential to motor vehicle safety. At the indicated maximum pressure value, the tire will carry an additional load, therefore there is no likelihood of creating an unsafe condition. In addition, all FMVSS No. 109 performance requirements are met, and all other informational markings as required by FMVSS No. 109 are present. Michelin has corrected the problem.

In consideration of the foregoing, NHTSA has decided that the petitioner has met its burden of persuasion that the noncompliance described is inconsequential to motor vehicle safety. Accordingly, Michelin's petition is granted and the petitioner is exempted from the obligation of providing notification of, and a remedy for, the noncompliance.

Authority: 49 U.S.C. 30118, 30120; delegations of authority at CFR 1.50 and 501.8.

Issued on: October 20, 2004.

Kenneth N. Weinstein,

Associate Administrator for Enforcement.

[FR Doc. 04–23875 Filed 10–25–04; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2004–18973; Notice 2]

Michelin North America, Inc., Grant of Petition for Decision of Inconsequential Noncompliance

Michelin North America, Inc. (Michelin) has determined that the sidewall markings on certain tires that it manufactured in 1993 through 2004 do not comply with S6.5(d) of 49 CFR 571.119, Federal Motor Vehicle Safety Standard (FMVSS) No. 119, ''New pneumatic tires for vehicles other than passenger cars.'' Pursuant to 49 U.S.C. 30118(d) and 30120(h), Michelin has petitioned for a determination that this noncompliance is inconsequential to motor vehicle safety and has filed an appropriate report pursuant to 49 CFR part 573, ''Defect and Noncompliance Reports.'' Notice of receipt of a petition was published, with a 30-day comment period, on September 14, 2004, in the **Federal Register** (69 FR 55491). NHTSA received one comment.

A total of approximately 97,468 tires are affected. This includes approximately 68,950 Michelin tires consisting of 24,644 LT215/85R16XPS Rib; 35,934 LT225/75R16 XPS Rib; 5,348 LT215/85R16 XPS Traction; and 3,024 8.75R16.5 XPS Rib tires manufactured from May 1, 2003 through the week beginning July 12, 2004. It also includes 28,518 Michelin 8.75R16.5 XPS Rib tires manufactured from approximately mid-1993 through the week beginning July 12, 2004. The sidewall load and inflation markings of these two groups of tires do not comply with S6.5(d), ''Tire markings.'' S6.5(d) requires that each tire shall be marked on each sidewall with ''[t]he maximum load rating and corresponding inflation pressure of the tire'' in both metric and English units.

The sidewall load and inflation markings on the 68,950 tires manufactured from May 1, 2003 through the week beginning July 12, 2004 are in English units only and do not have the metric units required by S6.5(d). The sidewall load and inflation markings on the 28,518 tires manufactured from approximately mid-1993 through the week beginning July 12, 2004 are incorrect for the Max. Load Dual category; the tires are marked ''2550 lbs at 75 psi'' when they should be marked ''2405 lbs at 80 psi.''

Michelin believes that the noncompliance is inconsequential to motor vehicle safety and that no corrective action is warranted. With regard to the tires that are marked in English units only, Michelin stated that the tires are manufactured for sale in the U.S. replacement market where the English system is universally comprehended, and the maximum load expressed in ''lbs.'' and air pressure expressed in ''psi'' will not confuse U.S. vehicle owners, nor result in unsafe use of the tires in terms of load or inflation values. With regard to the tires that are marked with the incorrect Max. Load Dual load and inflation, Michelin asserted that

> ''[w]hen both single and dual loads are marked on the tire (as is the case here), FMVSS No. 119 requires that performance compliance testing be done based on the single (higher, more punishing) tire load. Accordingly, the incorrect dual load marking is inconsequential for this tire. * * * Even at the lower, more punishing pressure of 75 psi, the tire meets all FMVSS No. 119 minimum performance requirements.''

NHTSA received one comment on this petition from a private individual that did not address the effect on motor vehicle safety of this noncompliance.

NHTSA agrees that the noncompliance is inconsequential to motor vehicle safety because the maximum load expressed in ''lbs.'' and air pressure expressed in ''psi'' will not confuse U.S. vehicle owners, nor result in unsafe use of the tires in terms of load or inflation values. The agency also agrees that safety will not be compromised for the tires marked with the incorrect ''max load dual'' since the more severe ''max load single'' load is marked correctly. In addition, these tires meet or exceed all of the performance requirements of FMVSS No. 119, and all other informational markings as required by FMVSS No. 119 are present. Michelin has corrected the problem.

In consideration of the foregoing, NHTSA has decided that the petitioner has met its burden of persuasion that the noncompliance described is inconsequential to motor vehicle safety. Accordingly, Michelin's petition is granted and the petitioner is exempted from the obligation of providing notification of, and a remedy for, the noncompliance.

Authority: (49 U.S.C. 30118, 30120; delegations of authority at CFR 1.50 and 501.8).

Issued on: October 20, 2004.

Kenneth N. Weinstein,

Associate Administrator for Enforcement.

[FR Doc. 04–23876 Filed 10–25–04; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2004–18923; Notice 2]

CCI Manufacturing IL Corporation, Grant of Petition for Decision of Inconsequential Noncompliance

CCI Manufacturing IL Corporation (CCI) has determined that certain brake fluid containers manufactured by its supplier, Gold Eagle, do not comply with S5.2.2.2(d) of 49 CFR 571.116, Federal Motor Vehicle Safety Standard (FMVSS) No. 116, ''Motor vehicle brake fluids.'' Pursuant to 49 U.S.C. 30118(d) and 30120(h), CCI has petitioned for a determination that this noncompliance is inconsequential to motor vehicle safety and has filed an appropriate report pursuant to 49 CFR Part 573, ''Defect and Noncompliance Reports.'' Notice of receipt of a petition was published, with a 30-day comment period, on August 31, 2004, in the **Federal Register** (69 FR 53130). NHTSA received no comments.

A total of approximately 21,204 units of brake fluid containers manufactured in March 2004 are affected. S5.2.2.2 of FMVSS No. 116 requires that:

> Each packager of brake fluid shall furnish the information specified in [paragraph d] of this S5.2.2.2 by clearly marking it on each brake fluid container or on a label (labels) permanently affixed to the container * * * After being subjected to the operations and conditions specified in S6.14, the information required by this section shall be legible. * * *

The information specified in paragraph (d) of S5.2.2.2 is ''[a] serial number identifying the package lot and date of packaging.'' With regard to the noncompliant brake fluid containers, the lot and date codes required by S5.2.2.2(d) are not legible after the containers are subjected to the test conditions of S6.14.

CCI believes that the noncompliance is inconsequential to motor vehicle safety and that no corrective action is warranted. CCI stated:

> NHTSA has identified only one purpose for [the lot and date code] marking: namely, ''to facilitate determination of the extent of defective brake fluid should such be discovered.'' * * * While it is clearly in the manufacturer's interest to be able to limit the ''extent of defective brake fluid should such

be discovered,'' by reference to lot/date code markings, there is no serious risk to motor vehicle safety if that information is lost. Instead, in the event of a defect or noncompliance determination affecting certain batches of brake fluid, the brake fluid manufacturer would be compelled to recall a larger population of brake fluid containers than it otherwise would need to do, because it could not rely on the presence of a legible lot/date code marking to limit the population of the recall.

CCI explained that it sold the affected brake fluid only to Mercedes-Benz, who then distributed it to its dealerships and authorized repair facilities. CCI does not believe Mercedes-Benz offers the brake fluid for retail sale to customers. CCI stated:

First, Mercedes-Benz purchases and distributes the brake fluid to its dealerships and authorized repair facilities in bulk quantities, and those products are used quickly. Even in the unlikely event that a dealership or repair facility could not read the lot/date code on a particular container of brake fluid, that entity would likely have other containers from the same lot/date code on its premises, and could ascertain the lot/date code for the fouled container from its companion products. Second, CCI believes that all of the noncompliant containers in Mercedes-Benz's inventory may already have been used.

The agency agrees that under the circumstances, the lot and date information could most likely be determined if necessary. In addition, the brake fluid containers comply with all other requirements of FMVSS No. 116 and the brake fluid itself complies with the performance requirements of FMVSS No. 116. CCI has corrected the problem.

In consideration of the foregoing, NHTSA has decided that the petitioner has met its burden of persuasion that the noncompliance described is inconsequential to motor vehicle safety. Accordingly, CCI's petition is granted and the petitioner is exempted from the obligation of providing notification of, and a remedy for, the noncompliance.

Authority: 49 U.S.C. 30118, 30120; delegations of authority at CFR 1.50 and 501.8.

Issued on: October 19, 2004.

Kenneth N. Weinstein,

Associate Administrator for Enforcement.

[FR Doc. 04–23877 Filed 10–25–04; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2004–19347; Notice 1]

Bridgestone/Firestone North American Tire, LLC, Receipt of Petition for Decision of Inconsequential Noncompliance

Bridgestone/Firestone North American Tire, LLC (Bridgestone/Firestone) has determined that certain tires it manufactured do not comply with S6.5 of Federal Motor Vehicle Safety Standard (FMVSS) No. 119, ''New pneumatic tires for vehicles other than passenger cars.'' Bridgestone/Firestone has filed an appropriate report pursuant to 49 CFR part 573, ''Defect and Noncompliance Reports.''

Pursuant to 49 U.S.C. 30118(d) and 30120(h), Bridgestone/Firestone has petitioned for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of Bridgestone/Firestone's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

A total of approximately 1,083 sizes 2.75–10 and 80/90–10 Bridgestone HOOP tires are affected. S6.5 of FMVSS No. 119 requires that the maximum load rating and corresponding inflation pressure of the tires be marked on the tire in both English and metric units. The noncompliant tires do not have the metric markings. The actual stamping is ''MAX. LOAD 355 LBS AT 36 PSI COLD.'' The correct stamping should be ''MAX. LOAD 160kg (353 LBS) AT 50 kPa (36 PSI) COLD.''

Bridgestone/Firestone believes that the noncompliance is inconsequential to motor vehicle safety and that no corrective action is warranted. Bridgestone/Firestone states that the actual performance of the tires will not be affected by the mismarking, and that the tires meet or exceed all performance requirements of FMVSS No. 119. Further, Bridgestone/Firestone states that the mismarking will have no impact on the operational performance or safety of vehicles on which the tires are mounted, and that the problem has been corrected.

Interested persons are invited to submit written data, views, and arguments on the petition described above. Comments must refer to the docket and notice number cited at the beginning of this notice and be submitted by any of the following methods. Mail: Docket Management Facility, U.S. Department of Transportation, Nassif Building, Room PL–401, 400 Seventh Street, SW., Washington, DC, 20590–0001. Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC. It is requested, but not required, that two copies of the comments be provided. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except Federal Holidays. Comments may be submitted electronically by logging onto the Docket Management System Web site at *http://dms.dot.gov.* Click on ''Help'' to obtain instructions for filing the document electronically. Comments may be faxed to 1–202–493–2251, or may be submitted to the Federal eRulemaking Portal: go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

The petition, supporting materials, and all comments received before the close of business on the closing date indicated below will be filed and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, notice of the decision will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: November 26, 2004.

Authority: 49 U.S.C. 30118, 30120: delegations of authority at CFR 1.50 and 501.8.

Issued on: October 19, 2004.

Kenneth N. Weinstein,

Associate Administrator for Enforcement.

[FR Doc. 04–23878 Filed 10–25–04; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration; Office of Hazardous Materials Safety

Notice of Applications for Modification of Exemption

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications for modification of exemption.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Material Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous

Materials Safety has received the application described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Request of modifications of exemptions (*e.g.* to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix ''M'' denote a modification request. These applications have been separated from the new application for exemption to facilitate processing.

DATES: Comments must be received on or before November 10, 2004.

ADDRESSES: Record Center, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If Confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Records Center, Nassif Building, 400 7th Street, SW., Washington DC or at *http://dms.dot.gov.*

This notice of receipt of applications for modification of exemption is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on October 19, 2004.

R. Ryan Posten,

Exemptions Program Officer, Office of Hazardous Materials, Exemptions & Approvals.

MODIFICATION EXEMPTIONS

Application No.	Docket No.	Applicant	Regulation(s) affected	Modification of exemption	Nature of exemption thereof
6263–M		Amtrol, Inc. West Warwick, RI.	49 CFR 173.302(a)(1).	6263	To modify the exemption to include ASME requirements for a pneumatic pressure test of the non-DOT specification non-refillable welded cylindrical or spherical steel tanks.
10319–M		Amtrol, Inc. West Warwick, RI.	49 CFR 173.302(a)(1); 173.306(g).	10319	To modify the exemption to authorize an increase in working pressure to 150 psig and the pressure test to at least 1.5 hydrostatically or 1.25 pneumatically for the non-DOT specification cylindrical pressure vessels.
11526–M		BOC Gases America Murray Hill, NJ.	49 CFR 172.302(c), (2), (3), (4), (5); 180.205(a)(f), (g); 180.209(b)(g); 180.215.	11526	To modify the exemption to authorize a change to the standard reference calibration standards for certain DOT Specification 3A of 3AA cylinders and removal of certain ultrasonic performance, test procedure and rejection criteria requirements.
11761–M		UOP LLC Des Plaines, IL.	49 CFR 173.31(d)(1)(iv); 172.302(c).	11761	To modify the exemption to authorize the transportation of the residue of an additional Class 8 material in DOT Specification and AAR specification tank cars.
11989–M	RSPA–97–3170	U.S. Department of Defense Fort Eustis, VA.	49 CFR 172.504; 176.83(a), (d), (f).	11989	To modify the exemption to authorize the transportation of an additional Division 2.2 material; additional guided bomb model number component items with specific loading, blocking, bracing requirements aboard vessels.
12284–M	RSPA–99–5935	The American Traffic Safety Services Assn. (ATSSA) Fredericksburg, VA.	49 CFR 173.242	12284	To modify the exemption to authorize the transportation of Division 5.2, Division 6.1, Class 8 and additional Class 3 materials in non-DOT specification cargo tanks used for roadway striping.
12706–M	RSPA–01–9731	Raufoss Composites AS Raufoss, NO.	49 CFR 173.201; 173.301; 173.304; 178.35; 178.50.	12706	To modify the exemption to update the bonfire test criteria requirements for the non-DOT specification fully-wrapped fiberglass composite cylinders.

[FR Doc. 04–23879 Filed 10–25–04; 8:45 am]

BILLING CODE 4909–60–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Application for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications for exemption.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Material Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before November 26, 2004.

ADDRESSES: Record Center, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If Confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Records Center, Nassif Building, 400 7th Street, SW., Washington, DC or at *http://dms.dot.gov.*

This notice of receipt of applications for modification of exemption is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on October 19, 2004.

R. Ryan Posten,

Exemptions Program Officer, Office of Hazardous Materials Safety, Exemptions & Approvals.

NEW EXEMPTION

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of exemption thereof
13936–N	RSPA–2004–19300.	Dow Chemical Company Midland, MI.	49 CFR 172.203(a); 173.26 and 179.13.	To authorize the transportation in commerce of DOT 112S specification tank cars that exceed the weight requirement for transporting certain hazardous materials. (mode 2)
13937–N	RSPA–2004–19318.	Questar, Inc. North Canton, OH.	49 CFR 173.12(b)(2)	To authorize the manufacture, marking and sale of a corrugated fiberboard box for use as the outer packaging for lab pack applications. (mode 1)
13938–N	RSPA–2004–19317.	Questar, Inc. North Canton, OH.	49 CFR 173.12(b)(2)	To authorize the manufacture, mark, sale and use of corrugated fiberboard boxes for use as the outer packaging for lab pack applications. (mode 1)
13956–N	RSPA–2004–19320.	U.S. Department of Energy (DOE) Washington, DC.	49 CFR 173.244	To authorize the one-time, one-way transportation in commerce of two inductions pumps, containing residual amounts of Sodium, Division 4.3 (mode 1)
13957–N	RSPA–2004–19321.	T.L.C.C.I, Inc.	49 CFR 173.304a(a)(1) and 175.3.	To authorize the manufacture, marking and sale and use of domestically-manufactured composite cylinders to be used in the transportation of certain flammable and nonflammable gases. (modes 1, 2, 3, 4)
13958–N	RSPA–2004–19309.	Department of Defense Fort Eustis, VA.	49 CFR 173.427(b)	To authorize the transportation in commerce of gondola cars equipped with a specially designed liner to be classified as an IP–2 package for use in transporting certain Class 7 hazardous materials. (mode 2)
13959–N	RSPA–2004–19313.	Koch Nitrogen company Wichita, KS.	49 CFR 177.834(i)(3)	To authorize cargo tanks to remain connected while standing without the physical presence of an unloader anhydrous ammonia, Division 2.2. (mode 1)
13960–N	RSPA–2004–19296.	Terumo Heart, Inc. Ann Arbor, MI.	49 CFR 173.185	To authorize the transportation in commerce of a specially designed medical device equipped with lithium ion battery module. (modes 1, 4)
13961–N	RSPA–2004–19297.	3AL Testing, Corp. Miami, FL.	49 CFR 180.205(f), (g); 180.209(a); 172.203(a); 172.301(c).	To authorize an alternative requalification method for DOT–3AL cylinders. (modes 1, 3, 4)
13962–N	RSPA–2004–19298.	Department of Energy, Washington, DC.	49 CFR 173.453(d)	To authorize the one-time, one-way transportation of certain IP–1 drums containing low-enriched uranium oxide. (mode 1)
13963–N	RSPA–2004–19299.	Duratek Columbia, SC	49 CFR 173.403; 173.427; 173.465.	To authorize the manufacture, marking, sale and use of specially designed packaging for transporting used nuclear reactor pressure vessel heads. (modes 1, 2, 6)

[FR Doc. 04–23880 Filed 10–25–04; 8:45 am]

BILLING CODE 4909–60–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

International Standards on the Transport of Dangerous Goods; Public Meetings

AGENCY: Research and Special Programs Administration (RSPA), Department of Transportation.

ACTION: Notice of public meetings.

SUMMARY: This notice is to advise interested persons that RSPA will conduct public meetings in preparation for and to report the results of the 26th session of the United Nation's Sub-Committee of Experts on the Transport of Dangerous Goods (UNSCOE) to be held November 29–December 7, 2004, in Geneva, Switzerland.

DATES: November 23, 2004, 9:30 a.m.–12:30 p.m., Room 6200. December 15, 2004, 9:30 a.m.–12:30 p.m., Room 6200.

ADDRESSES: Both meetings will be held at DOT Headquarters, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Mr. Bob Richard, International Standards Coordinator, or Mr. Duane Pfund, Assistant International Standards Coordinator, Office of Hazardous Materials Safety, Department of Transportation, Washington, DC 20590; (202) 366–0656.

SUPPLEMENTARY INFORMATION: The primary purpose of the first meeting will be to prepare for the 26th session of the UNSCOE and to discuss draft U.S. positions on UNSCOE proposals. The primary purpose of the second meeting will be to provide a briefing on the outcome of the UNSCOE session and to prepare for the 27th session of the UNSCOE. The 26th session of the UNSCOE is the final meeting in the current biennium cycle and will finalize amendments considered for the 14th Revised Edition of the United Nations Recommendations on the Transport of Dangerous Goods Model Regulations. Topics to be covered during the public meeting include:

(1) Harmonization of the Recommendations on the Transport of Dangerous Goods with the Globally Harmonized System of Classification and Labeling of Chemicals, (2) Hazards to the aquatic environment, (3) Transport of Dangerous Goods in limited quantities and consumer commodities, (4) Infectious Substances, (5) Vibration design type testing, (6) Entries for fuel cell devices and cartridges, (7) Procedures for incident reporting, (8) Harmonization with the IAEA Regulations for the safe transport of radioactive materials, (9) Miscellaneous proposals related to listing and classification and the use of packagings and tanks. The public is invited to attend without prior notification. Due to heightened security measures participants are encouraged to arrive early to allow time for security checks necessary to obtain access to the building.

Documents

Copies of documents for the UNSCOE meeting and the meeting agenda may be obtained by downloading them from the United Nations Transport Division's Web site at: *http://www.unece.org/trans/main/dgbd/dgsubc/c32004.html.* This site may also be accessed through RSPA's Hazardous Materials Safety home page at *http://hazmat.dot.gov/instandards.htm.* RSPA's site provides additional information regarding the UNSCOE and related matters such as a summary of decisions taken at previous sessions of the UNSCOE.

Issued in Washington, DC, on October 20, 2004.

Frits Wybenga,

Deputy Associate Administrator for Hazardous Materials Safety.

[FR Doc. 04–23881 Filed 10–25–04; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. RSPA–04–19091; Notice 1]

Pipeline Safety: Petition for Waiver; Tuscarora Gas Transmission Company

AGENCY: Research and Special Programs Administration (RSPA), U.S. Department of Transportation (DOT).

ACTION: Notice; Petition for Waiver.

SUMMARY: Tuscarora Gas Transmission Company has petitioned the Research and Special Programs Administration, Office of Pipeline Safety (RSPA/OPS) for a waiver of the pipeline safety regulation that requires each onshore gas transmission pipeline in a Class 1 location to have sectionalizing block valves spaced at a maximum distance of 20 miles.

DATES: Persons interested in submitting written comments on the waiver request described in this notice must do so by November 26, 2004. Late filed comments will be considered so far as practicable.

ADDRESSES: You may submit written comments by mailing or delivering an original and two copies to the Dockets Facility, U.S. Department of Transportation, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. The Dockets Facility is open from 10 a.m. to 5 p.m., Monday through Friday, except on Federal holidays when the facility is closed. Alternatively, you may submit written comments to the docket electronically at the following Web address: http://dms.dot.gov.

All written comments should identify the docket and notice numbers stated in the heading of this notice. Anyone who wants confirmation of mailed comments must include a self-addressed stamped postcard. To file written comments electronically, after logging on to *http://dms.dot.gov,* click on "Comment/Submissions." You can also read comments and other material in the docket. General information about the Federal pipeline safety program is available at *http://ops.dot.gov.*

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (volume 65, number 70; pages 19477–78), or you may visit *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: James Reynolds by phone at 202–366–2786, by fax at 202–366–4566, by mail at DOT, RSPA, Office of Pipeline Safety, 400 7th Street, SW., Washington, DC 20590, or by e-mail at *james.reynolds@rspa.dot.gov.*

SUPPLEMENTARY INFORMATION: The pipeline safety regulations at 49 CFR 192.179 require that each point on an onshore gas pipeline in a Class 1 location must be within 10 miles of a sectionalizing block valve, unless in a particular case the RSPA Administrator finds that alternative spacing would provide an equivalent level of safety. This means that the distance between valves in a Class 1 location may not exceed 20 miles. During a recent review of its records, Tuscarora Gas Transmission Company (Tuscarora) discovered that during construction the upstream portions of its pipeline in Lassen County, California, were slightly re-routed to avoid a sensitive environmental habitat. As a result, the spacing between main line valves MLV–

8 and MLV–9 exceeds the 20 mile maximum distance by 1,065 feet. Tuscarora requested a waiver of valve spacing requirement at § 192.179 for this line section.

In support of its waiver request, Tuscarora submitted the following:

• The affected valve is located adjacent to an existing dirt roadway, providing ease of access.

• All mainline block valves on the Tuscarora system are equipped with automatic line break detection and automatic closure devices.

• The design, installation, and maintenance of the pipeline is in full compliance with 49 CFR part 192.

• The pipeline was constructed and placed in service in 1995 and is protected by an impressed current cathodic protection system.

• The pipeline segment from MLV–8 to MLV–10 is designed, operated, and maintained to Class 1 requirements in accordance with 49 CFR part 192.

• Tuscarora's Gas Control Center continuously monitors conditions on the pipeline.

• Operator response time to this area is less than one hour from the time of detection and notification.

Tuscarora's waiver request is available for review in the docket. RSPA/OPS is seeking comments on the waiver request. After the comment period has ended, RSPA/OPS will consider Tuscarora's waiver request and any public comments on the issues raised in its waiver request. RSPA/OPS' decision to grant or deny the waiver will be published in the **Federal Register.**

Authority: 49 U.S.C. 60118 (c) and 49 CFR 1.53.

Issued in Washington, DC on October 19, 2004.

Stacey L. Gerard,

Associate Administrator for Pipeline Safety.

[FR Doc. 04–23882 Filed 10–25–04; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

October 19, 2004.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before November 26, 2004, to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0710.

Form Number: IRS Forms 550, 5500–C/R and Schedules (1998 Version).

Type of Review: Revision.

Title: Annual Return/Report of Employee Benefit Plan, Return/Report of Employee Benefit Plan and Associated Schedules.

Description: Forms 5500 and 5500–C/R are annual information returns filed by Employee Benefit Plans. The IRS uses this information to determine if the plan appears to be operating properly as required under the law or whether the plan should be audited.

Respondents: Business of other for-profit.

Estimated Number of Respondents/Recordkeepers: 2,000.

ESTIMATED BURDEN HOURS RESPONDENT/RECORDKEEPER

Form/Schedule	Recordkeeping	Learning about the law or the form	Preparing the form	Copying, assembling, and sending the form to the IRS
5500–C (initial filers)	55 hr., 33 min	7 hr., 23 min	10 hr., 29 min.	32 min
5500–C (all other filers)	45 hr., 41 min	7 hr., 23 min	10 hr., 19 min.	32 min
5500–R (initial filers)	22 hr., 29 min	3 hr., 49 min	6 hr., 13 min	32 min
5500–R (all other filers)	12 hr., 40 min	3 hr., 39 min	6 hr., 3 min	32 min
Schedule A	17 hr., 28 min	28 min	1 hr., 42 min	16 min
Schedule B—Part 1	30 hr., 37 min	3 hr., 16 min	3 hr., 55 min	
Schedule B—Part 2	15 hr., 19 min	1 hr., 23 min	1 hr., 42 min	
Schedule E (nonleveraged ESOP)	1 hr., 12 min	12 min	13 min	
Schedule E (leveraged ESOP)	10 hr., 2 min	1 hr., 41 min	1 hr., 56 min	
Schedule F	2 hr., 52 min	30 min	34 min	
Schedule G	15 hr., 4 min	6 min	21 min	
Schedule P	1 hr., 55 min	30 min	33 min	
Schedule SSA	5 hr., 30 min	6 min	11 min	

Frequency of response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 60,796 hours.

OMB Number: 1545–1384.

Form Number: IRS Form 3911.

Type of Review: Extension.

Title: Taxpayer Statement Regarding Refund.

Description: If a taxpayer inquires about their nonreceipt of refund (or lost or stolen refund) and the refund has been issued, the information and taxpayer signature are needed to begin tracing action.

Respondents: Individuals or households, Business or other for-profit, Not-for-profit institutions.

Estimated Number of Respondents/Recordkeepers: 520,000.

Estimated Burden Hours Respondent/Recordkeeper: 5 minutes.

Frequency of response: On occasion.

Estimated Total Reporting/Recordkeeping Burden: 43,160 hours.

OMB Number: 1545–1629.

Form Number: IRS Form 8867.

Type of Review: Revision.

Title: Paid Preparer's Earned Income Credit Checklist.

Description: Form 8867 helps preparers meet the due diligence requirements of Code section 6695(g), which was added by section 1085(a)(2) of the Taxpayer Relief Act of 1997. Paid preparers of Federal income tax returns or claims for refund involving the earned income credit (EIC) must meet the due diligence requirements in determining if the taxpayer is eligible for the EIC and the amount of the credit.

Failure to do so could result if a $100 penalty for each failure. Completion of form 8867 is one of the due diligence requirements.

Respondents: Business or other for-profit.

Estimated Number of Respondents/ Recordkeepers: 1,100,000.

ESTIMATED BURDEN HOURS RESPONDENT/RECORDKEEPER

Learning about the law or the form	12 min.
Preparing the form	25 min.

Frequency of response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 8,535,816 hours.

OMB Number: 1545–1752.

Revenue Procedure Number: Revenue Procedure 2001–42.

Type of Review: Extension.

Title: Modified Endowment Contract Correction Program Extension.

Description: This revenue procedure allows issuers (life insurance companies) to remedy inadvertent non-egregious failures to comply with the modified endowment rules set forth in section 7702A of the Internal Revenue Code.

Respondents: Business of other for-profit.

Estimated Number of Respondents: 10.

Estimated Burden Hours Respondent: 100 hours.

Frequency of response: On occasion.

Estimated Total Reporting Burden: 1,000 hours.

OMB Number: 1545–1885.

Announcement Number: Announcement 2004–46.

Type of Review: Revision.

Title: Son of Boss Settlement Initiative.

Description: The collected information is required to apply the terms of the settlement set forth in the announcement. The information will be used to determine whether the taxpayer has reported the disclosed item properly for income tax purposes.

Respondents: Business of other for-profit, Individuals or households.

Estimated Number of Respondents: 1,000.

Estimated Burden Hours Respondent: 5 hours.

Frequency of response: Other (one time).

Estimated Total Reporting Burden: 5,000 hours.

OMB Number: 1545–1895.

Revenue Procedure Number: Revenue Procedure 2004–46.

Type of Review: Extension.

Title: Relief from Late GST Allocation.

Description: This revenue procedure provides guidance to certain taxpayers in order to obtain an automatic extension of time to make an allocation of the generation-skipping transfer tax exemption. Rather than requesting a private letter ruling, the taxpayer may file certain documents directly with the Cincinnati Service Center to obtain relief.

Respondents: Individuals or households.

Estimated Number of Respondents: 50.

Estimated Burden Hours Respondent: 7 hours.

Frequency of response: On occasion.

Estimated Total Reporting Burden: 350 hours.

OMB Number: 1545–1898.

Revenue Procedure Number: Revenue Procedure 2004–47.

Type of Review: Extension.

Title: Relief from Ruling Process for Making Late Reverse QTIP Election.

Description: This revenue procedure provides alternative relief for taxpayers who failed to make a reverse QTIP election on an estate tax return. Instead of requesting a private letter ruling and paying the accompanying user fee the taxpayer may file certain documents with the Cincinnati Service Center directly to request relief.

Respondents: Individuals or households.

Estimated Number of Respondents: 6.

Estimated Burden Hours Respondent: 9 hours.

Frequency of response: Other (once for relief).

Estimated Total Reporting Burden: 54 hours.

Clearance Officer: R. Joseph Durbala (202) 622–3634, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Joseph F. Lackey, Jr. (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Treasury PRA Clearance Officer.

[FR Doc. 04–23936 Filed 10–25–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Senior Executive Service, Departmental Offices, FY 2004 Performance/Bonus Review Board; Amendment October 1, 2004

AGENCY: Treasury Department.

ACTION: Notice of members of the Departmental Offices Performance/ Bonus Review Board.

SUMMARY: Pursuant to 5 U.S.C. 4314(c)(4), this notice announces the appointment of members of the Departmental Offices Performance/ Bonus Review Board. The purpose of this Board is to review and make recommendations concerning proposed Performance appraisals, ratings, bonuses and other appropriate personnel actions for incumbents of SES positions.

COMPOSITION OF DEPARTMENTAL BOARD: The Board shall consist of at least three members. In the case of an appraisal of a career appointee, more than half the members shall consist of career appointees. The names and titles of the Boards members are attached.

DATES: Membership is effective on the date of this notice.

FOR FURTHER INFORMATION CONTACT: Cathy Hickson-Smith, Department of the Treasury, Office of Human Resources, HR Management Specialist, 15th and Pennsylvania Ave., NW., Washington, DC 20220. Telephone: 202–622–1690.

This notice does not meet the Department's criteria for significant Regulations.

Barbara McWhirter.

FY 2004 PERFORMANCE/BONUS REVIEW BOARD

Name	Official title
Angus, Barbara M	Internal Tax Counsel.
Bitsberger, Timothy S	DAS (Federal Finance).
Carfine, Kenneth Edward	DAS for Fiscal Operations and Policy.
Carleton, Norman K	Policy Director, Office of Financial M.
Carroll, Robert J	DAS (Tax Analysis).
Contreras, Rebecca A	Deputy Asst Sec & Chief Human Capital.
Dawson, Michael A	Dep Asst Sec for Critical Infrastructu.
Delgado Jenkins, Jesus H	DAS (Management and Budget).

FY 2004 PERFORMANCE/BONUS REVIEW BOARD—Continued

Name	Official title
Dobbins, Paul S	Director for Economic Modeling & Compu.
Dohner, Robert S	Senior Advisor to DAS (Intl Monetary).
Emiling, John H	Deputy Asst Sec for Legislative Affair.
Fall III, James H	DAS (Technical Assistance Policy).
Farrell, Paula F	DIR, Office of Government Financing.
Fatto, Salvatore Antonio	Dep Asst Sec (Public Affairs).
Fuller, Reese H	ACD Program Director.
Garcia, Arthur A	Director, CDFI Fund.
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Gerardi, Geraldine A	Dir for Business Taxation.
Granat, Rochelle	Dir, DC Pensions.
Hammond, Donald V	Fiscal Assistant Secretary.
Hudson, Barry K	Deputy Chief Financial Officer.
Jaskowiak, Mark M	Diretor, Office of Specialized Develo.
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Jones, Owen M	Dep Dir for Mgmt & Chief Fin Ofc.
Kiefer, Donald W	Director, Office of Tax Analysis.
Kodat, Roger E	DAS (Government Financial Policy).
Kupfer, Jeffrey F	Deputy Chief of State.
Lee, Nancy	DAS (Eurasia & Middle East).
Lingebach, James R	Dir., Accnting & Internal Control.
Lingrell, David A	Dir., Treas Bldg & Annex Reno & Rebldg Prog.
Loevinger, David G	Director, Office of East Asian Nations.
Lowery, Clay	Deputy Assistant Secretary (Debt & Dev P).
Mathiasen, Karen V	Dir, Ofc of Central & Easten Europ Nats.
McFadden, William J	Senior Policy Advisor.
Merkel, David A	DAS for Legislative Affairs (Internat).
Monroe, David J	Director, Office of Cash and Debt Mana.
Murden, William C	Dir, Ofc of Int'l Bankg & Sec Markets.
Newcomb, Robert R	Director, Office of Foreign Assets.
Nickles, Kim E	White House Liaison.
Nunns, James R	Dir for Individual Taxation.
Olechowski, Mark J	Dir, Do Modern. Project.
Parker, Orland M	Acting Chief Information Officer.
Paulson, Sara L	Supvy Director, Office of Development.
Pittman Jr, Bobby J	DAS Multilateral Dev Banks (IA).
Platt, Joel D	Dir for Revenue Estimating.
Pointer, Patricia J	Dep. to the Daswm & Dir., Ofc. of Workfo.
Randolph, William C	Director for International Taxation.
Reid, Robert N	DAS for Accounting Operations.
Relic, Rebecca L	DAS (Pub Lia, Str Pl Bus Dev).
Schott, Charles G	Deputy Asst Sec (Trade & Invest Policy).
Schuerch, William E	Dep Asst Sec (Int Dev, Debt & Envir Pol).
Shaw, Mary Beth	Dir., Office of D.C. Pensions.
Sills, Gay H	Dir, Ofc of International Investment.
Skud, Timothy E	DAS Tax, Trade and Tariff Policy.
Smith III, George E	Director, Ofc. of Technical Assistance.
Smith, Christopher A	Chief of Staff.
Sobel, Mark D	Deputy Ast Sec (Intl Mon. & Fin Pol).
Solomon, Eric	DAS (Regulatory Affairs).
Stedman, Louellen	Dir of Internatl Mon Aff.
Stein, Robert S	Dir (Macroeconomic Analysis).
Sweetnam Jr, William F	Benefits Tax Counsel.
Toloui, Ramin	Dir Ofc Latn Amer & Carib Ntns.
Tvardek, Steven F	Director, Office of Trade Finance.
Warthin, Thomas W	Dir., Ofc of Finan. Svcs Negotiations.
Weatherford, Timothy L	Senior Advisor to the Assistant Secret.
Wolfe, George B	Senior Advisor.
Wright Jr, Willie E	Deputy Asst Sec (Workforce Management).
Zarate, Juan C	DAS, Executive Ofc of Terr Fin & Fin C.
Zerzan, Gergory P	Dep. Ast Sec for (Fin Inst & Gse Pol).

SES PRB Process for FY04

[FR Doc. 04–23933 Filed 10–25–04; 8:45 am]

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Federal Register

Tuesday,

October 26, 2004

Part II

Department of Transportation

Federal Transit Administration

Fiscal Year 2005 Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements; Notice

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Fiscal Year 2005 Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice.

SUMMARY: Appendix A of this Notice contains the Federal Transit Administration's (FTA) comprehensive compilation of the Federal Fiscal Year 2005 certifications and assurances to be used in connection with all Federal assistance programs FTA administers during Federal Fiscal Year 2005, in compliance with 49 U.S.C. 5323(n).

EFFECTIVE DATE: These certifications and assurances became effective on October 1, 2004, the first day of fiscal year 2005.

FOR FURTHER INFORMATION CONTACT: FTA staff in the appropriate Regional Office listed below. For copies of other related documents, see the FTA Web site at *http://www.fta.dot.gov* or contact FTA's Office of Administration at (202) 366–4022.

Region 1: Boston

States served: Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont. Telephone # 617–494–2055.

Region 2: New York

States served: New Jersey, New York, and the Virgin Islands. Telephone # 212–668–2170.

Region 3: Philadelphia

States served: Delaware, Maryland, Pennsylvania, Virginia, West Virginia, and District of Columbia. Telephone # 215–656–7100.

Region 4: Atlanta

States served: Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, Puerto Rico, South Carolina, and Tennessee. Telephone # 404–562–3500.

Region 5: Chicago

States served: Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin. Telephone # 312–353–2789.

Region 6: Dallas/Ft. Worth

States served: Arkansas, Louisiana, Oklahoma, New Mexico and Texas. Telephone # 817–978–0550.

Region 7: Kansas City

States served: Iowa, Kansas, Missouri, and Nebraska. Telephone # 816–329–3920.

Region 8: Denver

States served: Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming. Telephone # 720–963–3300.

Region 9: San Francisco

States served: American Samoa, Arizona, California, Guam, Hawaii, Nevada, and the Northern Mariana Islands. Telephone # 415–744–3133.

Region 10: Seattle

States served: Alaska, Idaho, Oregon, and Washington. Telephone # 206–220–7954.

SUPPLEMENTARY INFORMATION: Before FTA may award Federal financial assistance through a Federal grant or cooperative agreement, the Applicant must submit all certifications and assurances pertaining to itself and its project as required by Federal laws and regulations. These certifications and assurances must be submitted to FTA irrespective of whether the project is financed under the authority of 49 U.S.C. chapter 53, or Title 23, United States Code, or another Federal statute.

The Applicant's Annual Certifications and Assurances for Federal Fiscal Year 2005 cover all projects for which the Applicant seeks funding during Federal Fiscal Year 2005 through the next fiscal year until FTA issues annual Certifications and Assurances for Federal Fiscal Year 2006. An Applicant's Annual Certifications and Assurances applicable to a specific grant or cooperative agreement generally remain in effect for either the duration of the grant or cooperative agreement to project closeout or the duration of the project or project property when a useful life or industry standard is in effect, whichever occurs later; *except,* if the Applicant provides certifications and assurances in a later year that differ from certifications and assurances previously provided, the later certifications and assurances will apply to the grant, cooperative agreement, project, or project property, unless FTA permits otherwise.

Background: Since Federal Fiscal Year 1995, FTA has been consolidating the various certifications and assurances that may be required of its Applicants and the projects into a single document for publication in the **Federal Register**. FTA intends to continue publishing this document annually, often in conjunction with its publication of the FTA annual apportionment Notice, which sets forth the allocations of funds made available by the latest U.S. Department of Transportation (U.S. DOT) annual appropriations act.

Federal Fiscal Year 2005 Changes: Apart from minor editorial revisions, changes include the following:

(1) Added a new introductory paragraph explaining that:

(a) Not all certifications and assurances apply to all Applicants.

(b) The certifications and assurances are pre-award requirements and do not encompass all Federal requirements that may apply to the Applicant and its project.

(c) A comprehensive list of Federal requirements is contained in FTA Master Agreement for fiscal year 2005 at *http://www.fta.dot.gov/16000_16002_ENG.HTML.htm.*

(2) Certification 13A(1)(j) has been revised to explain that in the case of an Applicant serving an urbanized area with a population of 200,000 or more, only capital security projects may be funded with the 1% of the urbanized area formula funds set aside by 49 U.S.C. 5307(d)(1)(J)(i) for transit security projects.

(3) The Affirmation of the Applicant portion of the Signature Page has been edited to clarify that the criminal fraud provisions of 18 U.S.C. 1001 apply to all certifications, assurances, agreements, and other submissions to FTA.

Text of Federal Fiscal Year 2005 Certifications and Assurances: The text of the certifications and assurances in Appendix A of this Notice also appears in TEAM–Web (*http://ftateamweb.fta.dot.gov/*) in the ''Recipients'' option at ''View/Modify Recipients,'' at the ''Cert's & Assurances'' tab. The certification and assurances also appear on the FTA public Web site at *http://www.fta.dot.gov/grant_programs/applying_for_managing_grants/3946_ENG_HTML.htm.* It is important that each Applicant be familiar with all sixteen (16) certification and assurance categories and their requirements, as they may be a prerequisite for receiving FTA financial assistance. Provisions of this notice supersede conflicting statements in any FTA circular containing a previous version of the Annual Certifications and Assurances. The certifications and assurances contained in those FTA circulars are merely examples, and are not acceptable or valid for Federal Fiscal Year 2005; do not rely on the provisions of certifications and assurances appearing in FTA circulars.

Significance of Certifications and Assurances: Selecting and submitting certifications and assurances to FTA, either through TEAM–Web or submission of the Signature Page(s) of Appendix A, signifies the Applicant's intent to comply with the requirements of the certifications and assurances it has selected to the extent they apply to a project for which the Applicant submits an application for assistance in Federal Fiscal Year 2005.

Requirement for Attorney's Signature: FTA requires a current (Federal Fiscal Year 2005) affirmation, signed by the Applicant's attorney, of the Applicant's legal authority to certify compliance with the obligations imposed by the certifications and assurances the Applicant has selected. Irrespective of whether the Applicant makes a single selection for all 16 categories or selects individual options from the 16 categories, the Affirmation of Applicant's Attorney from a previous year is not acceptable.

Deadline for Submission: All Applicants for FTA formula program or capital investment program assistance, and current FTA grantees with an active project financed with FTA formula program or capital investment program assistance, are expected to provide Federal Fiscal Year 2005 Certifications and Assurances within 90 days from the date of this publication or with their first grant application in Federal Fiscal Year 2005, whichever is first. FTA encourages other Applicants to submit their certifications and assurances as soon as possible.

Preference for Electronic Submission: Applicants registered in TEAM–Web must submit their certifications and assurances, as well as their applications, in TEAM–Web. Only if an Applicant is unable to submit its certifications and assurances in TEAM–Web should the Applicant use the Signature Page(s) in Appendix A of this notice.

Procedures for Electronic Submission: The TEAM–Web ''Recipients'' option at the ''Cert's & Assurances'' tab of ''View/Modify Recipients'' contains fields for selecting the categories of certifications and assurances to be submitted. Within that tab is a field for the Applicant's authorized representative to enter his or her personal identification number (PIN), which constitutes the Applicant's electronic signature for the certifications and assurances the Applicant has selected; in addition, there is a field for the Applicant's attorney to enter his or her PIN, affirming the Applicant's legal authority to make and comply with the certifications and assurances the Applicant has selected. In certain circumstances, the Applicant may enter its PIN in lieu of its Attorney's PIN, provided that the Applicant has on file the Affirmation of Applicant's Attorney in Appendix A of this notice, written and signed by the attorney and dated this Federal fiscal year. For more information, Applicants may contact the appropriate Regional Office listed in this notice or the TEAM–Web Helpdesk.

Procedures for Paper Submission: If an Applicant is unable to submit its certifications and assurances electronically, it must mark the certifications and assurances it is making on the Signature Page(s) in Appendix A of this notice and submit it to FTA. The Applicant may signify compliance with all Categories by placing a single mark in the appropriate space or select the Categories applicable to itself and its projects. In certain circumstances, the Applicant may enter its signature in lieu of its Attorney's signature in the Affirmation of Applicant's Attorney section of the Signature Page(s), provided that the Applicant has on file the Affirmation of Applicant's Attorney in Appendix A of this notice, written and signed by the attorney and dated this Federal fiscal year. For more information, Applicants may contact the appropriate Regional Office listed in this notice.

References. The Transportation Equity Act for the 21st Century, Pub. L. 105–178, June 9, 1998, as amended by the TEA–21 Restoration Act, Pub. L. 105–206, July 22, 1998, 49 U.S.C. chapter 53, Title 23, United States Code, other Federal laws administered by FTA, U.S. DOT and FTA regulations at 49 CFR, and FTA Circulars.

Issued on: October 19, 2004.

Jennifer L. Dorn,

Administrator.

Appendix A

Federal Fiscal Year 2005 Certifications and Assurances for Federal Transit Administration Assistance Programs

In accordance with 49 U.S.C. 5323(n), the following certifications and assurances have been compiled for Federal Transit Administration (FTA) assistance programs. FTA requests each Applicant to provide as many certifications and assurances as needed for all programs for which the Applicant intends to seek FTA assistance during Federal Fiscal Year 2005. FTA strongly encourages each Applicant to submit its certifications and assurances through TEAM-Web, FTA's electronic management system, at *http://ftateamweb.fta.dot.gov.*

Sixteen (16) Categories of certifications and assurances are listed by numbers 01 through 16 in the TEAM-Web ''Recipients'' option at the ''Cert's & Assurances'' tab of ''View/Modify Recipients,'' and on the opposite side of the Signature Page(s) at the end of this document. Category 01 applies to all Applicants. Category 02 applies to all applications exceeding $100,000. Categories (3) through 16 will apply to and be required for some, but not all, Applicants and projects.

FTA and the Applicant understand and agree that not every provision of these certifications and assurances will apply to every Applicant or every Project for which FTA provides Federal financial assistance through a grant agreement or cooperative agreement. The type of Project and the section of the statute authorizing Federal financial assistance for the Project will determine which requirements apply. The Applicant also understands and agrees that these certifications and assurances are pre-award requirements and do not encompass all statutory and regulatory requirements that may apply to the Applicant or its Project. A comprehensive list of those requirements is contained in the current Master Agreement MA(11) for Federal Fiscal Year 2005 at *http://www.fta.dot.gov/16000_16002_ENG_HTML.htm.*

1. Required of Each Applicant

Each Applicant for FTA assistance must provide all certifications and assurances in this Category ''01.'' FTA may not award any Federal assistance until the Applicant provides these certifications and assurances by selecting Category ''01.''

A. Authority of Applicant and Its Representative

The authorized representative of the Applicant and the attorney who sign these certifications, assurances, and agreements affirm that both the Applicant and its authorized representative have adequate authority under applicable state and local law and the Applicant's by-laws or internal rules to:

(1) Execute and file the application for Federal assistance on behalf of the Applicant;

(2) Execute and file the required certifications, assurances, and agreements on behalf of the Applicant binding the Applicant; and

(3) Execute grant agreements and cooperative agreements with FTA on behalf of the Applicant.

B. Standard Assurances

The Applicant assures that it will comply with all applicable Federal statutes, regulations, executive orders, FTA circulars, and other Federal requirements in carrying out any project supported by an FTA grant or cooperative agreement. The Applicant agrees that it is under a continuing obligation to comply with the terms and conditions of the grant agreement or cooperative agreement issued for its project with FTA. The Applicant recognizes that Federal laws, regulations, policies, and administrative practices may be modified from time to time and those modifications may affect project implementation. The Applicant agrees that the most recent Federal requirements will apply to the project, unless FTA issues a written determination otherwise.

C. Intergovernmental Review Assurance

The Applicant assures that each application for Federal assistance it submits to FTA has been or will be submitted, as required by each state, for intergovernmental review to the appropriate state and local agencies. Specifically, the Applicant assures that it has fulfilled or will fulfill the obligations imposed on FTA by U.S. DOT regulations, ''Intergovernmental Review of Department of Transportation Programs and Activities,'' 49 CFR part 17.

D. Nondiscrimination Assurance

As required by 49 U.S.C. 5332 (which prohibits discrimination on the basis of race, color, creed, national origin, sex, or age, and prohibits discrimination in employment or business opportunity), Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d, and U.S. DOT regulations, ''Nondiscrimination in Federally-Assisted Programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act,'' 49 CFR part 21 at 21.7, the Applicant assures that it will comply with all requirements of 49 CFR part 21; FTA Circular 4702.1, ''Title VI Program Guidelines for Federal Transit Administration Recipients,'' and other applicable directives, so that no person in the United States, on the basis of race, color, national origin, creed, sex, or age will be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination in any program or activity (particularly in the level and quality of transportation services and transportation-related benefits) for which the Applicant receives Federal assistance awarded by the U.S. DOT or FTA.

Specifically, during the period in which Federal assistance is extended to the project, or project property is used for a purpose for which the Federal assistance is extended, or for another purpose involving the provision of similar services or benefits, or as long as the Applicant retains ownership or possession of the project property, whichever is longer, the Applicant assures that:

(1) Each project will be conducted, property acquisitions will be undertaken, and project facilities will be operated in accordance with all applicable requirements of 49 U.S.C. 5332 and 49 CFR part 21, and understands that this assurance extends to its entire facility and to facilities operated in connection with the project.

(2) It will promptly take the necessary actions to effectuate this assurance, including notifying the public that complaints of discrimination in the provision of transportation-related services or benefits may be filed with U.S. DOT or FTA. Upon request by U.S. DOT or FTA, the Applicant assures that it will submit the required information pertaining to its compliance with these requirements.

(3) It will include in each subagreement, property transfer agreement, third party contract, third party subcontract, or participation agreement adequate provisions to extend the requirements of 49 U.S.C. 5332 and 49 CFR part 21 to other parties involved therein including any subrecipient, transferee, third party contractor, third party subcontractor at any level, successor in interest, or any other participant in the project.

(4) Should it transfer real property, structures, or improvements financed with Federal assistance provided by FTA to another party, any deeds and instruments recording the transfer of that property shall contain a covenant running with the land assuring nondiscrimination for the period during which the property is used for a purpose for which the Federal assistance is extended or for another purpose involving the provision of similar services or benefits.

(5) The United States has a right to seek judicial enforcement with regard to any matter arising under the Act, regulations, and this assurance.

(6) It will make any changes in its 49 U.S.C. 5332 and Title VI implementing procedures as U.S. DOT or FTA may request.

E. Assurance of Nondiscrimination on the Basis of Disability

As required by U.S. DOT regulations, ''Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance,'' at 49 CFR 27.9, the Applicant assures that, as a condition to the approval or extension of any Federal assistance awarded by FTA to construct any facility, obtain any rolling stock or other equipment, undertake studies, conduct research, or to participate in or obtain any benefit from any program administered by FTA, no otherwise qualified person with a disability shall be, solely by reason of that disability, excluded from participation in, denied the benefits of, or otherwise subjected to discrimination in any program or activity receiving or benefiting from Federal assistance administered by the FTA or any entity within U.S. DOT. The Applicant assures that project implementation and operations so assisted will comply with all applicable requirements of U.S. DOT regulations implementing the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, *et seq.*, and the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. 12101 *et seq.*, and implementing U.S. DOT regulations at 49 CFR parts 27, 37, and 38, and any applicable regulations and directives issued by other Federal departments or agencies.

F. Procurement Compliance Certification

The Applicant certifies that its procurements and procurement system will comply with all applicable third party procurement requirements of Federal laws, executive orders, regulations, FTA directives, and requirements, as amended and revised, and other requirements FTA may issue including FTA Circular 4220.1E, ''Third Party Contracting Requirements,'' and any revisions thereto, to the extent those requirements are applicable. The Applicant certifies that it will include in its contracts financed in whole or in part with FTA assistance all clauses required by Federal laws, executive orders, or regulations, and will ensure that each subrecipient and each contractor will also include in its subagreements and its contracts financed in whole or in part with FTA assistance all applicable clauses required by Federal laws, executive orders, or regulations.

G. Certifications and Assurances Required by the U.S. Office of Management and Budget (OMB) (SF–424B and SF–424D) As required by OMB, the Applicant certifies that it:

(1) Has 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 its application;

(2) Will give FTA, the Comptroller General of the United States, and, if appropriate, the state, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives;

(3) Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest or personal gain;

(4) Will initiate and complete the work within the applicable project time periods following receipt of FTA approval;

(5) Will comply with all applicable Federal statutes relating to nondiscrimination including, but not limited to:

(a) Title VI of the Civil Rights Act, 42 U.S.C. 2000d, which prohibits discrimination on the basis of race, color, or national origin;

(b) Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. 1681 through 1683, and 1685 through 1687, and U.S. DOT regulations, ''Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance,'' 49 CFR part 25, which prohibit discrimination on the basis of sex;

(c) Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, which prohibits discrimination on the basis of handicap;

(d) The Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101 through 6107, which prohibits discrimination on the basis of age;

(e) The Drug Abuse Office and Treatment Act of 1972, Pub. L. 92–255, March 21, 1972, and amendments thereto, 21 U.S.C. 1174 *et seq.* relating to nondiscrimination on the basis of drug abuse;

(f) The Comprehensive Alcohol Abuse and Alcoholism Prevention Act of 1970, Pub. L. 91–616, Dec. 31, 1970, and amendments thereto, 42 U.S.C. 4581 *et seq.* relating to nondiscrimination on the basis of alcohol abuse or alcoholism;

(g) The Public Health Service Act of 1912, as amended, 42 U.S.C. 290dd–3 and 290ee–3, related to confidentiality of alcohol and drug abuse patient records;

(h) Title VIII of the Civil Rights Act, 42 U.S.C. 3601 *et seq.*, relating to nondiscrimination in the sale, rental, or financing of housing;

(i) Any other nondiscrimination provisions in the specific statutes under which Federal assistance for the project may be provided including, but not limited, to 49 U.S.C. 5332, which prohibits discrimination on the basis of race, color, creed, national origin, sex, or age, and prohibits discrimination in employment or business opportunity, and section 1101(b) of the Transportation Equity Act for the 21st Century, 23 U.S.C. 101 note, which provides for participation of disadvantaged business enterprises in FTA programs; and

(j) Any other nondiscrimination statute(s) that may apply to the project;

(6) Will comply with, or has complied with, the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, (Uniform Relocation Act) 42 U.S.C. 4601 *et seq.*, which, among other things, provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in any purchase. As required by sections 210 and 305 of the Uniform Relocation Act, 42 U.S.C. 4630 and 4655, and U.S. DOT regulations, ''Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs,'' 49 CFR 24.4, the Applicant assures that it has the requisite authority under applicable state and local law to comply with the requirements of the Uniform Relocation Act, 42 U.S.C. 4601 *et seq.*, and U.S. DOT regulations, ''Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs,'' 49 CFR part 24, and will comply with or has complied with that Act and those U.S. DOT implementing regulations, including but not limited to the following:

(a) The Applicant will adequately inform each affected person of the benefits, policies, and procedures provided for in 49 CFR part 24;

(b) The Applicant will provide fair and reasonable relocation payments and assistance as required by 42 U.S.C. 4622, 4623, and 4624; 49 CFR part 24; and any applicable FTA procedures, to or for families, individuals, partnerships, corporations, or associations displaced as a result of any project financed with FTA assistance;

(c) The Applicant will provide relocation assistance programs offering the services described in 42 U.S.C. 4625 to such displaced families, individuals, partnerships, corporations, or associations in the manner provided in 49 CFR part 24 and FTA procedures;

(d) Within a reasonable time before displacement, the Applicant will make available comparable replacement dwellings to displaced families and individuals as required by 42 U.S.C. 4625(c)(3);

(e) The Applicant will carry out the relocation process in such manner as to provide displaced persons with uniform and consistent services, and will make available replacement housing in the same range of choices with respect to such housing to all displaced persons regardless of race, color, religion, or national origin;

(f) In acquiring real property, the Applicant will be guided to the greatest extent practicable under state law, by the real property acquisition policies of 42 U.S.C. 4651 and 4652;

(g) The Applicant will pay or reimburse property owners for necessary expenses as specified in 42 U.S.C. 4653 and 4654, with the understanding that FTA will provide Federal financial assistance for the Applicant's eligible costs of providing payments for those expenses, as required by 42 U.S.C. 4631;

(h) The Applicant will execute such amendments to third party contracts and subagreements financed with FTA assistance and execute, furnish, and be bound by such additional documents as FTA may determine necessary to effectuate or implement the assurances provided herein; and

(i) The Applicant agrees to make these assurances part of or incorporate them by reference into any third party contract or subagreement, or any amendments thereto, relating to any project financed by FTA involving relocation or land acquisition and provide in any affected document that these relocation and land acquisition provisions shall supersede any conflicting provisions;

(7) To the extent applicable, will comply with the Davis-Bacon Act, as amended, 40 U.S.C. 3141 *et seq.*, the Copeland ''Anti-Kickback'' Act, as amended, 18 U.S.C. 874, and the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. 3701 *et seq.*, regarding labor standards for federally assisted subagreements;

(8) To the extent applicable, will comply with the flood insurance purchase requirements of section 102(a) of the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 4012a(a), requiring Applicants and subrecipients in a special flood hazard area to participate in the program and purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more;

(9) Will comply with the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. 4831(b), which prohibits the use of lead-based paint in the construction or rehabilitation of residence structures;

(10) Will not dispose of, modify the use of, or change the terms of the real property title or other interest in the site and facilities on which a construction project supported with FTA assistance takes place without permission and instructions from the awarding agency;

(11) To the extent required by FTA, will record the Federal interest in the title of real property and will include a covenant in the title of real property acquired in whole or in part with Federal assistance funds to assure nondiscrimination during the useful life of the project;

(12) Will comply with FTA requirements concerning the drafting, review, and approval of construction plans and specifications of any construction project supported with FTA assistance. As required by U.S. DOT regulations, ''Seismic Safety,'' 49 CFR 41.117(d), before accepting delivery of any building financed with FTA assistance, it will obtain a certificate of compliance with the seismic design and construction requirements of 49 CFR part 41;

(13) Will provide and maintain competent and adequate engineering supervision at the construction site of any project supported with FTA assistance to ensure that the complete work conforms with the approved plans and specifications, and will furnish progress reports and such other information as may be required by FTA or the state;

(14) Will comply with any applicable environmental standards that may be prescribed to implement the following Federal laws and executive orders:

(a) Institution of environmental quality control measures under the National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4321–4335 and Executive Order No. 11514, as amended, 42 U.S.C. 4321 note;

(b) Notification of violating facilities pursuant to Executive Order No. 11738, 42 U.S.C. 7606 note;

(c) Protection of wetlands pursuant to Executive Order No. 11990, 42 U.S.C. 4321 note;

(d) Evaluation of flood hazards in floodplains in accordance with Executive Order 11988, 42 U.S.C. 4321 note;

(e) Assurance of project consistency with the approved state management program developed pursuant to the requirements of the Coastal Zone Management Act of 1972, as amended, 16 U.S.C. 1451–1465;

(f) Conformity of Federal actions to State (Clean Air) Implementation Plans under section 176(c) of the Clean Air Act of 1955, as amended, 42 U.S.C. 7401–7671q;

(g) Protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, 42 U.S.C. 300f–300j–6;

(h) Protection of endangered species under the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531–1544; and

(i) Environmental protections for Federal transportation programs, including, but not limited to, protections for parks, recreation areas, or wildlife or waterfowl refuges of national, state, or local significance or any land from a historic site of national, state, or local significance to be used in a transportation project as required by 49 U.S.C. 303(b) and (c);

(j) Protection of the components of the national wild and scenic rivers systems, as required under the Wild and Scenic Rivers Act of 1968, as amended, 16 U.S.C. 1271–1287; and

(k) Provision of assistance to FTA in complying with section 106 of the National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470f; the Archaeological and Historic Preservation Act of 1974, as amended, 16 U.S.C. 469a–469c; and Executive Order No. 11593 (identification and protection of historic properties), 16 U.S.C. 470 note;

(15) To the extent applicable, will comply with the requirements of the Hatch Act, 5 U.S.C. 1501–1508, and 7324–7326, which limit the political activities of state and local agencies and their officers and employees whose primary employment activities are financed in whole or part with Federal funds including a Federal loan, grant agreement, or cooperative agreement except, in accordance with 23 U.S.C. 142(g), the Hatch Act does not apply to a nonsupervisory employee of a transit system (or of any other agency or entity performing related functions) receiving FTA assistance to whom that Act does not otherwise apply;

(16) Will comply with the National Research Act, Pub. L. 93–348, July 12, 1974, as amended, 42 U.S.C. 289 *et seq.*, and U.S. DOT regulations, ''Protection of Human Subjects,'' 49 CFR part 11, regarding the protection of human subjects involved in research, development, and related activities supported by Federal assistance;

(17) Will comply with the Laboratory Animal Welfare Act of 1966, as amended, 7 U.S.C. 2131 *et seq.*, and U.S. Department of Agriculture regulations, ''Animal Welfare,'' 9 CFR subchapter A, parts 1, 2, 3, and 4, regarding the care, handling, and treatment of warm blooded animals held or used for research, teaching, or other activities supported by Federal assistance;

(18) Will have performed the financial and compliance audits as required by the Single Audit Act Amendments of 1996, 31 U.S.C. 7501 *et seq.*, OMB Circular No. A–133, ''Audits of States, Local Governments, and Non-Profit Organizations,'' Revised, and the most recent applicable OMB A–133 Compliance Supplement provisions for the Department of Transportation; and

(19) Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing the project.

2. Lobbying

An Applicant that submits or intends to submit an application for Federal assistance exceeding $100,000 must provide the following certification. FTA may not award Federal assistance exceeding $100,000 until the Applicant provides this certification by selecting Category ''02.''

A. As required by U.S. DOT regulations, ''New Restrictions on Lobbying,'' at 49 CFR 20.110, the Applicant's authorized representative certifies to the best of his or her knowledge and belief that for each application for Federal assistance exceeding $100,000:

(1) No Federal appropriated funds have been or will be paid by or on behalf of the Applicant to any person to influence or attempt to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress regarding the award of Federal assistance, or the extension, continuation, renewal, amendment, or modification of any Federal assistance agreement; and

(2) If any funds other than Federal appropriated funds have been or will be paid to any person to influence or attempt to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any application for Federal assistance, the Applicant assures that it will complete and submit Standard Form–LLL, ''Disclosure Form to Report Lobbying,'' including information required by the instructions accompanying the form, which form may be amended to omit such information as authorized by 31 U.S.C. 1352.

(3) The language of this certification shall be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements).

B. The Applicant understands that this certification is a material representation of fact upon which reliance is placed and that submission of this certification is a prerequisite for providing Federal assistance for a transaction covered by 31 U.S.C. 1352. The Applicant also understands that any person who fails to file a required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

3. Private Mass Transportation Companies

A state or local government Applicant seeking Federal assistance authorized by 49 U.S.C. chapter 53 to acquire the property or an interest in the property of a private mass transportation company or to operate mass transportation equipment or facilities in competition with, or in addition to, transportation service provided by an existing mass transportation company must provide the following certification. FTA may not award Federal assistance for that type of project until the Applicant provides this certification by selecting Category ''03.''

As required by 49 U.S.C. 5323(a)(1), the Applicant certifies that before it acquires the property or an interest in the property of a private mass transportation company or operates mass transportation equipment or facilities in competition with, or in addition to, transportation service provided by an existing mass transportation company, it has or will have:

A. Found that the assistance is essential to carrying out a program of projects as determined by the plans and programs of the metropolitan planning organization;

B. Provided for the participation of private mass transportation companies to the maximum extent feasible consistent with applicable FTA requirements and policies;

C. Paid just compensation under state or local law to a private mass transportation company for its franchises or property acquired; and

D. Acknowledged that the assistance falls within the labor standards compliance requirements of 49 U.S.C. 5333(a) and 5333(b).

4. Public Hearing

An Applicant seeking Federal assistance authorized by 49 U.S.C. chapter 53 for a capital project that will substantially affect a community or a community's mass transportation service must provide the following certification. FTA may not award Federal assistance for that type of project until the Applicant provides this certification by selecting Category ''04.''

As required by 49 U.S.C. 5323(b), the Applicant certifies that it has, or before submitting its application, it will have:

A. Provided an adequate opportunity for a public hearing with adequate prior notice of the proposed project published in a newspaper of general circulation in the geographic area to be served;

B. Held that hearing and provided FTA a transcript or detailed report summarizing the issues and responses, unless no one with a significant economic, social, or environmental interest requests a hearing;

C. Considered the economic, social, and environmental effects of the proposed project; and

D. Determined that the proposed project is consistent with official plans for developing the urban area.

5. Acquisition of Rolling Stock

An Applicant seeking Federal assistance authorized by 49 U.S.C. chapter 53 to acquire any rolling stock must provide the following certification. FTA may not award any Federal assistance to acquire such rolling stock until the Applicant provides this certification by selecting Category ''05.''

As required by 49 U.S.C. 5323(m) and implementing FTA regulations at 49 CFR 663.7, the Applicant certifies that it will comply with the requirements of 49 CFR part 663 when procuring revenue service rolling stock. Among other things, the Applicant agrees to conduct or cause to be conducted the requisite pre-award and post-delivery reviews, and maintain on file the certifications required by 49 CFR part 663, subparts B, C, and D.

6. Bus Testing

An Applicant for Federal assistance appropriated or made available for 49 U.S.C. chapter 53 to acquire any new bus model or any bus model with a new major change in configuration or components must provide the following certification. FTA may not provide assistance for the acquisition of new buses until the Applicant provides this certification by selecting Category ''06.''

As required by FTA regulations, ''Bus Testing,'' at 49 CFR 665.7, the Applicant certifies that before expending any Federal assistance to acquire the first bus of any new bus model or any bus model with a new major change in configuration or components, or before authorizing final acceptance of that bus (as described in 49 CFR part 665), the bus model:

A. Will have been tested at a bus testing facility approved by FTA; and

B. Will have received a copy of the test report prepared on the bus model.

7. Charter Service Agreement

An Applicant seeking Federal assistance authorized by 49 U.S.C. chapter 53 (except 49 U.S.C. 5310), or Title 23, U.S.C. to acquire or operate any mass transportation equipment or facilities must enter into the following Charter Service Agreement. FTA may not provide assistance authorized by 49 U.S.C. chapter 53 (except 49 U.S.C. 5310), or by Title 23, U.S.C. for projects until the Applicant enters into this Charter Service Agreement by selecting Category ''07.''

A. As required by 49 U.S.C. 5323(d) and FTA regulations, ''Charter Service,'' at 49 CFR 604.7, the Applicant agrees that it and each of its subrecipients and third party contractors at each tier will:

(1) Provide charter service that uses equipment or facilities acquired with Federal assistance authorized by 49 U.S.C. chapter 53 (except 49 U.S.C. 5310), or Title 23, U.S.C. for transportation projects, only to the extent that there are no private charter service operators willing and able to provide the charter service that it or its subrecipients or third party contractors desire to provide, unless one or more of the exceptions in 49 CFR 604.9 applies; and

(2) Comply with the requirements of 49 CFR part 604 before providing any charter service using equipment or facilities acquired with Federal assistance authorized by 49

U.S.C. chapter 53 (except 49 U.S.C. 5310), or Title 23, U.S.C. for transportation projects.

B. As The Applicant understands that:

(1) The requirements of 49 CFR part 604 will apply to any charter service it or its subrecipients or third party contractors provide,

(2) The definitions of 49 CFR part 604 will apply to this Charter Service Agreement, and

(3) A violation of this Charter Service Agreement may require corrective measures and imposition of penalties, including debarment from the receipt of further Federal assistance for transportation.

8. School Transportation Agreement

An Applicant seeking Federal assistance authorized by 49 U.S.C. chapter 53 or by Title 23, U.S.C. to acquire or operate transportation facilities and equipment must enter into the following School Transportation Agreement. FTA may not provide assistance for such projects until the Applicant enters into this agreement by selecting Category ''08.''

A. As required by 49 U.S.C. 5323(f) and implementing FTA regulations at 49 CFR 605.14, the Applicant agrees that it and each of its subrecipients and third party contractors at each tier will:

(1) Engage in school transportation operations in competition with private school transportation operators only to the extent permitted by 49 U.S.C. 5323(f), and Federal regulations; and

(2) Comply with the requirements of 49 CFR part 605 before providing any school transportation using equipment or facilities acquired with Federal assistance authorized by 49 U.S.C. chapter 53 or Title 23 U.S.C. for transportation projects.

B. As The Applicant understands that:

(1) The requirements of 49 CFR part 605 will apply to any school transportation service it or its subrecipients or third party contractors provide,

(2) The definitions of 49 CFR part 605 will apply to this School Transportation Agreement, and

(3) A violation of this School Transportation Agreement may require corrective measures and imposition of penalties, including debarment from the receipt of further Federal assistance for transportation.

9. Demand Responsive Service

An Applicant that operates demand responsive service and applies for direct Federal assistance authorized for 49 U.S.C. chapter 53 to acquire non-rail mass transportation vehicles is required to provide the following certification. FTA may not award direct Federal assistance authorized for 49 U.S.C. chapter 53 to an Applicant that operates demand responsive service to acquire non-rail mass transportation vehicles until the Applicant provides this certification by selecting Category ''09.''

As required by U.S. DOT regulations, ''Transportation Services for Individuals with Disabilities (ADA),'' at 49 CFR 37.77(d), the Applicant certifies that its demand responsive service offered to persons with disabilities, including persons who use wheelchairs, is equivalent to the level and quality of service offered to persons without disabilities. When the Applicant's service is viewed in its entirety, the Applicant's service for persons with disabilities is provided in the most integrated setting feasible and is equivalent with respect to: (1) Response time, (2) fares, (3) geographic service area, (4) hours and days of service, (5) restrictions on trip purpose, (6) availability of information and reservation capability, and (7) constraints on capacity or service availability.

10. Alcohol Misuse and Prohibited Drug Use

If an Applicant is required by FTA regulations to provide the following certification concerning its activities to prevent alcohol misuse and prohibited drug use in its transit operations, FTA may not provide Federal assistance to that Applicant until it provides this certification by selecting Category ''10.''

As required by FTA regulations, ''Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations,'' at 49 CFR part 655, subpart I, the Applicant certifies that it has established and implemented an alcohol misuse and anti-drug program, and has complied with or will comply with all applicable requirements of FTA regulations, ''Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations,'' 49 CFR part 655.

11. Interest and Other Financing Costs

An Applicant that intends to request the use of Federal assistance for reimbursement of interest or other financing costs incurred for its capital projects must provide the following certification. FTA may not provide assistance to support those costs until the Applicant provides this certification by selecting Category ''11.''

In compliance with 49 U.S.C. 5307(g), 49 U.S.C. 5309(g)(2)(B), 49 U.S.C. 5309(g)(3)(A), and 49 U.S.C. 5309(n), the Applicant certifies that it will not seek reimbursement for interest and other financing costs unless its records demonstrate that it has used reasonable diligence in seeking the most favorable financing terms underlying those costs, to the extent FTA may require.

12. Intelligent Transportation Systems

An Applicant for FTA assistance for an Intelligent Transportation Systems (ITS) project, defined as any project that in whole or in part finances the acquisition of technologies or systems of technologies that provide or significantly contribute to the provision of one or more ITS user services as defined in the ''National ITS Architecture,'' must provide the following assurance. FTA may not award any Federal assistance for an ITS project until the Applicant provides this assurance by selecting Category ''12.''

As used in this assurance, the term Intelligent Transportation Systems (ITS) project is defined to include any project that in whole or in part finances the acquisition of technologies or systems of technologies that provide or significantly contribute to the provision of one or more ITS user services as defined in the ''National ITS Architecture.''

A. In accordance with section 5206(e) of TEA–21, 23 U.S.C. 502 note, the Applicant assures it will comply with all applicable requirements of Section V (Regional ITS Architecture) and Section VI (Project Implementation) of FTA Notice, ''FTA National ITS Architecture Policy on Transit Projects,'' at 66 FR 1455 *et seq.*, January 8, 2001, and other FTA requirements that may be issued in connection with any ITS project financed with Highway Trust Funds (including funds from the Mass Transit Account) or funds made available for the Intelligent Transportation Systems Program authorized by TEA–21, title V, subtitle C, 23 U.S.C. 502 note.

B. With respect to any ITS project financed with Federal assistance derived from a source other than Highway Trust Funds (including funds from the Mass Transit Account) or TEA–21, title V, subtitle C, 23 U.S.C. 502 note, the Applicant assures that it will use its best efforts to ensure that any ITS project it undertakes will not preclude interface with other intelligent transportation systems in the Region.

13. Urbanized Area, JARC, and Clean Fuels Programs

Each Applicant for Urbanized Area Formula Program assistance authorized by 49 U.S.C. 5307, each Applicant for Job Access and Reverse Commute Program assistance authorized by section 3037 of the Transportation Equity Act for the 21st Century, 49 U.S.C. 5309 note, and each Applicant for Clean Fuels Formula Program assistance authorized by 49 U.S.C. 5308 must provide the following certifications. FTA may not award Federal assistance for those programs until the Applicant provides these certifications and assurances by selecting Category ''13.'' A state or other Applicant providing certifications and assurances that require the compliance of its prospective subrecipients is expected to obtain sufficient documentation from those subrecipients to assure the validity of its certifications and assurances.

Each Applicant that received Transit Enhancement funds authorized by 49 U.S.C. 5307(k)(1) must list the projects carried out during that Federal fiscal year with those funds in its quarterly report for the fourth quarter of the preceding Federal fiscal year. That list constitutes the report of transit enhancement projects carried out during that fiscal year, which report is required to be submitted as part of the Applicant's annual certifications and assurances, in accordance with 49 U.S.C. 5307(k)(3), and is therefore incorporated by reference and made part of the Applicant's annual certifications and assurances. FTA may not award Urbanized Area Formula Program assistance to any Applicant that has received Transit Enhancement funds authorized by 49 U.S.C. 5307(k)(1), unless that Applicant's quarterly report for the fourth quarter of the preceding Federal fiscal year has been submitted to FTA and includes the requisite list.

A. Certifications Required for the Urbanized Area Formula Program

(1) As required by 49 U.S.C. 5307(d)(1)(A) through (J), the Applicant certifies and assures as follows:

(a) It has or will have the legal, financial, and technical capacity to carry out the proposed program of projects;

(b) It has or will have satisfactory continuing control over the use of Project equipment and facilities;

(c) It will adequately maintain the equipment and facilities;

(d) It will ensure that elderly and handicapped persons, or any person presenting a Medicare card issued to himself or herself pursuant to title II or title XVIII of the Social Security Act (42 U.S.C. 401 *et seq.* or 42 U.S.C. 1395 *et seq.*), will be charged for transportation during non-peak hours using or involving a facility or equipment of a project financed with Federal assistance authorized for 49 U.S.C. 5307, or for the Job Access and Reverse Commute Program at section 3037 of the Transportation Equity Act for the 21st Century (TEA–21), 49 U.S.C. 5309 note, not more than fifty (50) percent of the peak hour fare;

(e) In carrying out a procurement financed with Federal assistance authorized for the Urbanized Area Formula Program, 49 U.S.C. 5307, or the Job Access and Reverse Commute Program, section 3037 of TEA–21, 49 U.S.C. 5309 note, it: (1) Will use competitive procurement (as defined or approved by the Secretary), (2) will not use exclusionary or discriminatory specifications, and (3) will comply with applicable Buy America laws;

(f) It has complied with or will comply with the requirements of 49 U.S.C. 5307(c). Specifically, it: (1) Has made available, or will make available, to the public information on the amounts available for the Urbanized Area Formula Program, 49 U.S.C. 5307 and, if applicable, the Job Access and Reverse Commute Grant Program, 49 U.S.C. 5309 note, and the program of projects it proposes to undertake; (2) has developed or will develop, in consultation with interested parties including private transportation providers, a proposed program of projects for activities to be financed; (3) has published or will publish a proposed program of projects in a way that affected citizens, private transportation providers, and local elected officials have the opportunity to examine the proposed program and submit comments on the proposed program and the performance of the Applicant; (4) has provided or will provide an opportunity for a public hearing to obtain the views of citizens on the proposed program of projects; (5) has ensured or will ensure that the proposed program of projects provides for the coordination of transportation services assisted under 49 U.S.C. 5336 with transportation services assisted by another Federal Government source; (6) has considered or will consider the comments and views received, especially those of private transportation providers, in preparing its final program of projects; and (7) has made or will make the final program of projects available to the public;

(g) It has or will have available and will provide the amount of funds required by 49 U.S.C. 5307(e) and applicable FTA policy (specifying Federal and local shares of project costs);

(h) It will comply with: 49 U.S.C. 5301(a) (requirements for transportation systems that maximize mobility and minimize fuel consumption and air pollution); 49 U.S.C. 5301(d) (requirements for transportation of the elderly and persons with disabilities); 49 U.S.C. 5303 through 5306 (planning requirements); and 49 U.S.C. 5301(d) (special efforts to design and provide mass transportation for the elderly and persons with disabilities);

(i) It has a locally developed process to solicit and consider public comment before raising fares or implementing a major reduction of transportation; and

(j) As required by 49 U.S.C. 5307, each fiscal year, the Applicant will spend at least one (1) percent of its funds authorized by 49 U.S.C. § 5307(d)(1)(J) for transit security projects (this includes only capital projects in the case of an Applicant serving an urbanized area with a population of 200,000 or more), unless the Applicant has certified to FTA that such expenditures are not necessary and FTA accepts that certification. Transit security projects include increased lighting in or adjacent to a transit system (including bus stops, subway stations, parking lots, and garages), increased camera surveillance of an area in or adjacent to that system, emergency telephone line or lines to contact law enforcement or security personnel in an area in or adjacent to that system, and any other project intended to increase the security and safety of an existing or planned transit system.

(2) As required by 49 U.S.C. 5307(k)(3), if it has received Transit Enhancement funds authorized by 49 U.S.C. 5307(k)(1), its quarterly report for the fourth quarter of the preceding Federal fiscal year includes a list of the projects it has implemented during that fiscal year using those funds, and that report is incorporated by reference and made part of its certifications and assurances.

B. Certification Required for Capital Leasing

As required by FTA regulations, ''Capital Leases,'' at 49 CFR 639.15(b)(1) and 49 CFR 639.21, if the Applicant acquires any capital asset by lease financed with Federal assistance authorized for 49 U.S.C. 5307 or section 3037 of TEA–21, 49 U.S.C. 5309 note, the Applicant certifies as follows:

(1) It will not use Federal assistance authorized for 49 U.S.C. 5307 or section 3037 of TEA–21, 49 U.S.C. 5309 note, to finance the cost of leasing any capital asset until it performs calculations demonstrating that leasing the capital asset would be more cost-effective than purchasing or constructing a similar asset;

(2) It will complete these calculations before entering into the lease or before receiving a capital grant for the asset, whichever is later; and

(3) It will not enter into a capital lease for which FTA can provide only incremental Federal assistance unless it has adequate financial resources to meet its future obligations under the lease in the event Federal assistance is not available for capital projects in subsequent years.

C. Certification Required for the Sole Source Acquisition of an Associated Capital Maintenance Item

As required by 49 U.S.C. 5325(c), the Applicant certifies that when it procures an associated capital maintenance item as authorized by 49 U.S.C. 5307(b)(1), it will use competition, unless the original manufacturer or supplier of the item is the only source for that item and the price of that item is no more than the price similar customers pay for that item, and that for each such procurement, it will maintain sufficient records on file and easily retrievable for inspection by FTA.

D. Clean Fuels Formula Grant Program Certification

As required by 49 U.S.C. 5308(c)(2), the Applicant certifies that vehicles financed with Federal assistance provided for the Clean Fuels Formula Program, 49 U.S.C. 5308, will be operated only with clean fuels.

14. Elderly and Persons With Disabilities Program

An Applicant that intends to administer the Elderly and Persons with Disabilities Program on behalf of a state must provide the following certifications and assurances. In providing certifications and assurances that require the compliance of its prospective subrecipients, the Applicant is expected to obtain sufficient documentation from those subrecipients to assure the validity of its certifications and assurances. FTA may not award assistance for the Elderly and Persons with Disabilities Program until the Applicant provides these certifications and assurances by selecting Category ''14.''

The Applicant administering, on behalf of the state, the Elderly and Persons with Disabilities Program authorized by 49 U.S.C. 5310 certifies and assures that the following requirements and conditions will be fulfilled:

A. The state organization serving as the Applicant and each subrecipient has or will have the necessary legal, financial, and managerial capability to apply for, receive, and disburse Federal assistance authorized for 49 U.S.C. 5310; and to implement and manage the project.

B. The state assures that each subrecipient either is recognized under state law as a private nonprofit organization with the legal capability to contract with the state to carry out the proposed project, or is a public body that has met the statutory requirements to receive Federal assistance authorized for 49 U.S.C. 5310.

C. The private nonprofit subrecipient's application for 49 U.S.C. 5310 assistance contains information from which the state concludes that the transit service provided or offered to be provided by existing public or private transit operators is unavailable, insufficient, or inappropriate to meet the special needs of the elderly and persons with disabilities.

D. The state assures that sufficient non-Federal funds have been or will be committed to provide the required local share.

E. The state assures that, before issuing the state's formal approval of a project, its Elderly and Persons with Disabilities Formula Program is included in the Statewide Transportation Improvement Program as required by 23 U.S.C. 135; all projects to be implemented in urbanized areas recommended for approval are included in the metropolitan Transportation Improvement Program in which the subrecipient is located; and any prospective subrecipient of capital assistance that is a public body has provided an opportunity for a public hearing.

F. The state recognizes that the subrecipient, rather than the state itself, will be ultimately responsible for implementing many Federal requirements covered by the certifications and assurances the state has signed. After having taken appropriate measures to secure the necessary compliance by each subrecipient, the state assures, on behalf of each subrecipient, that:

(1) The subrecipient has or will have by the time of delivery, sufficient funds to operate and maintain the vehicles and equipment financed with Federal assistance awarded for its project;

(2) The subrecipient has coordinated or will coordinate to the maximum extent feasible with other transportation providers and users, including social service agencies authorized to purchase transit service;

(3) The subrecipient has complied or will comply with all applicable civil rights requirements;

(4) The subrecipient has complied or will comply with applicable requirements of U.S. DOT regulations regarding participation of disadvantaged business enterprises in U.S. DOT programs;

(5) The subrecipient has complied or will comply with Federal requirements regarding transportation of elderly persons and persons with disabilities;

(6) The subrecipient has complied or will comply with applicable provisions of 49 CFR part 605 pertaining to school transportation operations;

(7) Viewing its demand responsive service to the general public in its entirety, the subrecipient has complied or will comply with the requirement to provide demand responsive service to persons with disabilities, including persons who use wheelchairs, meeting the standards of equivalent service set forth in 49 CFR 37.77(c), before purchasing non-accessible vehicles for use in demand responsive service for the general public;

(8) The subrecipient has established or will establish a procurement system, and has conducted or will conduct its procurements in compliance with all applicable provisions of Federal laws, executive orders, regulations, FTA Circular 4220.1E, ''Third Party Contracting Requirements,'' as amended and revised, and other Federal requirements that may be applicable;

(9) The subrecipient has complied or will comply with the requirement that its project provide for the participation of private mass transportation companies to the maximum extent feasible;

(10) The subrecipient has paid or will pay just compensation under state or local law to each private mass transportation company for its franchise or property acquired under the project;

(11) The subrecipient has complied or will comply with all applicable lobbying requirements for each application exceeding $100,000;

(12) The subrecipient has complied or will comply with all applicable nonprocurement suspension and debarment requirements;

(13) The subrecipient has complied or will comply with all applicable bus testing requirements for new bus models;

(14) The subrecipient has complied or will comply with applicable FTA Intelligent Transportation Systems architecture requirements to the extent required by FTA; and

(15) The subrecipient has complied or will comply with all applicable pre-award and post-delivery review requirements.

G. Unless otherwise noted, each of the subrecipient's projects qualifies for a categorical exclusion and does not require further environmental approvals, as described in the joint FHWA/FTA regulations, ''Environmental Impact and Related Procedures,'' at 23 CFR 771.117(c). The state certifies that, until the required Federal environmental finding is made, financial assistance will not be provided for any project that does not qualify for a categorical exclusion described in 23 CFR 771.117(c). The state further certifies that, until the required Federal conformity finding has been made, no financial assistance will be provided for a project requiring a Federal conformity finding in accordance with the U.S. Environmental Protection Agency's Clean Air Conformity regulations at 40 CFR parts 51 and 93.

H. The state assures that it will enter into a written agreement with each subrecipient stating the terms and conditions of assistance by which the project will be undertaken and completed.

I. The state recognizes the authority of FTA, U.S. DOT, and the Comptroller General of the United States to conduct audits and reviews to verify compliance with the foregoing requirements and stipulations, and assures that, upon request, the state and its subrecipients will make the necessary records available to FTA, U.S. DOT and the Comptroller General of the United States. The state also acknowledges its obligation under 49 CFR 18.40(a) to monitor project activities carried out by its subrecipients to assure compliance with applicable Federal requirements.

15. Nonurbanized Area Formula Program

An Applicant that intends to administer the Nonurbanized Area Formula Program on behalf of a state must provide the following certifications and assurances. In providing certifications and assurances that require the compliance of its prospective subrecipients, the Applicant is expected to obtain sufficient documentation from those subrecipients to assure the validity of its certifications and assurances.

The Applicant administering, on behalf of the state, the Nonurbanized Area Formula Program authorized by 49 U.S.C. 5311 certifies and assures that the following requirements and conditions will be fulfilled:

A. The state organization serving as the Applicant and each subrecipient has or will have the necessary legal, financial, and managerial capability to apply for, receive, and disburse Federal assistance authorized for 49 U.S.C. 5311; and to implement and manage the project.

B. The state assures that sufficient non-Federal funds have been or will be committed to provide the required local share.

C. The state assures that before issuing the state's formal approval of the project, its Nonurbanized Area Formula Program is included in the Statewide Transportation Improvement Program as required by 23 U.S.C. 135; and projects are included in a metropolitan Transportation Improvement Program, to the extent applicable.

D. The state has provided for a fair and equitable distribution of Federal assistance authorized for 49 U.S.C. 5311 within the state, including Indian reservations within the state.

E. The state recognizes that the subrecipient, rather than the state itself, will be ultimately responsible for implementing many Federal requirements covered by the certifications and assurances the state has signed. After having taken appropriate measures to secure the necessary compliance by each subrecipient, the state assures, on behalf of each subrecipient, that:

(1) The subrecipient has or will have, by the time of delivery, sufficient funds to operate and maintain the vehicles and equipment financed with Federal assistance awarded for its project;

(2) The subrecipient has coordinated or will coordinate to the maximum extent feasible with other transportation providers and users, including social service agencies authorized to purchase transit service;

(3) The subrecipient has complied or will comply with all applicable civil rights requirements;

(4) The subrecipient has complied or will comply with applicable requirements of U.S. DOT regulations regarding participation of disadvantaged business enterprises in U.S. DOT programs;

(5) The subrecipient has complied or will comply with Federal requirements regarding transportation of elderly persons and persons with disabilities;

(6) The subrecipient has complied or will comply with the transit employee protective provisions of 49 U.S.C. 5333(b), by one of the following actions: (a) Signing the Special Warranty for the Nonurbanized Area Formula Program, (b) agreeing to alternative comparable arrangements approved by the Department of Labor (DOL), or (c) obtaining a waiver from DOL; and the state has certified the subrecipient's compliance to DOL;

(7) The subrecipient has complied or will comply with 49 CFR part 604 in the provision of any charter service provided with equipment or facilities acquired with FTA assistance;

(8) The subrecipient has complied or will comply with applicable provisions of 49 CFR part 605 pertaining to school transportation operations;

(9) Viewing its demand responsive service to the general public in its entirety, the subrecipient has complied or will comply with the requirement to provide demand responsive service to persons with disabilities, including persons who use wheelchairs, meeting the standards of equivalent service set forth in 49 CFR 37.77(c), before purchasing non-accessible vehicles for use in demand responsive service for the general public;

(10) The subrecipient has established or will establish a procurement system, and has conducted or will conduct its procurements

in compliance with all applicable provisions of Federal laws, executive orders, regulations, FTA Circular 4220.1E, ''Third Party Contracting Requirements,'' as amended and revised, and other Federal requirements that may be applicable;

(11) The subrecipient has complied or will comply with the requirement that its project provide for the participation of private enterprise to the maximum extent feasible;

(12) The subrecipient has paid or will pay just compensation under state or local law to each private mass transportation company for its franchise or property acquired under the project;

(13) The subrecipient has complied or will comply with all applicable lobbying requirements for each application exceeding $100,000;

(14) The subrecipient has complied or will comply with all applicable nonprocurement suspension and debarment requirements;

(15) The subrecipient has complied or will comply with all applicable bus testing requirements for new bus models;

(16) The subrecipient has complied or will comply with all applicable pre-award and post-delivery review requirements;

(17) The subrecipient has complied with or will comply with all assurances FTA requires for projects involving real property;

(18) The subrecipient has complied or will comply with applicable FTA Intelligent Transportation Systems architecture requirements, to the extent required by FTA; and

(19) The subrecipient has complied or will comply with applicable prevention of alcohol misuse and prohibited drug use program requirements, to the extent required by FTA.

F. Unless otherwise noted, each of the subrecipient's projects qualifies for a categorical exclusion and does not require further environmental approvals, as described in the joint FHWA/FTA regulations, ''Environmental Impact and Related Procedures,'' at 23 CFR 771.117(c). The state certifies that, until the required Federal environmental finding is made, financial assistance will not be provided for any project that does not qualify for a categorical exclusion described in 23 CFR 771.117(c). The state further certifies that, until the required Federal conformity finding has been made, no financial assistance will be provided for a project requiring a Federal conformity finding in accordance with the U.S. Environmental Protection Agency's Clean Air Conformity regulations at 40 CFR parts 51 and 93.

G. The state assures that it will enter into a written agreement with each subrecipient stating the terms and conditions of assistance by which the project will be undertaken and completed.

H. The state recognizes the authority of FTA, U.S. DOT, and the Comptroller General of the United States to conduct audits and reviews to verify compliance with the foregoing requirements and stipulations, and assures that, upon request, the state and its subrecipients will make the necessary records available to FTA, U.S. DOT and the Comptroller General of the United States. The state also acknowledges its obligation under 49 CFR 18.40(a) to monitor project activities carried out by its subrecipients to assure compliance with applicable Federal requirements.

I. In compliance with the requirements of 49 U.S.C. 5311(f), the state assures that it will expend not less than fifteen (15) percent of the amounts of Federal assistance as provided in 49 U.S.C. 5311(f) and apportioned during this Federal fiscal year to carry out a program within the state to develop and support intercity bus transportation, unless the chief executive officer of the state, or his or her designee, duly authorized under state law, regulations or procedures, certifies to the Federal Transit Administrator that the intercity bus service needs of the state are being adequately met.

16. State Infrastructure Bank Program

An Applicant for a grant of Federal assistance for deposit in its State Infrastructure Bank (SIB) must provide the following certifications and assurances. In providing certifications and assurances that require the compliance of its prospective subrecipients, the Applicant is expected to obtain sufficient documentation from those subrecipients to assure the validity of its certifications and assurances.

The state, serving as the Applicant for Federal assistance for its State Infrastructure Bank (SIB) Program authorized by either section 350 of the National Highway System Designation Act of 1995, as amended, 23 U.S.C. 101 note, or the State Infrastructure Bank Pilot Program, 23 U.S.C. 181 note, certifies and assures that the following requirements and conditions concerning any transit Project financed with Federal assistance derived from its SIB have been or will be fulfilled:

A. The state organization, which is serving as the Applicant (state) for Federal assistance for its SIB, agrees and assures the agreement of its SIB and the agreement of each recipient of Federal assistance derived from the SIB within the state (subrecipient) that each transit Project financed with Federal assistance derived from SIB will be administered in accordance with:

(1) Applicable provisions of section 350 of the National Highway System Designation Act of 1995, as amended, 23 U.S.C. 101 note, or of the State Infrastructure Bank Pilot Program, 23 U.S.C. 181 note, and any further amendments thereto;

(2) The provisions of any applicable Federal guidance that may be issued;

(3) The terms and conditions of Department of Labor Certification(s) of Transit Employee Protective Arrangements that are required by Federal law or regulations;

(4) The provisions of the FHWA and FTA cooperative agreement with the state to establish the state's SIB Program; and

(5) The provisions of the FTA grant agreement with the state that provides Federal assistance for the SIB, except that any provision of the Federal Transit Administration Master Agreement incorporated by reference into that grant agreement will not apply if it conflicts with any provision of National Highway System Designation Act of 1995, as amended, 23 U.S.C. 101 note, or section 1511 of TEA–21, as amended, 23 U.S.C. 181 note, Federal guidance pertaining to the SIB Program, the provisions of the cooperative agreement establishing the SIB Program within the state, or the provisions of the FTA grant agreement.

B. The state agrees to comply with, and assures the compliance of the SIB and each subrecipient of assistance provided by the SIB with, all applicable requirements for the SIB Program, as those requirements may be amended from time to time. Pursuant to subsection 1511(h)(2) of TEA–21, 23 U.S.C. 181 note, the state understands and agrees that any previous cooperative agreement entered into with FHWA and FTA under section 350 of the National Highway System Designation Act of 1995, as amended, 23 U.S.C. 101 note, has been or will be revised to comply with the requirements of TEA–21.

C. The state assures that the SIB will provide Federal assistance from its Transit Account only for transit capital projects eligible under section 350 of the National Highway System Designation Act of 1995, as amended, 23 U.S.C. 101 note or under section 1511 of TEA–21, 23 U.S.C. 181 note, and that those projects will fulfill all requirements imposed on comparable capital transit projects financed by FTA.

D. The state understands that the total amount of funds to be awarded will not be immediately available for draw down. Consequently, the state assures that it will limit the amount of Federal assistance it draws down for deposit in the SIB to amounts that do not exceed the limitations specified in the grant agreement or the approved project budget for that grant agreement.

E. The state assures that each subrecipient has or will have the necessary legal, financial, and managerial capability to apply for, receive, and disburse Federal assistance authorized by Federal statute for use in the SIB, and to implement, manage, operate, and maintain the project and project property for which such assistance will support.

F. The state assures that sufficient non-Federal funds have been or will be committed to provide the required local share.

G. The state recognizes that the SIB, rather than the state itself, will be ultimately responsible for implementing many Federal requirements covered by the certifications and assurances the state has signed. After having taken appropriate measures to secure the necessary compliance by the SIB, the state assures, on behalf of the SIB, that:

(1) The SIB has complied or will comply with all applicable civil rights requirements;

(2) The SIB has complied or will comply with applicable requirements of U.S. DOT regulations regarding participation of disadvantaged business enterprises in U.S. DOT programs;

(3) The SIB will provide Federal assistance only to a subrecipient that is either a public or private entity recognized under state law as having the legal capability to contract with the state to carry out its proposed project;

(4) Before the SIB enters into an agreement with a subrecipient to disburse Federal assistance for a project, the subrecipient's project is included in the Statewide Transportation Improvement Program; all

projects in urbanized areas recommended for approval are included in the metropolitan Transportation Improvement Program in which the subrecipient is located; and the requisite certification that an opportunity for a public hearing has been provided;

(5) The SIB will not provide Federal financial assistance for any project that does not qualify for a categorical exclusion as described in 23 CFR 771.117(c) until the required Federal environmental finding has been made. Moreover, the SIB will provide no financial assistance for a project requiring a Federal conformity finding in accordance with the Environmental Protection Agency's Clean Air Conformity regulations at 40 CFR parts 51 and 93, until the required Federal conformity finding has been made;

(6) Before the SIB provides Federal assistance for a transit project, each subrecipient will have complied with the applicable transit employee protective provisions of 49 U.S.C. 5333(b) as required for that subrecipient and its project; and

(7) The SIB will enter into a written agreement with each subrecipient stating the terms and conditions of assistance by which the project will be undertaken and completed, including specific provisions that any security or debt financing instrument that the SIB may issue shall contain an express statement that the security or debt financing instrument does not constitute a commitment, guarantee, or obligation of the United States.

H. The state also recognizes that the subrecipient, rather than the state itself, will be ultimately responsible for implementing many Federal requirements covered by the certifications and assurances the state has signed. After having taken appropriate measures to secure the necessary compliance of each subrecipient, the state assures, on behalf of each subrecipient, that:

(1) The subrecipient has complied or will comply with all applicable civil rights requirements;

(2) The subrecipient has complied or will comply with applicable requirements of U.S. DOT regulations regarding participation of disadvantaged business enterprises in U.S. DOT programs;

(3) The subrecipient has complied or will comply with Federal requirements regarding transportation of elderly persons and persons with disabilities;

(4) The subrecipient has complied or will comply with the applicable transit employee protective provisions of 49 U.S.C. 5333(b) as required for that subrecipient and its project;

(5) The subrecipient has complied or will comply with 49 CFR part 604 in the provision of any charter service provided with equipment or facilities acquired with FTA assistance;

(6) The subrecipient has complied with or will comply with applicable provisions of 49 CFR part 605 pertaining to school transportation operations;

(7) Viewing its demand responsive service to the general public in its entirety, the subrecipient has complied or will comply with the requirement to provide demand responsive service to persons with disabilities, including persons who use wheelchairs, meeting the standards of equivalent service set forth in 49 CFR 37.77(c), before purchasing non-accessible vehicles for use in demand responsive service for the general public;

(8) The subrecipient has established or will establish a procurement system, and has conducted or will conduct its procurements in compliance with all applicable provisions of Federal laws, executive orders, regulations, FTA Circular 4220.1E, ''Third Party Contracting Requirements,'' as amended and revised, and other implementing requirements FTA may issue;

(9) The subrecipient has complied or will comply with the requirement that its project provides for the participation of private mass transportation companies to the maximum extent feasible;

(10) The subrecipient has paid or will pay just compensation under state or local law to each private mass transportation company for its franchise or property acquired under the project;

(11) The subrecipient has complied or will comply with all applicable lobbying requirements for each application exceeding $100,000;

(12) The subrecipient has complied or will comply with all nonprocurement suspension and debarment requirements;

(13) The subrecipient has complied or will comply with all applicable bus testing requirements for new bus models;

(14) The subrecipient has complied or will comply with all applicable pre-award and post-delivery review requirements;

(15) The subrecipient has complied with or will comply with all assurances FTA requires for projects involving real property;

(16) The subrecipient has complied or will comply with applicable FTA Intelligent Transportation Systems architecture requirements, to the extent required by FTA; and

(17) The subrecipient has complied or will comply with applicable prevention of alcohol misuse and prohibited drug use program requirements, to the extent required by FTA.

I. The state recognizes the authority of FTA, U.S. DOT, and the Comptroller General of the United States to conduct audits and reviews to verify compliance with the foregoing requirements and stipulations, and assures that, upon request, the SIB and its subrecipients, as well as the states, will make the necessary records available to FTA, U.S. DOT and the Comptroller General of the United States. The state also acknowledges its obligation under 49 CFR 18.40(a) to monitor project activities carried out by the SIB and its subrecipients to assure compliance with applicable Federal requirements.

##

Selection and Signature Page(s) Follow

BILLING CODE 4910–57–P

Appendix A

FEDERAL FISCAL YEAR 2005 CERTIFICATIONS AND ASSURANCES FOR FEDERAL TRANSIT ADMINISTRATION ASSISTANCE PROGRAMS

(Signature page alternative to providing Certifications and Assurances in TEAM-Web)

Name of Applicant: ____

The Applicant agrees to comply with applicable requirements of Categories 01 - 16. _____
(The Applicant may make this selection in lieu of individual selections below.)

OR

The Applicant agrees to comply with the applicable requirements of the following Categories it has selected:

Category	Description	
01.	Required of Each Applicant	______
02.	Lobbying	______
03.	Private Mass Transportation Companies	______
04.	Public Hearing	______
05.	Acquisition of Rolling Stock	______
06.	Bus Testing	______
07.	Charter Service Agreement	______
08.	School Transportation Agreement	______
09.	Demand Responsive Service	______
10.	Alcohol Misuse and Prohibited Drug Use	______
11.	Interest and Other Financing Costs	______
12.	Intelligent Transportation Systems	______
13.	Urbanized Area, JARC, and Clean Fuels Programs	______
14.	Elderly and Persons with Disabilities Program	______
15.	Nonurbanized Area Formula Program	______
16.	State Infrastructure Bank Program	______

(Both sides of this Signature Page must be appropriately completed and signed as indicated.)

Appendix A

FEDERAL FISCAL YEAR 2005 FTA CERTIFICATIONS AND ASSURANCES SIGNATURE PAGE

(Required of all Applicants for FTA assistance and all FTA Grantees with an active capital or formula project)

AFFIRMATION OF APPLICANT

Name of Applicant: ______________________________

Name and Relationship of Authorized Representative: ______________________________

BY SIGNING BELOW, on behalf of the Applicant, I declare that the Applicant has duly authorized me to make these certifications and assurances and bind the Applicant's compliance. Thus, the Applicant agrees to comply with all Federal statutes, regulations, executive orders, and Federal requirements applicable to each application it makes to the Federal Transit Administration (FTA) in Federal Fiscal Year 2005.

FTA intends that the certifications and assurances the Applicant selects on the other side of this document, as representative of the certifications and assurances in Appendix A, should apply, as required, to each project for which the Applicant seeks now, or may later, seek FTA assistance during Federal Fiscal Year 2005.

The Applicant affirms the truthfulness and accuracy of the certifications and assurances it has made in the statements submitted herein with this document and any other submission made to FTA, and acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. 3801 *et seq.*, as implemented by U.S. DOT regulations, "Program Fraud Civil Remedies," 49 CFR part 31 apply to any certification, assurance or submission made to FTA. The criminal fraud provisions of 18 U.S.C. 1001 apply to any certification, assurance, or submission made in connection with a Federal Transit program authorized in Chapter 53 or any other statute.

In signing this document, I declare under penalties of perjury that the foregoing certifications and assurances, and any other statements made by me on behalf of the Applicant are true and correct.

Signature______________________________ Date: ____________

Name______________________________
Authorized Representative of Applicant

AFFIRMATION OF APPLICANT'S ATTORNEY

For (Name of Applicant): ______________________________

As the undersigned Attorney for the above named Applicant, I hereby affirm to the Applicant that it has authority under state and local law to make and comply with the certifications and assurances as indicated on the foregoing pages. I further affirm that, in my opinion, the certifications and assurances have been legally made and constitute legal and binding obligations on the Applicant.

I further affirm to the Applicant that, to the best of my knowledge, there is no legislation or litigation pending or imminent that might adversely affect the validity of these certifications and assurances, or of the performance of the project.

Signature______________________________ Date: ____________

Name______________________________
Attorney for Applicant

Each Applicant for FTA financial assistance (except 49 U.S.C. 5312(b) assistance) and each FTA Grantee with an active capital or formula project must provide an Affirmation of Applicant's Attorney pertaining to the Applicant's legal capacity. The Applicant may enter its signature in lieu of the Attorney's signature, provided the Applicant has on file this Affirmation, signed by the attorney and dated this Federal fiscal year.

[FR Doc. 04–23871 Filed 10–25–04; 8:45 am]
BILLING CODE 4910–57–C

Federal Register

Tuesday,

October 26, 2004

Part III

Department of Agriculture

Cooperative State Research, Education, and Extension Service

7 CFR Part 3402

Food and Agricultural Sciences National Needs Graduate and Postgraduate Fellowship Grants Program; Final Rule

DEPARTMENT OF AGRICULTURE

Cooperative State Research, Education, and Extension Service

7 CFR Part 3402

[Regulation Identifier Number: 0524–AA30]

Food and Agricultural Sciences National Needs Graduate and Postgraduate Fellowship Grants Program

AGENCY: Cooperative State Research, Education, and Extension Service, USDA.

ACTION: Final rule.

SUMMARY: The Cooperative State Research, Education, and Extension Service (CSREES) revises administrative provisions for the Food and Agricultural Sciences National Needs Graduate Fellowship Grants Program. The revisions relax constraints that are causing grantees to return unexpended funds to CSREES and provide support to the training of students awarded Fellowships from grants of the Program.

DATES: This rule is effective October 26, 2004.

FOR FURTHER INFORMATION CONTACT: Jeffrey L. Gilmore, Ph.D.; Director, Higher Education Programs; Phone: 202–720–1973 Fax: 202–720–2030; e-mail: *jgilmore@csrees.usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

On July 12, 2004, CSREES published a Proposed Rule (69 FR 41763, Jul. 12, 2004) to revise administrative provisions for the Food and Agricultural Sciences National Needs Graduate Fellowship Grants Program.

Adoption of Proposal as Final Rule

In the Proposed Rule, CSREES invited comments, which were due by August 11, 2004. The Agency received one comment which condemned the Food and Agricultural Sciences National Needs Graduate Fellowship Grants Program for wasting taxpayer money and asked that Congress terminate support for it.

The commenter is not clear that CSREES uses a competitive process to make awards. The Agency solicits applications, and bases award decisions on recommendations from a panel of subject matter experts, drawn from colleges, private associations, and appropriate government agencies. ‘‘National Needs’’ refer to those scientific disciplines where, according to national data supplied by the U.S. Department of Education and U.S. Bureau of Labor Statistics, there are projected shortages of scientific personnel required for the U.S. These can change and, as a result, are described in program solicitations.

The commenter questions the value of studying abroad. However, modern agriculture is a global enterprise and funded trips allow students to round out their education and/or prepare dissertations. Concern was expressed over eligibility, which includes foreign nationals, people who are legally extended the rights of citizenship, and excludes illegal aliens.

The commenter also states that the Agency discriminates by setting aside funds for minorities. The awards do not specifically target minority students or minority student groups. The legislation that authorizes this program identifies eligible institutions and, to maximize inclusivity, specifically mentions colleges/universities that have significant minority enrollments and demonstrable capacity for teaching food and agricultural sciences.

Finally, the commenter states that one year should be the maximum amount of time USDA supports a Fellow. CSREES does not deem this to be a sufficient amount of time to support a Fellow because this program intends to provide for students for the duration of their coursework to ensure that they complete degree requirements.

Upon further consideration, CSREES is issuing the Final Rule as it was proposed. No public meeting was requested or held.

Purpose

The former rule (7 CFR part 3402) required that grantees refund all unexpended money to the Agency, if (1) Fellows are not appointed within 15 months of the effective date of the grant; or (2) Fellowships are prematurely terminated. The Agency uses refunded money to provide Fellows with supplemental grants for international travel and thesis/dissertation travel. Numerous stakeholders expressed dissatisfaction with the requirement to refund unexpended grant funds. CSREES concluded that the Fellowship Program's purpose is better served by extending the amount of time for Fellowship appointment and permitting grantees to recruit and train replacement Fellows.

The former rule required that (1) new Graduate Fellows are newly recruited; and (2) have a strong interest in preparing for careers as food or agricultural scientists or professionals. Project Directors indicated that the recruitment restriction limited their ability to gauge whether new Fellows had the requisite interest. To give Project Directors more time to interact with potential Graduate Fellows before recruiting them into the Program, the Final Rule allows them to appoint students who have completed less than two semesters of full-time study as new Graduate Fellows.

Under the former rule, a grantee could award a Fellowship to a student enrolled as a master's or doctoral degree candidate, but a grantee was prohibited from awarding a Fellowship to a postdoctoral candidate. Because of the new and multidisciplinary expertise required of the next generation of food and agricultural scientists, stakeholders and CSREES concluded that postdoctoral training is an integral part of their preparation.

During the period of support, the former rule restricted Fellows from accepting employment from their sponsoring institution or any other agency. Grantees complained that this unfairly prohibited Fellows from participating in assistantships or other employment opportunities that included, as compensation, tuition waivers. At the discretion of sponsoring institutions, this Final Rule allows Fellows to accept additional supplemental employment that positively contributes to their training or research and provides eligibility for tuition waivers.

The Agency revises the existing rule for the Food and Agricultural Sciences National Needs Graduate Fellowship Grants Program at 7 CFR part 3402 to address these problems. This Final Rule allows grantees up to 18 months after award to appoint Fellows, and permits the recruitment and training of replacement Fellows under certain circumstances. This Final Rule permits grantees to appoint as new Graduate Fellows students who have completed less than two semesters of full-time study. It also permits the Agency to fund postdoctoral Fellows preparing for a career in agricultural research, teaching or extension. Finally, this Final Rule authorizes Fellows, at the discretion of their institutions, to accept additional supplemental employment that will contribute to their training or research and provide eligibility for tuition waivers (*e.g.*, full or partial tuition waivers provided with research or teaching assignments).

Paperwork Reduction Act of 1995—Information Collection

Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the collection of information requirements contained in this Final Rule have been approved (OMB Approval No. 0524–0039).

Regulatory Flexibility Act

USDA certifies that this rule will not have a significant impact on a substantial number of small entities as defined in the Regulatory Flexibility Act, Public Law 96–354, as amended (5 U.S.C. 601, *et seq.*) because it is a Federal assistance program, not a regulatory regime, and the majority of awards will be made to colleges and universities that do not qualify as small entities.

Executive Order 12866

This rule has been reviewed under Executive Order 12866 and has been determined to be nonsignificant as it will not create a serious inconsistency or otherwise interfere with an action planned by another agency; will not materially alter the budgetary impact of entitlement, grants, user fees, or loan programs, or rights and obligations of the recipients thereof; and will not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or principles set forth in this Executive Order. This rule will not have an annual effect on the economy of $100 million or more or 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.

Unfunded Mandates Reform Act

Pursuant to title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), the Department assessed the effects of this rulemaking action on State, local, and Tribal government, and the public. This action does not compel the expenditure of $100 million or more by any State, local, or Tribal governments, or anyone in the private sector. Therefore, a statement under Section 202 of the Unfunded Mandates Reform Act of 1995 is not required.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

(1) Does not have an annual effect on the economy of $100 million or more;

(2) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and

(3) 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.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. In accordance with the Executive Order: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; (3) no administrative proceedings are required before bringing any judicial action regarding this rule.

Executive Order 13132

In accordance with Executive Order 13132, this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The policies contained in this rule do not have any substantial direct effect on the policymaking discretion of the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Nor does this rule impose substantial direct compliance costs on State and local governments.

Executive Order 12372

For the reasons set forth in the Final Rule Related Notice for 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), this program is excluded from the scope of the Executive Order 12372 which requires intergovernmental consultation with State and local officials. This program does not directly affect State and local governments.

Executive Order 13175

The policies contained in this rulemaking do not have tribal implications and thus no further action is required under Executive Order 13175.

List of Subjects in 7 CFR Part 3402

Administrative practice and procedure, Colleges and universities, Educational study programs, Grant programs—agriculture, Scholarships and fellowships.

■ For the reasons stated in the preamble, the Cooperative State Research, Education, and Extension Service revises title 7, part 3402 to read as follows:

PART 3402—FOOD AND AGRICULTURAL SCIENCES NATIONAL NEEDS GRADUATE AND POSTGRADUATE FELLOWSHIP GRANTS PROGRAM

Subpart A—General Introduction

Sec.

Subpart B—Program Description

Subpart C—Preparation of an Application

Subpart D—Submission and Evaluation of an Application

Subpart E—Supplementary Information

Authority: 7 U.S.C. 3316.

Subpart A—General Introduction

§ 3402.1 Applicability of regulations.

(a) The regulations of this part apply to competitive grants awarded under the provisions of section 1417(b)(6) of the National Agricultural Research, Extension and Teaching Policy Act of 1977, as amended, 7 U.S.C. 3152(b)(6). The Act designates the U.S. Department of Agriculture (USDA) as the lead Federal agency for agricultural research, extension, and teaching in the food and agricultural sciences. Section 1417(b)(6) authorizes the Secretary of Agriculture, who has delegated the authority to the Cooperative State Research, Education, and Extension Service (CSREES), to make competitive grants to land-grant colleges and universities, colleges and universities having significant minority enrollments and a demonstrable capacity to carry out the teaching of food and agricultural sciences, and to other colleges and universities having a demonstrable capacity to carry out the teaching of food and agricultural sciences, to administer and conduct graduate and postdoctoral fellowship programs to help meet the Nation's needs for development of scientific and professional expertise in the food and agricultural sciences. The Graduate Fellowships are intended to encourage outstanding students to pursue and complete graduate degrees in the areas of food and agricultural sciences designated by CSREES through the Office of Higher Education Programs (HEP) as national needs. The postdoctoral Fellowships are intended to provide additional mentoring and training to outstanding USDA Graduate Fellows who completed their doctoral degrees no more than five (5) years before they begin the postdoctoral Fellowships.

(b) The regulations of this part do not apply to grants awarded by the Department of Agriculture under any other authority.

§ 3402.2 Definitions.

As used in this part:

Citizen or national of the United States means—

(1) A citizen or native resident of a State; or,

(2) A person defined in the Immigration and Nationality Act, 8 U.S.C. 1101(a)(22), who, though not a citizen of the United States, owes permanent allegiance to the United States.

College and university means an educational institution in any State which—

(1) Admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate,

(2) Is legally authorized within such State to provide a program of education beyond secondary education,

(3) Provides an educational program for which a bachelor's degree or any other higher degree is awarded,

(4) Is a public or other nonprofit institution, and

(5) Is accredited by a nationally recognized accrediting agency or association.

Food and agricultural sciences means basic, applied, and developmental research, extension, and teaching activities in the food, agricultural, renewable natural resources, forestry, and physical and social sciences in the broadest sense of these terms including but not limited to research, extension and teaching activities concerned with the production, processing, marketing, distribution, conservation, consumption, research, and development of food and agriculturally related products and services, inclusive of programs in agriculture, natural resources, aquaculture, forestry, veterinary medicine, home economics, rural development, and closely allied fields.

Graduate degree means a master's or doctoral degree.

State means any one of the fifty States, the Commonwealth of Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Marianas, the Federated States of Micronesia, the Republic of the Marshall Islands, the Republic of Palau, the Virgin Islands of the United States, and the District of Columbia.

Teaching activities means formal classroom instruction, laboratory instruction, and practicum experience specific to the food and agricultural sciences and matters relating thereto conducted by colleges and universities offering baccalaureate or higher degrees.

§ 3402.3 Institutional eligibility.

Applications may be submitted by land-grant colleges and universities, by colleges and universities having significant minority enrollments and a demonstrable capacity to carry out the teaching of food and agricultural sciences, and by other colleges and universities having a demonstrable capacity to carry out the teaching of food and agricultural sciences. All applicants must be institutions that confer a graduate degree in at least one area of the food and agricultural sciences targeted for National Needs Fellowships, that have a significant on-going commitment to the food and agricultural sciences generally, and that have a significant ongoing commitment to the specific subject area for which a grant application is made. It is the objective to award grants to colleges and universities which have notable teaching and research competencies in the food and agricultural sciences. The Graduate Fellowships are specifically intended to support programs that encourage outstanding students to pursue and complete a graduate degree at such institutions in an area of the food and agricultural sciences for which there is a national need for the development of scientific and professional expertise. The postdoctoral Fellowships are designed to support academic programs that provide additional training and mentoring to USDA Graduate Fellows and have notable teaching and research competencies in the CSREES designated national need areas. Institutions which currently have excellent programs of graduate study and training in the food and agricultural sciences dealing with targeted national needs are particularly encouraged to apply for all National Needs Fellowships.

Subpart B—Program Description

§ 3402.4 Food and agricultural sciences areas targeted for National Needs Graduate and Postdoctoral Fellowship Grants Program support.

Areas of the food and agricultural sciences, including multidisciplinary studies, appropriate for Fellowship grant applications are those in which developing shortages of expertise have been determined and targeted by HEP for National Needs Graduate and Postdoctoral Fellowship Grants Program support. When funds are available and HEP determines that a new competition is warranted, the specific areas and funds per area will be identified in a funding opportunity announcement announcing the program and soliciting program applications.

§ 3402.5 Overview of National Needs Graduate and Postdoctoral Fellowship Grants Program.

(a) The program will provide funds for a limited number of grants to support graduate student stipends and cost-of-education institutional allowances. These grants will be awarded competitively to eligible institutions. In order to encourage the development of special activities that are expected to contribute to Fellows' advanced degree objectives, the program will also provide competitive, special international study or thesis/dissertation research travel allowances for a limited number of USDA Graduate Fellows. To encourage academic institutions to provide additional training/mentoring to outstanding USDA Graduate Fellows who have completed their doctoral degrees, the program will also provide postdoctoral Fellowship grants to a limited number of USDA Graduate Fellows.

(b) Based on the amount of funds appropriated in any fiscal year, HEP will determine:

(1) Whether new competitions for graduate Fellowships, postdoctoral Fellowships, and/or special international study or thesis/dissertation research travel allowances will be held during that fiscal year;

(2) The degree level(s) to be supported—master's, doctoral and/or postdoctoral;

(3) The proportion of appropriations to be targeted for Fellowship stipends for each respective degree level supported;

(4) The proportion of appropriations to be targeted for the cost-of-education institutional allowances for each respective degree level supported;

(5) The proportion of appropriations to be targeted for the special international study or thesis/dissertation research travel allowances for each respective degree level supported;

(6) The allowable stipend amount for each respective degree level supported, the cost-of-education institutional allowance for each respective degree level supported, and the maximum funds available for each special international study or thesis/dissertation research travel allowance for each respective degree level supported;

(7) The activities for which the cost-of-education allowance may be used for awards made in that year; and

(8) The maximum total funds that may be awarded to an institution under the program in a given fiscal year.

(c) HEP will also determine:

(1) The maximum number of national needs areas for which funding may be requested in a single application;

(2) The degree levels for which funding may be requested in a single application;

(3) The minimum and maximum number of fellowships for which an institution may apply in a single application; and

(4) The limits on the total number of applications that can be submitted by an institution, college, school, or other administrative unit.

(d) These determinations will be published as a part of the solicitation, which will be available at *http://www.grants.gov.*

§ 3402.6 Overview of the special international study and/or thesis/dissertation research travel allowance.

(a) For each USDA Graduate Fellow who desires to be considered for a special international study or thesis/dissertation research travel allowance, the Project Director must apply to HEP for a supplemental grant in accordance with instructions published in the solicitation. Postdoctoral Fellows are not eligible to receive the special international study or thesis/dissertation research travel allowance. Each application must include a ''Proposal Cover Page'' (Form CSREES–2002), ''Project Summary'' (Form CSREES–2003), ''Budget'' (Form CSREES–2004) and National Environmental Policy Act Exclusions Form (Form CSREES—2006).

(1) To provide HEP with sufficient information upon which to evaluate the merits of the requests for a special international study or thesis/dissertation research travel allowance, each application for a supplemental grant must contain a narrative which provides the following:

(i) The specific destination(s) and duration of the travel;

(ii) The specific study or thesis/dissertation research activities in which the Fellow will be engaged;

(iii) How the international experience will contribute to the Fellow's program of study;

(iv) A budget narrative specifying and justifying the dollar amount requested for the travel;

(v) Summary credentials of the faculty or other professionals with whom the Fellow will be working during the international experience (summary credentials must not exceed three pages per person);

(vi) A letter from the dean of the Fellow's college or equivalent administrative unit supporting the Fellow's travel request and certifying that the travel experience will not jeopardize the Fellow's satisfactory progress toward degree completion; and

(vii) A letter from the fellowship grant Project Director certifying the Fellow's eligibility, the accuracy of the Fellow's travel request, and the relevance of the travel to the Fellow's advanced degree objectives.

(2) The narrative portion of the application must not exceed the page limitation included in the program solicitation.

(b) All complete requests will be evaluated by professional staff from USDA or other Federal agencies, as appropriate. Evaluation criteria will be published in the solicitation. HEP will award grants in accordance with evaluation criteria and to the extent possible based on availability of funds.

(c) Any current Fellow with sufficient time to complete the international experience before the termination date of the grant under which he/she is supported is eligible for a special international study or thesis/dissertation research travel allowance. Before the international study or thesis/dissertation research travel may commence, a Fellow must have completed one academic year of full-time study, as defined by the institution, under the Fellowship appointment and arrangements must have been formalized for the Fellow to study and/or conduct research in the foreign location(s).

§ 3402.7 Fellowship appointments.

(a)(1) Fellows must be identified and Fellowships must be awarded within 18 months of the effective date of a grant. Institutions failing to meet this deadline will be required to refund monies associated with any unawarded Fellowship(s). Graduate Fellowship appointments may be held only by persons who enroll and pursue full-time study in a graduate degree program in the national need area and at the degree level supported by the grant. Postdoctoral Fellowship appointments may be held only by persons who pursue full-time traineeship in research, teaching or extension in the national need area and are supervised by the mentor indicated in the grant application.

(2) It will be the responsibility of the grantee institution to award fellowships to students of superior academic ability.

(3) Graduate Fellows:

(i) Must be appointed before completing two semesters or equivalent hours of full-time study, as defined by the institution, or immediately after passing of candidacy/qualifying examinations, whichever is later;

(ii) Must be citizens or nationals of the United States as determined in accordance with Federal law; and

(iii) Must have strong interest, as judged by the institution, in pursuing a degree in a targeted national need area and in preparing for a career as a food or agricultural scientist or professional.

(4) Postdoctoral Fellows:

(i) Must have been USDA Graduate Fellows who successfully completed their doctoral degrees in areas of the food and agricultural sciences designated by CSREES as national need areas;

(ii) Must not have obtained their doctoral degrees more than five years prior to beginning their postdoctoral Fellowships;

(iii) Must have strong interest, as judged by the institution, in preparing for a career in agricultural research, teaching or extension.

(5)(i) A doctoral level Graduate Fellow who maintains satisfactory progress in his or her course of study is eligible for support for a maximum of 36 months within a 42-month period. A master's level Fellow who maintains satisfactory progress in his or her course of study is eligible for support for a maximum of 24 months during a 30-month period. A postdoctoral Fellow who achieves his or her training objectives is eligible for support for a maximum of 36 months during a 60-month period. It is the intent of this program that Graduate Fellows pursue full-time uninterrupted study or thesis/dissertation research, including time spent pursuing USDA-funded special international study or thesis/dissertation research activities.

(ii) Postdoctoral Fellowship appointments may be held only by persons who pursue full-time traineeship in research, teaching, or extension in the national need area and are supervised by the mentor indicated in the grant application.

However, during the period of support, USDA Graduate and Postdoctoral Fellows are permitted, at the discretion of their institutions, to accept additional supplemental employment that would positively contribute to their training or research and provide eligibility for tuition waivers (*e.g.*, full or partial tuition waivers with research or teaching assignments).

(iii) For graduate Fellows requiring additional time to complete a degree, it is expected that the institution will endeavor to continue supporting individuals originally appointed to Fellowships through such other institutional means as teaching assistantships and research assistantships. For postdoctoral Fellows who terminate the Fellowships prematurely, the institution must return all unexpended monies to USDA. For USDA Graduate Fellows who complete the program of study early (less than 24 months for master's degree or 36 months for doctoral degree) or terminate their Fellowships prematurely, the institution may use any unexpended monies, within the time remaining on the project grant, to support pursuit of a doctoral degree in a discipline in the food and agricultural sciences by a master's degree level Fellow at the grantee institution; or a replacement Graduate Fellow. Where less than one semester/quarter remains before the expiration date of the Graduate Fellowship grant, the institution must refund any unexpended monies to the granting agency. Such funds cannot be used to increase the annual stipend amounts for current USDA Graduate or Postdoctoral Fellows.

(b) Within the framework of the regulations in this part, all decisions with respect to the appointment of Fellows will be made by the institution. However, institutions are urged to take maximum advantage of opportunities for awarding Fellowships to members of underrepresented groups at the graduate and postdoctoral level in the food and agricultural sciences, particularly minorities and women. Throughout a USDA Graduate Fellow's tenure, the institution should satisfy itself that the Fellow is making satisfactory academic progress, and carrying out, or planning to carry out, national needs related research. If an institution finds it necessary to terminate support of a USDA Graduate Fellow or a postdoctoral Fellow for insufficient progress or by decision on the part of the Fellow, the Fellow may no longer receive funds from the active grant. However, termination does not automatically disqualify a Fellow from receiving future grant support under this program. If a graduate or postdoctoral Fellow finds it necessary to interrupt his or her program of study because of health, personal reasons, or outside employment, the institution must reserve the funds for the purpose of allowing the Fellow to resume funded training any time within a six (6) month period. However, a USDA Graduate or Postdoctoral Fellow who finds it necessary to interrupt his/her program of training more than one time cannot exceed a total of six (6) months' cumulative leave status without forfeiting eligibility. For a USDA Graduate Fellowship terminated because of insufficient progress, by decision on the part of the Fellow, or reserved due to an interrupted program but not resumed within the required time period, the institution may use any unexpended monies to support, within the time remaining on the project grant, and subject to the limitations above, a replacement Fellow at the same master's or doctoral levels. For postdoctoral Fellowships terminated because of insufficient progress, by decision on the part of the Fellow, or reserved due to an interrupted program but not resumed within the required time period, the institution must return all the unexpended monies to CSREES.

(c) Only Fellows enrolled in master's programs of study may be supported under master's Fellowship grants. Master's degree level Fellows who complete their degree early may be supported under master's Fellowship grants, if they are enrolled in Ph.D. programs in areas of the food and agricultural sciences designated as national need areas. Only Fellows enrolled in doctoral programs of study may be supported under doctoral degree Fellowship grants. Only USDA Graduate Fellows who have completed their doctoral degrees may be supported under postdoctoral Fellowship grants.

§ 3402.8 Fellowship activities.

A USDA Graduate Fellow shall be enrolled as a full-time graduate student, as defined by the institution, at all times during the tenure of the Fellowship in the national need area and at the degree level supported by the grant. This includes the time used for special international study or thesis/dissertation research, if the international travel is funded through a special international study or thesis/dissertation research travel allowance under this grant program. However, the normal requirement for formal registration during part of this tenure may be waived if permitted by the policy of the Fellowship institution, provided that the Graduate Fellow is making satisfactory progress toward degree completion and remains engaged in appropriate full-time Fellowship activities such as thesis/dissertation research. Postdoctoral Fellowship appointments may be held only by persons who pursue full-time traineeship in research, teaching, or extension in the national need area and are supervised by the mentor indicated in the grant application. Graduate and postdoctoral Fellows in academic institutions are not entitled to vacations as such. They are entitled to the short normal student holidays observed by the institution. The time between academic semesters or quarters is to be utilized as an active part of the grant period. During the period of support, USDA Graduate and Postdoctoral Fellows are permitted, at the discretion of their institutions, to accept additional supplemental employment that would positively contribute to their training or research and provide eligibility for tuition waivers (*e.g.*, full or partial tuition waivers provided with research or teaching assignments). A Fellow may accept from any other entity a grant supporting the Fellow's research costs.

§ 3402.9 Financial provisions.

An institution may elect to apply the cost-of-education/training institutional allowance to a Fellow's tuition, fees and laboratory expenses and to defray other program expenses (*e.g.*, recruitment, travel, publications, or salaries of project personnel), unless stated otherwise in the solicitation. Tuition and fees are the responsibility of the Fellow unless an institution elects to use its cost-of-education institutional allowance for this purpose or elects to pay such costs out of non-USDA monies. No dependency allowances are provided to any USDA Graduate or Postdoctoral Fellows. Stipend payments and special international study or thesis/dissertation research travel allowances may be made to Fellows by the institution, in accordance with standard institutional procedures for graduate and postdoctoral fellowships and assistantships.

Subpart C—Preparation of an Application

§ 3402.10 Application package.

Applications will be available at *http://www.grants.gov* and through the CSREES Web site. An application package will be made available to any potential grant applicant upon request. This package will include all necessary forms and instructions to apply for a grant under this program.

§ 3402.11 Proposal cover page.

The Proposal Cover Page, Form CSREES–2002, must be completed in its entirety, including all authorizing signatures. One copy of each grant application must contain the original pen-and-ink signatures, or approved electronic equivalent, of:

(a) The Project Director(s); and

(b) The Authorized Organizational Representative for the institution.

§ 3402.12 Project summary.

Using the Project Summary, Form CSREES–2003, applicants must summarize the proposed graduate program of study and/or the academic and research strengths of the institution in the national need area for which funding is requested. To the extent possible, applicants should emphasize the uniqueness of the proposed program of training. The summary should not include any reference to the specific number of fellowships requested. The information on Form CSREES–2003 will be used in assigning the most appropriate panelists to review an application. If an application is supported, this Form may be used in program publications.

§ 3402.13 National need narrative.

HEP will determine the composition of the narrative for each competition, including page limits, font size, the number and the order of sections, and other supporting information that may be required. Detailed instructions for preparing the narrative will be published in the solicitation.

§ 3402.14 Budget and budget narrative.

Applicants must prepare the Budget, Form CSREES–2004, and a budget narrative identifying all costs associated with the application. Instructions for completing the Budget are provided with the form.

§ 3402.15 Faculty vitae.

This section should include a Summary Vita, no more than 2 pages excluding publications listing, for each faculty member contributing significantly to institutional competence at the level of graduate study for the national need area addressed in the application. Applicants should arrange the faculty vitae with the Project Director(s) first, followed by the remaining faculty, in alphabetical order.

§ 3402.16 Appendix.

Any additional supporting information deemed essential to enhancing the application should be included in an Appendix and referenced in the national need narrative.

Subpart D—Submission and Evaluation of an Application

§ 3402.17 Where to submit an application.

The solicitation will indicate the date for submission of applications and the number of application copies required to apply for a grant. In addition, the solicitation will provide the address to which the application, the required number of accompanying duplicate copies, and any other required forms and materials should be sent.

§ 3402.18 Evaluation criteria.

Applications addressing a particular national need area at a particular Fellowship level (master's, doctoral or postdoctoral) will be evaluated in competition with other applications addressing the same national need area at the same level. Both USDA internal staff and the panelists will evaluate applications on the basis of the criteria published in the solicitation.

Subpart E—Supplementary Information

§ 3402.19 Terms and conditions of grant awards.

Within the limit of funds available for such purpose, the awarding official shall make project grants to those responsible, eligible applicants whose applications are judged most meritorious according to evaluation criteria stated in the solicitation. The beginning of the project period shall be no later than September 30 of the Federal fiscal year in which the project is approved for support. All funds granted under this part shall be expended solely for the purpose for which the funds are granted in accordance with the approved application and budget, the regulations of this part, the terms and conditions of the award, the applicable Federal cost principles, and the Department's assistance regulations (parts 3015 and 3019 of 7 CFR).

§ 3402.20 Other Federal statutes and regulations that apply.

Several Federal statutes and regulations apply to grant applications considered for review and to grants awarded under this program. These include, but are not limited to:

7 CFR part 1, subpart A—USDA implementation of the Freedom of Information Act.

7 CFR part 3—USDA implementation of OMB Circular No. A–129 regarding debt collection.

7 CFR part 15, subpart A—USDA implementation of title VI of the Civil Rights Act of 1964, as amended.

7 CFR part 331 and 9 CFR part 121—USDA implementation of the Agricultural Bioterrorism Protection Act of 2002.

7 CFR part 3015, or any successor rule—USDA Uniform Federal Assistance Regulations, as amended, implementing OMB directives (*i.e.*, Circular Nos. A–21 and A–122) and incorporating provisions of 31 U.S.C. 6301–6308 (formerly the Federal Grant and Cooperative Agreement Act of 1977, Pub. L. No. 95–224), as well as general policy requirements applicable to recipients of Departmental financial assistance.

7 CFR part 3017—USDA implementation of Government wide Debarment and Suspension (Nonprocurement) and Government wide Requirements for Drug-Free Workplace (Grants).

7 CFR part 3018—USDA implementation of New Restrictions on Lobbying. Imposes prohibitions and requirements for disclosure and certification related to lobbying on recipients of Federal contracts, grants, cooperative agreements, and loans.

7 CFR part 3019—USDA implementation of OMB Circular No. A–110, Uniform Administrative Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations.

7 CFR part 3052—USDA implementation of OMB Circular No. A–133, Audits of States, Local Governments, and Nonprofit Organizations.

7 CFR part 3407—CSREES implementation of the National Environmental Policy Act.

29 U.S.C. 794, Section 504—Rehabilitation Act of 1973, and

7 CFR part 15b (USDA implementation of statute), prohibiting discrimination based upon physical or mental handicap in Federally assisted programs.

35 U.S.C. 200 *et seq.* —Bayh-Dole Act, controlling allocation of rights to inventions made by employees of small business firms and domestic nonprofit organizations, including universities, in Federally assisted programs (implementing regulations are contained in 37 CFR part 401).

§ 3402.21 Confidential aspects of applications and awards.

When an application results in a grant, the application and supporting information become part of the record of CSREES transactions, and available to the public upon specific request. Information that the Secretary determines to be of a confidential, privileged, or proprietary nature will be held in confidence to the extent permitted by law. Therefore, any information that the applicant wishes to have considered as confidential, privileged, or proprietary should be clearly marked within the application.

The original copy of an application that does not result in a grant will be retained by the Agency for a period of one year. Other copies will be destroyed. Such an application will be released only with the consent of the applicant or to the extent required by law. An application may be withdrawn at any time prior to the final action thereon.

§ 3402.22 Access to peer review information.

After final decisions have been announced, HEP will, upon request, inform the PD of the reasons for its decision on an application. Verbatim copies of summary reviews, not including the identity of the reviewers, will be made available to respective PDs upon specific request.

§ 3402.23 Documentation of progress on funded projects.

(a) Fellowships/Scholarships Entry/Exit Forms (Form CSREES–2010) are available from CSREES upon request. Upon request by HEP, Project Directors awarded Graduate Fellowship (excluding supplemental international and postdoctoral) grants under the program shall complete and submit this form.

(1) Appointment Information shall be submitted to HEP within 3 months of appointment of a Fellow;

(2) The Project Director shall submit an annual update of each Fellow's progress to HEP by September 30 each year. Additional progress reports may be needed to assess continuing progress of Fellows supported by any special international study or thesis/dissertation research allowance and/or institutional adherence to program guidelines.

(3) Exit Information shall be completed and submitted to HEP by the Project Director for each Fellow supported by a grant as soon as a Fellow either: Graduates; is officially terminated from the Fellowship or the academic program due to unsatisfactory academic progress; or voluntarily withdraws from the Fellowship or the academic program. If a Fellow has not completed all degree requirements at the end of the five-year grant duration, HEP may request a preliminary exit report. In such a case, a final exit report shall be required at a later date. When a final exit report for each Fellow supported by a grant has been accepted by HEP, the grantee will have satisfied the requirement of a final performance report for the grant. Additional follow-up reports to track Fellows' career patterns may be requested.

(b) All grantees (supplemental international, graduate, and postdoctoral) shall submit initial project information and annual and summary reports to CSREES' Current Research Information System (CRIS). The CRIS database contains narrative project information, progress/impact statements, and final technical reports that are made available to the public. For applications recommended for funding, instructions on preparation and submission of project documentation will be provided to the applicant by the agency contact. Documentation must be submitted to CRIS before CSREES funds will be released. Project reports will be requested by the CRIS office when required. For more information about CRIS, visit *http://cris.csrees.usda.gov.*

§ 3402.24 Evaluation of program.

Grantees should be aware that HEP may, as a part of its own program evaluation activities, carry out in-depth evaluations of assisted activities through independent third parties. Thus, grantees should be prepared to cooperate with evaluators retained by HEP to analyze both the institutional context and the impact of any supported project.

Dated: October 19, 2004.

Daniel E. Kugler,

Acting Administrator, Cooperative State Research, Education, and Extension Service.

[FR Doc. 04–23896 Filed 10–25–04; 8:45 am]

BILLING CODE 3410–22–P

Federal Register

Tuesday,
October 26, 2004

Part IV

Department of Labor

Office of the Secretary

Memorandum of Succession for Executive Continuity; Notice

DEPARTMENT OF LABOR

Office of the Secretary

Memorandum of Succession for Executive Continuity

AGENCY: Office of the Secretary, Labor.

ACTION: Notice.

SUMMARY: On October 14, 2004, Secretary of Labor Elaine L. Chao, pursuant to Secretary's Order 4–2003 (68 FR 41048, July 9, 2003), and the authorities cited therein, issued a ''Memorandum For Department of Labor Executive Staff'' to provide lines of succession in case of absence, sickness, resignation, or death of agency heads and during periods of national emergency declared by the President and to provide for ongoing operational management of agency programs and personnel. The Secretary has directed that this Memorandum be published in the **Federal Register**, and a copy of the Memorandum is annexed hereto as an Appendix.

DATES: This notice is effective October 26, 2004.

FOR FURTHER INFORMATION CONTACT: Contact Edward C. Hugler, Deputy Assistant Secretary for Operations, tel. (202) 693–4040.

Signed in Washington, DC, this 20th day of October, 2004.

Patrick Pizzella,

Assistant Secretary of Labor for Administration and Management.

Memorandum for Department of Labor Executive Staff

From: Elaine L. Chao, Secretary of Labor.

Subject: To Provide for the Order of Succession for Executive Continuity.

October 14, 2004.

This memorandum is issued pursuant to Secretary's Order 4–2003 and the authorities cited therein, in order to provide lines of succession in case of absence, sickness, resignation, or death of agency heads and during periods of national emergency declared by the President and to provide for ongoing operational management of agency programs and personnel.

Functions and duties and ongoing operational management responsibilities of the officers of the Department whose appointment to office is required to be made by the President, by and with the advice and consent of the Senate (PAS), will be performed in an acting capacity by the below designated ''first assistants,'' unless and until the President makes an alternative designation under the Federal Vacancies Reform Act of 1998 (FVRA).[1] Functions and duties are those non-delegable responsibilities established by law (statute or regulation) and required to be performed by, and only by, the PAS.

In the event that the first assistant does not serve or is barred from serving, unless and until the President makes an alternative designation under the FVRA, the person whose designation closest follows that of the first assistant shall perform the operational management of the agency. However, the functions and duties of the PAS may not be performed by any person other than the person serving in an acting capacity, in accord with FVRA (or, in the absence of an acting officer, by the Secretary pursuant to the FVRA).

The Office of the Chief Information Officer and the Bureau of International Labor Affairs, which are not covered by the statute, (because they are not headed by PAS positions) are included in this memorandum for the purpose of consolidating the presentation of the Department's program for establishing orderly internal succession in the event of vacancies.

This memorandum supersedes all prior inconsistent agency delegations. Agency Heads shall assure that agency delegations, position descriptions, and other pertinent documents are maintained consistently with the designations provided below. Any modifications to the Order of Succession specified in this memorandum are solely reserved to the Secretary.

This memorandum shall be published in the **Federal Register** and codified in the Department of Labor Manual Series. This memorandum is subject to periodic revision by the Secretary, as necessary, and is effective on the date indicated above.

Designation of Agency First Assistant [1] and Order of Succession

A. PAS Positions Under the Secretary of Labor

Deputy Secretary of Labor

Designation to be made by Presidential direction, as provided in 5 U.S.C. 3345.

Solicitor of Labor

Deputy Solicitor
Deputy Solicitor for National Operations
Deputy Solicitor for Regional Operations

[1] The first assistants are designated in the list that follows as the position designated immediately below the PAS or non-PAS agency head position title.

Assistant Secretary for Administration and Management

Deputy Assistant Secretary for Operations
Deputy Assistant Secretary for Budget and Performance Planning
Deputy Assistant Secretary for Security and Emergency Management

Assistant Secretary for the Employee Benefits Security Administration [2]

Deputy Assistant Secretary for Policy
Deputy Assistant Secretary for Program Operations

Assistant Secretary for the Employment Standards Administration

Administrator of the Wage and Hour Division
Deputy Assistant Secretary
Deputy Assistant Secretary for Federal Contract Compliance
Deputy Assistant Secretary for Labor-Management Programs
Director, Office of Workers' Compensation Programs

Assistant Secretary for the Employment and Training Administration

Deputy Assistant Secretary for Employment and Training [3]
Deputy Assistant Secretary for Employment and Training [4]

Assistant Secretary for the Mine Safety and Health Administration

Deputy Assistant Secretary for Mine Safety and Health [5]
Deputy Assistant Secretary for Mine Safety and Health [6]

Assistant Secretary for the Occupational Safety and Health Administration

Deputy Assistant Secretary [7]
Deputy Assistant Secretary

Assistant Secretary for the Office of the Assistant Secretary for Policy

Deputy Assistant Secretary [8]
Deputy Assistant Secretary for Policy (Operations and Analysis)

Assistant Secretary for the Office of Congressional and Intergovernmental Affairs

Deputy Assistant Secretary for Congressional Affairs
Deputy Assistant Secretary for Intergovernmental Affairs

Assistant Secretary for the Office of Disability Employment Policy

Deputy Assistant Secretary
Director, Office of Operations

Assistant Secretary for the Office of Public Affairs

Deputy Assistant Secretary [9]
Deputy Assistant Secretary [10]

Deputy Assistant Secretary [11]

Assistant Secretary for the Veterans' Employment and Training Service

Deputy Assistant Secretary
Deputy Assistant Secretary for Operations and Management
Director of Operations and Programs

Director of the Women's Bureau

Deputy Director [12]
Regional Office Coordinator

Administrator of the Wage and Hour Division

Deputy Wage and Hour Administrator

Commissioner of the Bureau of Labor Statistics

Deputy Commissioner

Chief Financial Officer

Deputy Chief Financial Officer

Inspector General

Deputy Inspector General

B. Non-PAS Agency Head Positions

Deputy Under Secretary for International Affairs of the Bureau of International Labor Affairs

Associate Deputy Under Secretary for Policy
Associate Deputy Under Secretary and Director of International Economic Affairs

Chief Information Officer

Deputy Chief Information Officer

[1] The first assistants are designated in italic font immediately below the PAS or Non-PAS position title.

[2] Described as Assistant Secretary of Labor in charge of the Pension and Welfare Benefits Administration in Executive Order 13245. This agency was renamed Employee Benefits Security Administration in Secretary's Order 1–2003.

[3] This Deputy Assistant Secretary position is responsible for the formulation of policies and development of multi-year goals, objectives and strategies, among other responsibilities. Organizationally, the position is known as the Deputy Assistant Secretary for the Workforce Investment System.

[4] This Deputy Assistant Secretary position is responsible for providing leadership and direction to ETA operations with specific direction provided to administrative and management systems and activities. Organizationally, this position is known as the Deputy Assistant Secretary for Performance and Administration.

[5] This Deputy Assistant Secretary is responsible for the formulation of policies and development of multi-year goals, objectives, and strategies, among other responsibilities. Organizationally, the position is known as the Deputy Assistant Secretary for Policy.

[6] This Deputy Assistant Secretary is responsible for the day-to-day management of internal operations, among other responsibilities. Organizationally, the position is known as the Deputy Assistant Secretary for Operations.

[7] This Deputy Assistant Secretary position is responsible for Congressional and Intergovernmental liaison activity, among other responsibilities.

[8] This Deputy Assistant Secretary serves as liaison to the Executive Office of the President to assure Departmental policies, goals, objectives and strategies reflect the Administration's positions.

[9] This Deputy Assistant Secretary serves as the primary adviser to the Assistant Secretary and other DOL officials on public affairs aspects of policy and program development, among other responsibilities.

[10] This Deputy Assistant Secretary develops marketing and public outreach campaigns for programs or issues and serves as the primary spokesperson for the Secretary and the Department, among other responsibilities.

[11] This Deputy Assistant Secretary serves as the principal career public affairs consultant to the Assistant Secretary and manages and directs the office's day-to-day public affairs activities, among other responsibilities.

[12] This position is first assistant, pursuant to 29 U.S.C. 14.

[FR Doc. 04–23947 Filed 10–25–04; 8:45 am]

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Federal Register

Tuesday,
October 26, 2004

Part V

The President

Executive Order 13360—Providing Opportunities for Service-Disabled Veteran Businesses To Increase Their Federal Contracting and Subcontracting

Federal Register
Vol. 69, No. 206
Tuesday, October 26, 2004

Presidential Documents

Title 3—

The President

Executive Order 13360 of October 20, 2004

Providing Opportunities for Service-Disabled Veteran Businesses To Increase Their Federal Contracting and Subcontracting

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to strengthen opportunities in Federal contracting for service-disabled veteran businesses, it is hereby ordered as follows:

Section 1. *Policy.* America honors the extraordinary service rendered to the United States by veterans with disabilities incurred or aggravated in the line of duty during active service with the armed forces. Heads of agencies shall provide the opportunity for service-disabled veteran businesses to significantly increase the Federal contracting and subcontracting of such businesses. To achieve that objective, agencies shall more effectively implement section 15(g) of the Small Business Act (15 U.S.C. 644(g)), which provides that the President must establish a goal of not less than 3 percent for participation by service-disabled veteran businesses in Federal contracting, and section 36 of that Act (15 U.S.C. 657f), which gives agency contracting officers the authority to reserve certain procurements for service-disabled veteran businesses.

Sec. 2. *Duties of Agency Heads.* To implement the policy set forth in section 1, heads of agencies shall:

(a) develop a strategy to implement the policy set forth in section 1;

(b) make the agency's strategy publicly available and report annually to the Administrator of the Small Business Administration on implementation of the agency's strategy;

(c) designate a senior-level official who shall be responsible for developing and implementing the agency's strategy;

(d) include development and implementation of the agency's strategy and achievements in furtherance of the strategy as significant elements in any performance plans of the agency's designated agency senior-level official, chief acquisition officer, and director of small and disadvantaged business utilization; and

(e) include in the agency's strategy plans for:

(i) reserving agency contracts exclusively for service-disabled veteran businesses;

(ii) encouraging and facilitating participation by service-disabled veteran businesses in competitions for award of agency contracts;

(iii) encouraging agency contractors to subcontract with service-disabled veteran businesses and actively monitoring and evaluating agency contractors' efforts to do so;

(iv) training agency personnel on applicable law and policies relating to participation of service-disabled veteran businesses in Federal contracting; and

(v) disseminating information to service-disabled veteran businesses that would assist these businesses in participating in awards of agency contracts.

Sec. 3. *Additional Duties of Administrator of the Small Business Administration.* The Administrator of the Small Business Administration shall:

(a) designate an appropriate entity within the Small Business Administration that shall, in coordination with the Veterans Affairs' Center for Veterans Enterprise (CVE), provide to service-disabled veteran businesses information and assistance concerning participation in Federal contracting;

(b) advise and assist heads of agencies in their implementation of section 2 of this order; and

(c) make available to service-disabled veteran businesses training in Federal contracting law, procedures, and practices that would assist such businesses in participating in Federal contracting.

Sec. 4. *Additional Duties of Administrator of General Services.* The Administrator of General Services shall:

(a) establish a Government-wide Acquisition Contract reserved for participation by service-disabled veteran businesses; and

(b) assist service-disabled veteran businesses to be included in Federal Supply Schedules.

Sec. 5. *Additional Duties of the Secretary of Defense.* The Secretary of Defense shall direct the Defense Acquisition University (DAU) to develop training on contracting with service-disabled veteran businesses and make this training available on line through the DAU continuous learning program.

Sec. 6. *Additional Duties of the Secretary of Veterans Affairs.* The Secretary of Veterans Affairs shall assist agencies by making available services of the CVE and assist in verifying the accuracy of contractor registration databases with regard to service-disabled veteran businesses.

Sec. 7. *Additional Duties of the Secretary of Labor and Secretary of Veterans Affairs.* The Secretary of Labor and Secretary of Veterans Affairs shall, respectively, direct the Transition Assistance Program and the Disability Transition Assistance Program to educate separating service members as to the benefits available to service-disabled veteran businesses and as to potential entrepreneurial opportunities.

Sec. 8. *Definitions.* As used in this order:

(a) the term ''agency'' means an ''executive agency'' as that term is defined in section 105 of title 5, United States Code, excluding an executive agency that has fewer than 500 employees, the Government Accountability Office, or a Government corporation;

(b) the term ''service-disabled'' means, with respect to disability, that the disability was incurred or aggravated in the line of duty in the active service in the United States Armed Forces;

(c) the term ''service-disabled veteran'' means a veteran, as defined in 38 U.S.C. 101(2), with a disability that is service-connected, as defined in 38 U.S.C. 101(16);

(d) the term ''service-disabled veteran business'' means a small business concern owned and controlled by service-disabled veterans, as defined in section 3(q) of the Small Business Act (15 U.S.C. 632(q)); and

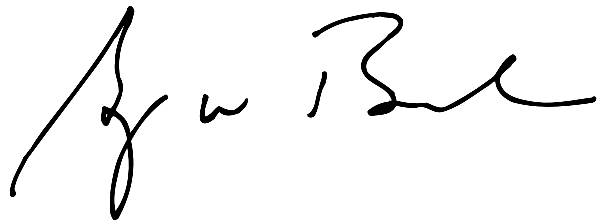
(e) the term ''small business concern'' has the meaning specified in section 3(a) of the Small Business Act (15 U.S.C. 632(a)) and the definitions and standards issued under that section.

Sec. 9. *General Provisions.* (a) Heads of agencies shall carry out duties assigned by sections 3, 4, 5, 6, and 7 of this order to the extent consistent with applicable law and subject to the availability of appropriations.

(b) To the extent permitted by law, an agency shall disclose personally identifying information on service-disabled veterans to other agencies who require such information in order to discharge their responsibilities under this order.

(c) An agency that consists of a multi-member commission shall implement this order to the extent it determines appropriate to the accomplishment of the agency's mission.

(d) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, instrumentalities or entities, its officers, employees or agents, or any other person.



THE WHITE HOUSE,
October 20, 2004.

[FR Doc. 04–24098
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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.

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H.R. 5122/P.L. 108–349
To amend the Congressional Accountability Act of 1995 to permit members of the Board of Directors of the Office of Compliance to serve for 2 terms. (Oct. 21, 2004; 118 Stat. 1389)

S. 33/P.L. 108–350
To authorize the Secretary of Agriculture to sell or exchange all or part of certain administrative sites and other land in the Ozark-St. Francis and Ouachita National Forests and to use funds derived from the sale or exchange to acquire, construct, or improve administrative sites. (Oct. 21, 2004; 118 Stat. 1390)

S. 1791/P.L. 108–351
To amend the Lease Lot Conveyance Act of 2002 to provide that the amounts received by the United States under that Act shall be deposited in the reclamation fund, and for other purposes. (Oct. 21, 2004; 118 Stat. 1394)

S. 2178/P.L. 108–352
National Park System Laws Technical Amendments Act of 2004 (Oct. 21, 2004; 118 Stat. 1395)

S. 2415/P.L. 108–353
To designate the facility of the United States Postal Service located at 4141 Postmark Drive, Anchorage, Alaska, as the "Robert J. Opinsky Post Office Building". (Oct. 21, 2004; 118 Stat. 1399)

S. 2511/P.L. 108–354
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S. 2742/P.L. 108–356
To extend certain authority of the Supreme Court Police, modify the venue of prosecutions relating to the Supreme Court building and grounds, and authorize the acceptance of gifts to the United States Supreme Court. (Oct. 21, 2004; 118 Stat. 1416)

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