11–5–04 Friday
Vol. 69 No. 214 Nov. 5, 2004

Pages 64475–64636

Federal Register

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Presidential Documents

Title 3—

The President

Presidential Determination No. 2005–06 of October 22, 2004

Drawdown of Commodities and Services from the Department of Defense to Support African Union Peacekeeping in Darfur, Sudan

Memorandum for the Secretary of State [and] the Secretary of Defense

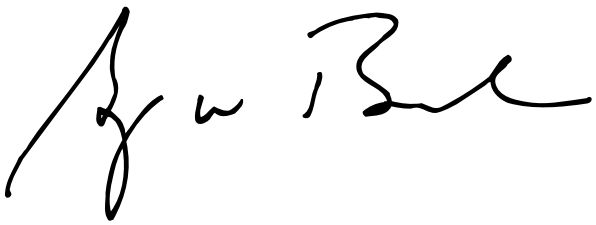
Pursuant to the authority vested in me by the Constitution and laws of the United States, including section 552(c)(2) of the Foreign Assistance Act of 1961, as amended (FAA), I hereby determine that:

(1) as a result of an unforeseen emergency, the provision of assistance under Chapter 6 of Part II of the Act in amounts in excess of funds otherwise available for such assistance is important to the national interests of the United States; and

(2) such unforeseen emergency requires the immediate provision of assistance under Chapter 6 of Part II of the Act.

I therefore direct the drawdown of up to $2,500,000 in commodities and services from the Department of Defense to support the transportation of African Union forces to Darfur, Sudan.

The Secretary of State is authorized and directed to report this determination to the Congress and to publish it in the **Federal Register**.



THE WHITE HOUSE,
Washington, October 22, 2004.

[FR Doc. 04–24846
Filed 11–4–04; 8:45 am]
Billing code 4710–10–P

Rules and Regulations

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

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

DEPARTMENT OF AGRICULTURE

7 CFR Chaper XXX

Office of the Chief Financial Officer; Policy Statement for Direct Final Rulemaking

AGENCY: Office of the Chief Financial Officer, USDA.

ACTION: Policy statement.

SUMMARY: The Office of the Chief Financial Officer (OCFO) is implementing a new ''direct final'' rulemaking procedure to expedite any noncontroversial changes to its regulations.

DATES: Effective November 5, 2004.

FOR FURTHER INFORMATION CONTACT: Matthew Faulkner, Office of the Chief Financial Officer, Credit, Travel and Grants Policy Division, United States Department of Agriculture, (202) 720–1307.

SUPPLEMENTARY INFORMATION:

The Direct Final Rule Process

Rules that OCFO determines to be noncontroversial and unlikely to result in adverse comments will be published in the **Federal Register** as direct final rules. Each direct final rule will advise the public that no adverse comments are anticipated. Unless any adverse comments are received within 60 days, the direct final rule will take effect 90 days after it is published in the **Federal Register**.

If OCFO receives written adverse comments or notice of intent to submit such comments within 60 days of the publication of a direct final rule, OCFO will publish in the **Federal Register** a document stating that adverse comments were received and withdrawing the direct final rule prior to its effective date.

Any comment expressing support for the rule as published will not be considered adverse. Additionally, any comment suggesting that requirements in the rule should or should not be employed by OCFO in other programs or situations outside the scope of the direct final rule will not be considered adverse.

In accordance with rulemaking provisions of the Administrative Procedure Act (5 U.S.C. 553), the direct final rulemaking procedure notifies the public of OCFO intent to adopt a new rule and gives interested persons an opportunity to participate in the rulemaking process through the submission of comments for consideration. If neither written adverse comments nor written notice of intent to submit such comments are received, OCFO will publish a document in the **Federal Register** stating that no adverse comments were received and confirming the direct final rule's effective date.

Determining When To Use Direct Final Rulemaking

OCFO promulgates USDA-wide policies pertaining to Federal financial assistance. Many of these policies implement broader Federal policies established by the Office of Management and Budget (OMB), frequently through OMB circulars. OMB typically uses a notifier and comment process in adopting the OMB circulars. OCFO has limited discretion in implementing these policies through rulemakings governing USDA financial assistance. Typically, such OMB policies are implemented verbatim.

OCFO may use the direct final rulemaking process to revise USDA regulations to implement revisions to OMB Circulars. For instance, if OMB revises the dollar thresholds in an OMB Circular, OCFO would use a direct final rulemaking to incorporate the revisions into USDA-implementing regulations.

Not all OCFO rules are good candidates for the direct final rulemaking. OCFO intends to use the direct final rulemaking procedure only for rules considered to be noncontroversial and unlikely to generate adverse comments. The decision whether to use the direct final rulemaking process for a particular action will be based on OCFO experience with similar actions.

Patricia E. Healy,
Acting Chief Financial Officer.
Ann M. Veneman,
Secretary of Agriculture.

[FR Doc. 04–23254 Filed 11–4–04; 8:45 am]
BILLING CODE 3410–90–P

DEPARTMENT OF HOMELAND SECURITY

8 CFR Parts 215, 235, and 252

[DHS 2007–0002]

RIN 1650–AA00

Notice to Nonimmigrant Aliens Subject To Be Enrolled in the United States Visitor and Immigrant Status Indicator Technology System (US–VISIT); Extension of Comment Period

AGENCY: Border and Transportation Security Directorate, DHS.

ACTION: Interim rule; extension of comment period.

SUMMARY: On August 31, 2004, the Department of Homeland Security (DHS) published in the **Federal Register** at 69 FR 53318, an interim rule which extended the US–VISIT program to include persons traveling without visas under the Visa Waiver Program, expanded US–VISIT to the 50 most highly trafficked land border ports of entry, and made several other minor changes to the US–VISIT program. The comment period for this regulation was set to expire on November 1, 2004. However, DHS has extended the comment period for this interim rule for an additional 30 days. This document informs the public that the comment period has been extended until December 1, 2004.

DATES: Written comments must be submitted on or before December 1, 2004.

ADDRESSES: You may submit comments identified by RIN 1615–AA00 to the Docket Management Facility at the EPA. To avoid duplication, please use only one of the following methods:

(1) *Web Site: http://www.epa.gov/edocket.* Follow the instructions for submitting comments at that Web site.

(2) *Mail:* Written comments may be submitted to Michael Hardin, Senior

Policy Advisor, US–VISIT, Border and Transportation Security; Department of Homeland Security; 1616 North Fort Myer Drive, 18th Floor, Arlington, VA 22209.

(3) *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

(4) *E-mail:* Send comments to *USVISITREGS@DHS.GOV.*

Submitted comments may be inspected at 1616 North Ft. Myer Drive, Arlington, VA 22209, between 9 a.m. and 5 p.m., Monday through Friday except Federal holidays. Arrangements to inspect submitted comments should be made in advance by calling (202) 298–5200. You may also find this docket on the Internet at *http://www.epa.gov/edocket.* You may also access the Federal eRulemaking Portal at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Michael Hardin, US–VISIT, Border and Transportation Security, Department of Homeland Security, 1616 North Fort Myer Drive, 18th Floor, Arlington, VA 22209, telephone (202) 298–5200.

Elizabeth L. Branch,

Associate General Counsel for Rules and Legislation, Office of the General Counsel, Department of Homeland Security.

[FR Doc. 04–24811 Filed 11–4–04; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 5

[Docket No. 04–23]

RIN 1557–AC81

Rules, Policies, and Procedures for Corporate Activities; Annual Report on Operating Subsidiaries

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is amending 12 CFR part 5 to require a national bank to file an Annual Report on Operating Subsidiaries (Annual Report) with the OCC. The Annual Report will identify the national bank's operating subsidiaries that do business directly with consumers and that are not functionally regulated. The Annual Report will include certain information about each operating subsidiary, such as the name of the operating subsidiary, its location and contact information, and the operating subsidiary's lines of business. The OCC will make this information available to the public on its Web site at *http://www.occ.gov* in order to assist consumers in identifying entities that are national bank operating subsidiaries.

DATES: *Effective Date:* December 6, 2004.

FOR FURTHER INFORMATION CONTACT: Stuart E. Feldstein, Assistant Director, Legislative and Regulatory Activities, (202) 874–5090; Patrick T. Tierney, Attorney, Legislative and Regulatory Activities, (202) 874–5090; or Stephen A. Lybarger, Director of Licensing Activities, (202) 874–5060, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

Background

On March 25, 2004, the OCC published a notice of proposed rulemaking (NPRM) (69 FR 15260) in the **Federal Register** to require each national bank to file an Annual Report on Operating Subsidiaries (Annual Report) with the OCC. The Annual Report identifies the bank's operating subsidiaries that do business directly with consumers and are not functionally regulated [1] as defined in section 5(c)(5) of the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1844(c)(5)). The NPRM required a national bank to provide information including the name of each operating subsidiary, its location and contact information, and the operating subsidiary's lines of business. The NPRM also discussed how the OCC would make the information available to the public on its Web site.

Overview of Comments Received

The NPRM comment period closed on April 26, 2004, and we received 15 comments. Commenters included national banks, state agencies, banking trade associations, a realtor trade association, and community groups. The majority of the commenters expressing a view generally supported the NPRM.[2] Several commenters offered specific suggestions for refining the information contained in the Annual Report. A summary of the comments and a description of the final rule follow.

Summary of Comments and OCC Response

Filing Requirement (§ 5.34(e)(6)(i))

The NPRM required each national bank to prepare and file with the OCC an Annual Report for each of its operating subsidiaries that are not functionally regulated within the meaning of section 5(c)(5) of the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1844(c)(5)) and that do business directly with consumers in the United States. The NPRM stated that an operating subsidiary ''does business directly with consumers'' if it provides products or services to individuals to be used primarily for personal, family, or household purposes.

Several commenters suggested revisions to, or sought clarification of, the proposed filing requirement. For example, one commenter suggested that the final rule should not apply to an operating subsidiary that provides products or services to commercial entities and only incidentally to consumers. We agree with the commenter that a business transaction with a consumer that is not otherwise part of the bank's ordinary course of business should not trigger this reporting requirement. Therefore, the final rule provides that a national bank operating subsidiary does business with consumers in the United States if, *in the ordinary course of its business,* it provides products or services to individuals to be used primarily for personal, family, or household purposes. Thus, for example, an operating subsidiary is not covered by this reporting requirement when it is engaged in the business of leasing

[1] A subsidiary is a ''functionally regulated'' subsidiary if under section 5(c)(5) of the Bank Holding Company Act of 1956, as amended, it is a broker or dealer that is registered under the Securities Exchange Act of 1934; a registered investment adviser, properly registered by or on behalf of either the Securities and Exchange Commission or any State, with respect to the investment advisory activities of such investment adviser and activities incidental to such investment advisory activities; an investment company that is registered under the Investment Company Act of 1940; an insurance company, with respect to insurance activities of the insurance company and activities incidental to such insurance activities, that is subject to supervision by a State insurance regulator; or an entity that is subject to regulation by the Commodity Futures Trading Commission, with respect to the commodities activities of such entity and activities incidental to such commodities activities. *See* 12 U.S.C. 1844(c)(5)(B)(i)–(v).

[2] Three commenters asserted objections to the OCC's previous rules relating to visitorial powers and preemption. *See* 69 FR 1895 (visitorial powers) and 69 FR 1904 (preemption) (Jan. 13, 2004). These comments are beyond the scope of the current rulemaking, and, accordingly we do not address them here. One commenter noted that many states have laws that require operating subsidiaries to provide consumers with information about where to direct questions and complaints, including the appropriate state supervisory authority. This commenter asserted that the proposal would preempt these types of state disclosure requirements. We note that this final rule is an administrative reporting requirement and has no independent preemptive effect on state or local disclosure requirements. Questions about the applicability of such requirements are governed by the OCC's final preemption rule and Federal judicial preemption precedents.

equipment or other property to businesses, and, as an accommodation, leases a piece of equipment to an officer or director of a company.

Another commenter questioned whether the reporting requirement would apply to a second-tier subsidiary that does business directly with consumers where the first-tier operating subsidiary does not. The OCC confirms that the reporting requirement applies to the second-tier operating subsidiary in this example. The final rule covers any operating subsidiary of a national bank that is not functionally regulated and does business directly with consumers.

One commenter asked for clarification as to whether a national bank must include on its Annual Report an operating subsidiary that only engages in the business of servicing consumer mortgage loans, where the operating subsidiary is not involved with the initial credit decisions or funding of any loans. The final rule's definition of ''doing business directly with consumers'' includes providing products or *services* to consumers. Since an operating subsidiary that engages solely in mortgage servicing provides *services* for consumers (*e.g.*, pay off information, payment processing and accounting, customer service, escrow administration), a national bank must include this type of operating subsidiary on its Annual Report.

A few commenters suggested that national banks should also report information on operating subsidiaries that are functionally regulated by another state or federal regulatory agency. The Gramm-Leach-Bliley Act of 1999 put in place a framework for the functional regulation of bank subsidiaries and affiliates by amending section 5(c) of the Bank Holding Company Act of 1956 (12 U.S.C. 1844(c)) and adding section 45 to the Federal Deposit Insurance Act (12 U.S.C. 1831v).[3] Under that framework, another regulatory agency has primary supervisory authority over a national bank's functionally regulated subsidiary. For example, a state insurance regulator would have supervisory authority in the case of a subsidiary that sells insurance products. In this example, the state insurance regulator is the appropriate agency to receive consumer complaints.

[3] The amendments to section 5(c) of the Bank Holding Company Act set out, among other things, the limited circumstances when reports may be required from, and examinations can be made of, a functionally regulated subsidiary. Section 45 imposes certain limits on the OCC's authority to examine, or require reports from, subsidiaries that are ''functionally regulated.''

The OCC continues to believe that the agency with primary supervisory authority should be the consumer's first point of contact for any complaints. Thus, a national bank need not include on the Annual Report information about any functionally regulated operating subsidiary that engages only in functionally regulated activities that are regulated by a primary supervisor other than the OCC. However, in order to assist consumers in locating information concerning functionally regulated subsidiaries and other entities that may be regulated by other State or Federal supervisory authorities, the OCC plans to provide contact information for these other regulators on its public Web site.

Another commenter recommended that the final rule permit a national bank to file an Annual Report on any number of operating subsidiaries even if the rule does not require the filing of information about operating subsidiaries that are functionally regulated by another agency or that do not do business directly with consumers. We believe that, at this time, a national bank should only file the required information for its operating subsidiaries that are expressly covered by the rule. Focusing only on those operating subsidiaries that do business directly with consumers will minimize confusion and better assist customers in identifying whether the entity they are doing business with is related to a national bank.

Information Required (§ 5.34(e)(6)(ii))

The NPRM required the Annual Report to contain:

- The name and charter number of the parent national bank;
- The name, mailing address (including the street address or post office box, city, state, and zip code), and telephone number of the operating subsidiary;
- The principal place of business of the operating subsidiary, if different from its reported mailing address; and
- The lines of business in which the operating subsidiary is engaged by designating the appropriate code contained in appendix B (Federal Reserve Board Activity Codes) to the General Instructions for filing the Report of Changes in Organizational Structure, Form FR Y–10. If the operating subsidiary is engaged in an activity not set forth in this list, the national bank would use the code 0000 and provide a brief description of the activity.

One commenter suggested that the OCC include, in addition to the name of the operating subsidiary, any ''doing business as'' (dba), abbreviated, or trade names. We agree that this change would remove confusion and help direct consumers to the appropriate entity. Therefore, the final rule requires that national banks report an operating subsidiary's name, including any dba, abbreviated, or trade names that are used to identify the operating subsidiary when it does business directly with consumers.

Another commenter suggested that the OCC require national banks to list in the Annual Report all the locations where an operating subsidiary's transactions occur or where it conducts business. Given consumers' increasing use of electronic channels for obtaining and using financial services, such as by telephone and the Internet, the physical location of an operating subsidiary's offices is not necessarily related to the number or location of the consumers with whom it does business. Accordingly, we believe this information is not likely to be helpful to consumers who want to know where to file a complaint.

Two commenters addressed the use of the Federal Reserve Board Activity Codes to identify operating subsidiary activities. One commenter suggested that the NPRM would limit paperwork burden if the OCC obtained operating subsidiary information from the Board of Governors of the Federal Reserve System (Federal Reserve Board) as that information is reported on the Form FR Y–10. Another commenter wrote that the FR Y–10 code list is insufficient to describe the range of activities authorized by the OCC for national bank operating subsidiaries. The commenter suggested that it would be more appropriate for the OCC to use a coding system derived from the list of activities that are eligible for notice procedures under 12 CFR 5.34(e)(5)(v). As we next describe, we have revised the regulation so that the reporting codes will align better with the range of activities permissible for national bank operating subsidiaries. We continue to believe, however, that the use of standardized reporting codes, rather than codes tailored only to the national banking system, is preferable because it avoids the burden on banks of reporting the same information in different ways for different reports.

The Federal Reserve Board recently replaced its FR Y–10 activity code list with the North American Industry Classification System codes (NAICS) relevant to the banking industry to describe organizational activities.[4]

[4] NAICS is a system for classifying establishments by type of economic activity. Its purposes are to facilitate the collection, tabulation, presentation,

Continued

National banks are likely to be familiar with the NAICS codes since they are required for reporting changes in organizational structure to the Federal Reserve Board, reported by national banks that file the OCC's Shared Credit Review Report, and used by many national banks to identify collateral or for internal business analysis and planning. In addition, these NAICS codes are usually more specific and thus more accurately describe permissible activities of national bank operating subsidiaries. This should make activity information more meaningful to consumers. In addition, national banks that are part of a holding company that is required to file Form FR Y–10 to report changes in operating subsidiary activities will be able to use much of the same information in filing their operating subsidiary report with the OCC. Accordingly, the final rule requires national banks to report the lines of business in which an operating subsidiary is doing business directly with consumers by designating the appropriate NAICS code listed in appendix B to the Federal Reserve Board's form FR Y–10, Report of Changes in Organizational Structure.

In a few circumstances, the NAICS may not contain a code that describes a particular operating subsidiary activity. The proposal permitted a national bank to code as 0000 and include a brief description for other activities not included in the FR Y–10 activity code list. The final rule retains this provision, but now allows use of the 0000 code where the activity is not appropriately covered by a NAICS code. The OCC also will provide a link on its public Web site to the FR Y–10 data reported to the Federal Reserve Board so that consumers can check information on national bank operating subsidiaries that are part of a bank holding company structure for a change in status after the information is reported to the OCC.

Filing Time Frames and Availability of Information (§ 5.34(e)(6)(iii))

The NPRM required national banks to file their Annual Reports with information current as of March 31st of the year in which the report is filed and to submit this information before July 1st of each corresponding calendar year. One commenter suggested that the timing of the filing requirement should be based on a national bank's fiscal year, which would correspond to certain Federal Reserve Board and Securities and Exchange Commission filings.

The OCC believes that aligning the timeframe of this filing requirement closely with the Call Report filing requirements reduces compliance burden. Therefore, the final rule requires national banks to file their Annual Reports by January 31st and to include information as of December 31st of the immediate prior year. Thus, the first report will be due January 31, 2005, for information as of December 31, 2004. A national bank may submit the Annual Report electronically or in another format prescribed by the OCC. The OCC plans to issue guidance to national banks and Federal branches and agencies that will provide more specific information for filing the Annual Report. The OCC will make available to the public the information contained in the Annual Report on its Web site at *http://www.occ.gov*.

We also note that a national bank may not submit partial information in the Annual Report to update information contained in prior reports. The Annual Report represents a complete list of the required information for each operating subsidiary that is not functionally regulated and that does business directly with consumers. A national bank must include in its Annual Report all of the required information for each covered operating subsidiary. The OCC will replace the information every year in its entirety.

A few commenters expressed concern that consumers may have difficulty locating the information contained in the Annual Report on the OCC public Web site at *http://www.occ.treas.gov*, particularly if they are not aware that the OCC is a bureau of the United States Department of the Treasury. In response to this comment, the OCC has acquired the *http://www.occ.gov* Web address and has taken steps to acquire other similar Web addresses. This should provide easier access to the OCC's public Web site. In addition, as discussed previously, we intend to enhance the OCC's Web site to assist consumers in finding information about entities that are regulated by other State and Federal agencies. Further, the OCC is considering several options to enhance consumer awareness of the OCC's Customer Assistance Group [5] such as by use of notices, advertising vehicles, and technological solutions. The OCC expects to begin implementing this consumer information program in 2005.

Description of Final Rule

This final rule specifies the Annual Report filing requirement, information reported, filing time frames, and public availability of the information. This final rule requires each national bank to prepare and file with the OCC an Annual Report for each of its operating subsidiaries that (1) is not functionally regulated and (2) does business directly with consumers in the United States. An operating subsidiary, or any subsidiary thereof, ''does business directly with consumers'' if, in the ordinary course of its business, it provides products or services to individuals to be used primarily for personal, family, or household purposes.

The final rule requires an Annual Report to contain the following information:

- The name and charter number of the parent national bank;
- The name (including any ''dba,'' abbreviated names, or trade names that are used to identify the operating subsidiary when it does business directly with consumers), mailing address (which includes the street address or post office box, city, state, and zip code), e-mail address (if any), and telephone number of the operating subsidiary;
- The principal place of business of the operating subsidiary, if different from the mailing address; and
- The lines of business in which the operating subsidiary is doing business directly with consumers by designating the appropriate code contained in appendix B (NAICS Activity Codes for Commonly Reported Activities) to the Federal Reserve Board's Instructions for Preparation of Report of Changes in Organizational Structure, Form FR Y–10, which appears on the OCC's Web site at *http://www.occ.gov*. If the operating subsidiary is engaged in an activity not set forth in this list, the national bank should use the code 0000 and provide a brief description of the activity.

This final rule contains specific filing time frames. Each national bank's

and analysis of data relating to establishments, and to promote uniformity and comparability in the presentation and analysis of statistical data describing the economy. Federal statistical agencies use NAICS to collect or publish data by industry. NAICS also is used widely by State agencies, trade associations, private businesses, and other organizations. NAICS activity codes that are relevant to the banking industry for describing organizational activities are available on the OCC Web site at *http://www.occ.gov*.

[5] The OCC Customer Assistance Group (CAG) answers questions, offers guidance, and assists consumers in resolving complaints about national banks and their subsidiaries. You can reach one of the OCC Customer Assistance Specialists by calling our toll free number, 1–800–613–6743, or sending an e-mail to *Customer.Assistance@occ.treas.gov*. Since e-mail is not necessarily secure against interception, the OCC asks that consumers not include sensitive information of a personal or confidential nature—such as your bank account, credit card, or social security number— in their e-mails to the CAG.

Annual Report will contain information current as of December 31st for each year the report is filed. A national bank must submit its first report to the OCC on or before January 31, 2005, and on or before January 31st each year thereafter. A national bank may submit its Annual Report electronically or in another format prescribed by the OCC. The OCC plans to issue guidance to national banks and Federal branches and agencies that will provide more specific information for filing the Annual Report. The OCC will make available to the public the information contained in the Annual Report on its Web site at *http://www.occ.gov*.

Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b) (RFA), the regulatory flexibility analysis otherwise required under section 604 of the RFA is not required if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities and publishes its certification and a short, explanatory statement in the **Federal Register** along with its rule.

Pursuant to section 605(b) of the RFA, the OCC hereby certifies that this rulemaking will not have a significant economic impact on a substantial number of small entities. The OCC has reviewed the impact this final rule will have on small national banks. ''Small national banks'' are those banks with less than $150 million in total assets. Based on that review, the OCC certifies that the final rule will not have a significant economic impact on a substantial number of small entities. This final rule imposes a minimal annual reporting requirement only on national banks with operating subsidiaries that do business directly with consumers. The OCC is providing an option for institutions to report this information to the OCC electronically. The economic impact of this final rule on national banks, regardless of size, is not expected to be significant. Accordingly, a regulatory flexibility analysis is not needed.

Executive Order 12866

The OCC has determined that this final rule is not a significant regulatory action under Executive Order 12866.

Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4 (2 U.S.C. 1532) (Unfunded Mandates Act), requires that an agency prepare a budgetary impact statement before promulgating any rule likely to result in 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 in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. The OCC has determined that this final rule will not result in expenditures by State, local, and tribal governments, or by the private sector, of $100 million or more in any one year. Accordingly, this final rule is not subject to section 202 of the Unfunded Mandates Act.

Paperwork Reduction Act

The Office of Management and Budget (OMB), pursuant to the requirements of the Paperwork Reduction Act, approved the paperwork burden associated with the final rule under OMB control number 1557–0014.

Executive Order 13132

The OCC has determined that this final rule does not have any Federalism implications, as required by Executive Order 13132.

List of Subjects in 12 CFR Part 5

Administrative practice and procedure, National banks, Reporting and recordkeeping requirements, Securities.

Authority and Issuance

■ For the reasons set forth in the preamble, part 5 of chapter I of title 12 of the Code of Federal Regulations is amended as follows:

PART 5—RULES, POLICIES, AND PROCEDURES FOR CORPORATE ACTIVITIES

■ 1. Revise the authority citation for part 5 to read as follows:

Authority: 12 U.S.C. 1 *et seq.*, 93a, 215a–2, 215a–3, 481, and section 5136A of the Revised Statutes (12 U.S.C. 24a).

■ 2. In § 5.34, a new paragraph (e)(6) is added to read as follows:

§ 5.34 Operating subsidiaries.

* * * * *

(e)(6) *Annual Report on Operating Subsidiaries—(i) Filing requirement.* Each national bank shall prepare and file with the OCC an Annual Report on Operating Subsidiaries containing the information set forth in paragraph (e)(6)(ii) of this section for each of its operating subsidiaries that:

(A) Is not functionally regulated within the meaning of section 5(c)(5) of the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1844(c)(5)); and

(B) Does business directly with consumers in the United States. For purposes of paragraph (e)(6) of this section, an operating subsidiary, or any subsidiary thereof, does business directly with consumers if, in the ordinary course of its business, it provides products or services to individuals to be used primarily for personal, family, or household purposes.

(ii) Information required. The Annual Report on Operating Subsidiaries must contain the following information for each covered operating subsidiary listed:

(A) The name and charter number of the parent national bank;

(B) The name (include any ''dba'' (doing business as), abbreviated names, or trade names used to identify the operating subsidiary when it does business directly with consumers), mailing address (include the street address or post office box, city, state, and zip code), e-mail address (if any), and telephone number of the operating subsidiary;

(C) The principal place of business of the operating subsidiary, if different from the address provided pursuant to paragraph (e)(6)(ii)(B) of this section; and

(D) The lines of business in which the operating subsidiary is doing business directly with consumers by designating the appropriate code contained in appendix B (NAICS Activity Codes for Commonly Reported Activities) to the Instructions for Preparation of Report of Changes in Organizational Structure, Form FR Y–10, a copy of which is set forth on the OCC's Web site at *http://www.occ.gov.* If the operating subsidiary is engaged in an activity not set forth in this list, a national bank shall report the code 0000 and provide a brief description of the activity.

(iii) Filing time frames and availability of information. Each national bank's Annual Report on Operating Subsidiaries shall contain information current as of December 31st for the year prior to the year the report is filed. The national bank shall submit its first Annual Report on Operating Subsidiaries (for information as of December 31, 2004) to the OCC on or before January 31, 2005, and on or before January 31st each year thereafter. The national bank may submit the Annual Report on Operating Subsidiaries electronically or in another format prescribed by the OCC. The OCC will make available to the public the information contained in the Annual

Report on Operating Subsidiaries on its Web site at *http://www.occ.gov.*

Dated: October 29, 2004.

Julie L. Williams,

Acting Comptroller of the Currency.

[FR Doc. 04–24735 Filed 11–4–04; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–19001; Directorate Identifier 2004–NM–98–AD; Amendment 39–13842; AD 2004–22–14]

RIN 2120–AA64

Airworthiness Directives; Saab Model SAAB SF340A and SAAB 340B Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Saab Model SAAB SF340A and SAAB 340B series airplanes. This AD requires an inspection of the elevator and aileron trim-tab fittings, and related investigative/corrective actions if necessary. This AD is prompted by reports of improperly installed rivets in the retainers that hold the elevator trim-tab bearings. We are issuing this AD to prevent the elevator and aileron trim-tab bearings from coming loose, which could result in excessive play in the elevator and aileron trim systems, and reduced controllability of the airplane.

DATES: This AD becomes effective December 10, 2004.

The incorporation by reference of a certain publication listed in the AD is approved by the Director of the Federal Register as of December 10, 2004.

ADDRESSES: For service information identified in this AD, contact Saab Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. You can examine this information at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Docket: The AD docket contains the proposed AD, comments, and any final disposition. 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.

FOR FURTHER INFORMATION CONTACT:

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

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

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR Part 39 with an AD for certain Saab Model SAAB SF340A and SAAB 340B series airplanes. That action, published in the **Federal Register** on September 3, 2004 (69 FR 53846), proposed to require an inspection of the elevator and aileron trim-tab fittings, and related investigative/corrective actions if necessary.

Comments

We provided the public the opportunity to participate in the development of this AD. No comments have been submitted on the proposed AD or on the determination of the cost to the public.

Conclusion

We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed.

Costs of Compliance

The following table provides the estimated costs for U.S. operators to comply with this AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Inspection	16	$65	None	$1,040	170	$176,800

Regulatory Findings

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

For the reasons discussed above, I certify that this AD:

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

(2) Is not a ''significant rule'' under 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 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, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 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):

2004–22–14 Saab Aircraft AB: Amendment 39–13842. Docket No. FAA–2004–19001; Directorate Identifier 2004–NM–98–AD.

Effective Date

(a) This AD becomes effective December 10, 2004.

Affected ADs

(b) None.

Applicability

(c) This AD applies to certain Saab Model SAAB SF340A series airplanes, line numbers 004 through 159 inclusive; and SAAB 340B series airplanes, line numbers 160 through 459 inclusive; certificated in any category.

Unsafe Condition

(d) This AD was prompted by reports of improperly installed rivets in the retainers located in the elevator trim-tab fittings. The retainers hold the trim-tab bearings. We are issuing this AD to prevent the elevator and aileron trim-tab bearings from coming loose, which could result in excessive play in the elevator and aileron trim systems, and reduced 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.

Inspection and Related Investigative/ Corrective Actions

(f) Within 800 flight hours or 6 months after the effective date of this AD, whichever is first: Do a detailed inspection of the elevator and aileron trim-tab fittings, and all applicable related investigative and corrective actions, by accomplishing all of the actions in the Accomplishment Instructions of Saab Service Bulletin 340–51–025, Revision 01, dated October 21, 2003. Any related investigative and corrective actions must be done before further flight.

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

Parts Installation

(g) As of the effective date of this AD, no person may install on any airplane an elevator or aileron trim-tab fitting unless it has been inspected, and any applicable corrective actions have been done, in accordance with paragraph (f) of this AD.

Reporting Not Required

(h) Although the service bulletin referenced in this AD specifies to submit certain information to the manufacturer, this AD does not include that requirement.

Alternative Methods of Compliance (AMOCs)

(i) The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

Related Information

(j) Swedish airworthiness directive 1–194, dated October 14, 2003, also addresses the subject of this AD.

Material Incorporated by Reference

(k) You must use Saab Service Bulletin 340–51–025, Revision 01, dated October 21, 2003, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approves the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. For copies of the service information, contact Saab Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. For information on the availability of this material at the National Archives and Records Administration (NARA), call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.* You may view the AD docket at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., room PL–401, Nassif Building, Washington, DC.

Issued in Renton, Washington, on October 21, 2004.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–24520 Filed 11–4–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 740, 748, and 774

[Docket No. 041020285–4285–01]

RIN 0694–AD18

Computer Technology and Software Eligible for Export Under License Exception; and Establishment of ''Foreign National Review'' Requirement and Procedure

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: This final rule expands the availability of license exceptions for certain deemed exports of computer technology and source code under the Export Administration Regulations (EAR), partially implementing the expansion set forth in a proposed rule published on October 24, 2003. In addition, this final rule clarifies certain provisions of License Exception CTP. This rule also establishes a new ''Foreign National Review (FNR)'' requirement for deemed exports of technology or source code under License Exception CTP.

DATES: This rule is effective on November 5, 2004.

FOR FURTHER INFORMATION CONTACT: Sharron Cook, Senior Export Policy Analyst, Office of Exporter Services, Regulatory Policy Division, Bureau of Industry and Security, Telephone: (202) 482–2440.

SUPPLEMENTARY INFORMATION:

Background

On June 4, 2002, BIS published a notice of inquiry (67 FR 39675), requesting information from industry to assist BIS in evaluating the license exception eligibility level of 33,000 MTOPS for exports and reexports of computer technology and software controlled under ECCNs 4D001 and 4E001. BIS received four comments in response to the notice of inquiry, all stating that the license exception threshold should be adjusted.

On October 24, 2003, BIS published a proposed rule with request for comments from industry (68 FR 60891) to expand the availability of License Exception CTP for exports and reexports of computer technology and software on the Commerce Control List (CCL) of the Export Administration Regulations (EAR) under Export Classification Control Numbers (ECCNs) 4D001 and 4E001. These ECCNs control technology and software that can be used for the development, production, or use of computers. The proposed rule also requested comments to assist BIS in evaluating microprocessor technology controlled under ECCN 3E002. BIS received eleven comments in response to the proposed rule and the questions posed in the preamble. BIS has decided to address computer technology and software and microprocessor technology in two different final rules. This final rule implements the license exception expansion for computer technology and software. The corresponding rule on license exception eligibility for microprocessor technology is published elsewhere in this issue of the **Federal Register**.

Current Controls on Computer Technology and Software

Export controls for computer technology and software are controlled multilaterally through the Wassenaar Arrangement. The current Wassenaar Arrangement (WA) control thresholds for computer technology and software are: 28,000 MTOPS for the Basic List (BL), 75,000 MTOPS for the Sensitive List (SL); and 150,000 MTOPS for the Very Sensitive List (VSL). (**Note:** the computer hardware level within WA (under the BL) and in the United States is currently at 190,000 MTOPS. Computer hardware is not controlled on WA's SL and VSL.).

The EAR control the export and reexport of technology and software for the development, production, or use of

computers with a CTP greater than 28,000 Millions of Theoretical Operations per Second (MTOPS) under Export Control Classification Numbers (ECCNs) 4D001 and 4E001 of the Commerce Control List (CCL). Such technology and software requires a license, for national security (NS) reasons, to all destinations except Canada. Heretofore, ECCNs 4D001 and 4E001 have provided that License Exception TSR (section 740.6 of the EAR) is available for exports and reexports of such technology and software: (1) For computers of unlimited CTP to 22 countries; and (2) for computers with a CTP less than or equal to 33,000 MTOPS to countries listed in Country Group B (Supplement No. 1 to part 740). License Exception TSR availability for computer software and technology differs from License Exception CTP availability for computer hardware in two ways: (1) The countries eligible; and (2) the MTOPS level.

Deemed Export Revision

While the original **Federal Register** notice proposed the eligibility of exports and reexports of computer technology and software equal to or less than 150,000 MTOPS to Computer Tier 1 countries under License Exception CTP, this final rule raises the level to 190,000 MTOPS, but expands License Exception availability for deemed exports of computer technology and source code only.

Computer technology and software is listed by the Wassenaar Arrangement on both the Sensitive List (75,000 MTOPS) and the Very Sensitive List (150,000 MTOPS). Accordingly, adjustments in control limits for actual exports and reexports of computer technology and software should be implemented based on agreement with the United States' Wassenaar partners. Therefore, the United States may discuss raising the level of controls for actual exports and reexports of computer technology and software within the Wassenaar Arrangement. After a decision is made on the level of controls for exports and reexports of computer technology and software in the Wassenaar Arrangement, the EAR will be amended accordingly.

Generally, Wassenaar countries do not have in-country transfer controls (deemed export controls), with the exception of classified material. A deemed export is any release of technology or source code subject to the EAR to a foreign national within the United States. Such release is deemed to be an export to the home country or countries of the foreign national. The deemed export rule does not apply to persons lawfully admitted for permanent residence in the United States and does not apply to persons who are protected individuals under the Immigration and Naturalization Act (8 U.S.C. 1324b(a)(3)). Deemed export license applications for foreign nationals with dual citizenship should be based on the most recently obtained country citizenship. Applications for foreign nationals with temporary or permanent residence status of a third country (*i.e.*, non-U.S. and a temporary or permanent residence status other than a foreign national's country of origin) should be based on the foreign national's country of citizenship.

Because the United States is one of the only WA country members to implement deemed export controls, U.S. industry has been required to obtain license authorization for these deemed exports when other WA member countries have not imposed such controls on their industries. Expanding the availability of a License Exception for deemed exports of computer technology and source code provides relief from licensing burdens for U.S. industry and levels the playing field in global competition. BIS has found that the expansion of license exception availability under the technology parameters set forth below will not have an adverse impact on the U.S. national security.

Expansion of License Exception CTP for Certain Computer Technology and Software Controlled Under ECCNs 4D001 and 4E001

This final rule provides that the 22 countries previously eligible to receive technology and software for computers with unlimited CTP under License Exception TSR continue to be eligible for export and reexport of unlimited CTP level of technology and software, but this eligibility is now pursuant to License Exception CTP. All of these 22 countries are in ''Computer Tier 1'' for purposes of License Exception CTP.

This final rule provides that countries in Country Group B previously eligible to receive technology and software for computers and electronic assemblies classified under ECCN 4A003.b and ECCN 4A003.c, respectively, with a CTP less than or equal to 33,000 MTOPS under License Exception TSR continue to be eligible for export and reexport under License Exception TSR. In addition, technology and software for other equipment, *i.e.*, not controlled under ECCN 4A003.b and ECCN 4A003.c, controlled under ECCNs 4E001 and 4D001 will also continue to be eligible for export and reexport under License Exception TSR.

However, this final rule amends License Exception TSR eligibility paragraphs under ECCNs 4D001 and 4E001 for certain controlled computer technology and software, so that technology and software with a CTP greater than 33,000 MTOPS to the 22 countries previously listed in the TSR paragraph is no longer eligible for export and reexport under TSR. In addition, this rule adds License Exception CTP to the License Exception section of ECCNs 4D001 and 4E001. License Exception CTP formerly applied to only computer hardware classified under ECCN 4A003.

Also, this final rule provides that for Computer Tier 1 destinations other than these 22 countries, technology and source code for computers with a CTP equal to or less than 190,000 MTOPS are eligible for deemed exports under License Exception CTP. Actual exports and reexports of computer technology and software will continue to be controlled for export and reexport under ECCNs 4D001 and 4E001 when the CTP exceeds 28,000 MTOPS, and eligible for License Exception TSR when the CTP is equal to or less than 33,000 MTOPS to Computer Tier 1 countries that are also Country Group B countries.

Lastly, this final rule provides that technology and source code for computers with a CTP equal to or less than 75,000 MTOPS are eligible for deemed exports under License Exception CTP to foreign nationals of ''Computer Tier 3'' destinations. Certain deemed exports to Computer Tier 3 foreign nationals are subject to a Foreign National Review requirement.

Exports and reexports to countries in Country Group E:1 (terrorist supporting countries) continue to be ineligible for License Exception CTP. The following chart shows the new eligibility thresholds under License Exception CTP.

COMPUTER TECHNOLOGY AND SOFTWARE ELIGIBILITY THRESHOLDS UNDER LICENSE EXCEPTION CTP

Unlimited CTP (deemed exports and actual exports/reexports).	22 ''Tier 1'' destinations: Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Japan, Luxembourg, Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, Turkey, or the United Kingdom.
190,000 MTOPS (deemed exports only).	All other ''Tier 1'' destinations: Antigua and Barbuda, Argentina, Aruba, Bahamas (The), Bangladesh, Barbados, Belize, Benin, Bhutan, Bolivia, Botswana, Brazil, Brunei, Burkina Faso, Burma, Burundi, Cameroon, Cape Verde, Central African Republic, Chad, Chile, Colombia, Congo (DemocraticRepublic of the), Congo (Republic of the), Costa Rica, Cote d'Ivoire, Cyprus, Czech Republic, Dominica, Dominican Republic, East Timor, Ecuador, El Salvador, Equatorial Guinea, Eritrea, Estonia, Ethiopia, Fiji, Gabon, Gambia (The), Ghana, Grenada, Guatemala, Guinea, Guinea-Bissau, Guyana, Haiti, Honduras, Hong Kong, Hungary, Iceland, Indonesia, Jamaica, Kenya, Kiribati, Korea (Republic of), Latvia, Lesotho, Liberia, Liechtenstein, Lithuania, Madagascar, Malawi, Malaysia, Maldives, Mali, Malta, Marshall Islands, Mauritius, Mexico, Micronesia (Federated States of), Monaco, Mozambique, Namibia, Nauru, Nepal, Netherlands Antilles, Nicaragua, Niger, Nigeria, Palau,Panama, Papua New Guinea, Paraguay, Peru, Philippines, Poland, Romania, Rwanda, St. Kitts & Nevis, St. Lucia, St. Vincent and the Grenadines, Sao Tome & Principe, Samoa, San Marino, Senegal, Seychelles, Sierra Leone, Singapore, Slovakia, Slovenia, Solomon Islands, Somalia, South Africa, Sri Lanka, Surinam, Swaziland, Taiwan, Tanzania, Togo, Tonga, Thailand, Trinidad and Tobago, Tuvalu, Uganda, Uruguay, Vatican City, Venezuela, Western Sahara, Zambia, and Zimbabwe.
75,000 MTOPS (deemed exports only).	All ''Tier 3'' destinations: Afghanistan, Albania, Algeria, Andorra, Angola, Armenia, Azerbaijan, Bahrain, Belarus, Bosnia & Herzegovina, Bulgaria, Cambodia, China (People's Republic of), Comoros, Croatia, Djibouti, Egypt, Georgia, India, Iraq, Israel, Jordan, Kazakhstan, Kuwait, Kyrgyzstan, Laos, Lebanon, Macau, Macedonia (The Former Yugoslav Republic of), Mauritania, Moldova, Mongolia, Morocco, Oman, Pakistan, Qatar, Russia, Serbia and Montenegro, Saudi Arabia, Tajikistan, Tunisia, Turkmenistan, Ukraine, United Arab Emirates, Uzbekistan, Vanuatu, Vietnam, and Yemen.
Not eligible	Cuba, Iran, Libya, North Korea, Sudan, and Syria.

Foreign National Review Requirement for Deemed Exports

This final rule imposes a foreign national review requirement for deemed exports of specified computer technology and source code under License Exception CTP and section 748.8(s) and (t), and Supplement No. 2 to part 748 of the EAR. Prior to disclosing eligible technology or source code to a foreign national under License Exception CTP, an exporter must submit a Foreign National Review (FNR) request to BIS. The FNR requirement only applies to foreign nationals from a country in Computer Tier 3 that is not also a country listed in Country Group B of Supplement No. 1 to part 740. The exporter must confirm eligibility from the System for Tracking Export License Applications (STELA) or the Simplified Network Application Procedure (SNAP) prior to using License Exception CTP. FNR requests must be submitted using Form BIS–748P (Multipurpose Application), or its electronic equivalent, and must include information about the foreign national who is to receive the computer technology and source code. The information required for the FNR request is set forth in paragraphs (s) and (t) of Supplement No 2 to part 748 of the EAR. BIS will electronically refer the FNR request for interagency review within nine business days or, if necessary, return the FNR request without action to the applicant, *e.g.*, if more information is necessary. Upon receipt of the BIS referral, the agencies have 30 days in which to return a recommendation to BIS. License exception CTP may not be used until the exporter has received official notification from BIS.

Use of License Exception CTP

Exporters who have current licenses for deemed exports of computer technology or source code to Computer Tier 3 destination foreign nationals that become eligible for License Exception CTP are no longer bound by conditions on their licenses, as provided under section 750.7 of the EAR. Termination of license conditions does not relieve an exporter of its responsibility for violations that occurred prior to the availability of the License Exception.

Although most licenses for computer technology and source code have been issued to companies who employ Computer Tier 3 destination foreign nationals in their U.S. facilities and who hold work visas issued by the U.S. Government, the availability of License Exception CTP for deemed exports is not confined to employer releases of technology to employees. It is also available for deemed exports of technology and source code to Computer Tier 3 destination foreign national visitors and customers, under the procedures set forth in License Exception CTP.

Unique Application and Submission Requirements

This rule revises the heading of § 748.8 and the title of Supplement No. 2 to part 748, which currently addresses only unique license application requirements, to include other submission requirements as well. This rule also adds paragraphs (s) and (t) to Supplement No. 2 to part 748. Paragraph (s) sets forth the requirements for a Foreign National Review Request under License Exception CTP, using the BIS–748P ''Multipurpose Application'' form. Paragraph (t) lists the information that an applicant must submit about the foreign national to whom the technology or source code will be disclosed, either as part of a license application or under the Foreign National Review Request.

Additional Amendments

This final rule adds paragraph (r), ''Encryption Review Requests,'' which was inadvertently omitted from a previous amendment to § 748.8 of the EAR. This final rule also removes a reference to ECCN 4A003.d in 740.7(b)(1), because ECCN 4A003.d (graphic accelerators) were removed from ECCN 4A003. (They continue to be controlled for anti-terrorism reasons only under ECCN 4A994.g). Also, this rule restructures paragraph 740.7(a) ''Scope'' to clarify that computers that are controlled under ECCN 4A003.e (equipment performing analog-to-digital conversion exceeding the limits in ECCN 3A001.a.5.a), and computers controlled for MT reasons are not eligible for License Exception CTP. In addition, this rule moves a restriction concerning proliferation end-users from paragraph 740.7(d)(3) to paragraph 740.7(b)(5), because this restriction pertains to all exports and reexports

under License Exception CTP, regardless of destination. Also, it clarifies within this restriction and within 740.7(b)(3) that ''retransfer'' is an in-country transfer.

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

Comments

The comments to the proposed rule that were received by BIS may be found at *http://efoia.bis.doc.gov/pubcomm/Computer%20Tech%20and%20Software/Final.pdf.* Set forth below are the questions that were posed to industry in the proposed rule, a summary of the comments BIS received and, where applicable, BIS's response. BIS's responses to questions on microprocessor technology export controls are published in the final rule on microprocessor technology exports under license exceptions.

1. What impact would the proposed revision of computer technology and software controls have on your company?

The majority of respondents considered the proposed changes a ''significant improvement to the current system'' and requested that BIS publish a final rule as soon as possible. Many respondents suggested revisions to improve the proposal. One of the recommendations was to make computer technology and software eligible to all of Computer Tier 1 countries with an unlimited Composite Theoretical Performance (CTP), instead of just the 22 countries that already have that authorization under License Exception TSR. BIS has determined that U.S. national security interests warrant continuing to control computer technology and software exports to Tier 1 countries other than these 22 countries. The 22 countries that were eligible to receive technology and software for computers with unlimited CTP under License Exception TSR will continue to be eligible to receive this technology and software; however, this eligibility will be under a different License Exception—License Exception CTP.

In addition, respondents recommended that BIS harmonize the CTP level for technology and software (150,000 Millions of Theoretical Operations per Second (MTOPS)), with that for hardware (190,000 MTOPS) under License Exception CTP for Computer Tier 3 countries. The reasons given for this recommendation were ease of enforcement and compliance, and that there seemed to be no national security reason for having the technology and software controls at a lower level, because the hardware was already available at these levels to these countries. This final rule does not implement such a harmonization, because computer technology and software is commonly treated as more sensitive in nature than hardware by the Wassenaar Arrangement. Computer technology and software is listed on both the Sensitive (75,000 MTOPS) and Very Sensitive (150,000 MTOPS) lists of the Wassenaar Arrangement, while computer hardware is only listed on Wassenaar's Basic List. While BIS agrees with the exporting community that using the CTP of 190,000 MTOPS instead of 150,000 MTOPS is easier for enforcement/compliance purposes and the difference between the CTPs is minimal, BIS has decided that adjustments in control limits concerning actual exports and reexports should be negotiated at the Wassenaar Arrangement meetings.

However, Wassenaar countries generally do not have in-country transfer controls (deemed export controls), with the exception of classified material. Therefore, this rule makes eligible, under License Exception CTP, deemed exports of computer technology and source code equal to or less than 75,000 MTOPS to foreign nationals of Computer Tier 3 countries and deemed exports of computer technology and source code equal to or less than 190,000 MTOPS to foreign nationals of Computer Tier 1 countries (other than the 22 countries that were previously listed in the License Exception TSR eligibility paragraphs of ECCNs 4D001 and 4E001). A decision to raise the level of controls for actual exports and reexports of computer technology and software should be negotiated in the Wassenaar Arrangement. After a decision is made on the level of controls for exports and reexports of computer technology and software in the Wassenaar Arrangement, the EAR will be amended accordingly.

2. Is there another proposal regarding computer technology and software, and microprocessor technology controls that you would like Commerce to consider? If so, describe your proposal in detail and please give technical and other justifications for your proposal.

Many comments received suggested creation of a technology license. In response to these comments and those received in the past, BIS has discussed with other agencies the possibility of allowing certain exports and reexports of this technology using a ''Special Intra-company License (SIL).'' The goal is to create a license that will ease the flow of certain authorized technology and source code within the global corporate structure, based on an approved Technology Control Plan, *i.e.*, an internal control program.

A number of respondents suggested that BIS do away with the CTP metric for control and use end-user and end-use based controls. However, computers are listed on the Dual-use and Technologies List of the Wassenaar Arrangement under 4.A.3. The agreed controlling parameter for computers is Composite Theoretical Performance (CTP) in Millions of Operations per Second (MTOPS). Therefore, in keeping with our agreements to the Wassenaar Arrangement, BIS will continue to control computers using the CTP metric for control.

3. What is the highest CTP level for microprocessors currently being manufactured by your company?

Comments in response to this question are addressed in the final rule for microprocessor technology export controls.

4. What should be the CTP MTOPS limitation for microprocessor technology under the proposed License Exception CIV? Please provide detailed technical and other justification for your proposal.

Comments in response to this question are addressed in the final rule for microprocessor technology export controls.

5. How do other countries license the transfer of computer technology and software, and microprocessor technology? Have there been instances where your company has been placed at a competitive disadvantage based on current U.S. license requirements?

The majority of respondents did not have enough information to comment on procedures or regulations of other countries' export policies with regard to computer technology and software, and microprocessor technology. None of the respondents felt they had enough information to definitively claim that the current export control levels put them at a competitive disadvantage.

6. What are your predictions for the CTP level of microprocessors that will be in production 3 and 5 years from now? On what basis did you make your predictions?

Comments in response to these questions are addressed in the final rule for microprocessor technology export controls.

7. What percentage of your research and development is accomplished: (1) Outside of the United States; and (2) with the assistance of foreign nationals within the United States?

Some respondents said they had already provided such information to BIS. None of the respondents addressed this specifically, but one respondent noted that in the physical sciences and engineering, nearly 50 per cent of all Masters and PhD degrees awarded by U.S. schools are earned by foreign nationals.

8. Is there an alternative method or parameter for controlling exports of computers and microprocessors and the technology and software therefore that industry believes would be more in-line with the way industry produces, develops, or measures these items?

Many of the respondents pointed out that performance-based controls are ''unsuited'' for general purpose and rapidly advancing technologies such as semiconductors and computers. Many respondents would like to see end-use and end-user based controls. It has been determined by Wassenaar Arrangement members that technology and software to develop or produce computers warrants placement on the Sensitive and Very Sensitive Lists. The control parameter on these lists are based on their performance capabilities, and at this time the only metric that the regime members have agreed upon is CTP. In keeping with the Wassenaar Arrangement agreements, BIS will not adopt a unilateral end-use/user based control for computer technology or software.

However, BIS and industry via the High-Performance Computer (HPC) Working Group of the Information Systems Technical Advisory Committee are jointing investigating a new metric to replace the Millions of Theoretical Operations per Second (MTOPS) parameter, it is called ''Weighted Teraflop (WT)''. Industry representatives noted that timely implementation of the new metric is important because HPC technology and computer performance levels are advancing at a rapid pace.

Rulemaking Requirements

1. This final rule has been determined to be not significant for purposes of E.O. 12866.

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This rule contains a collection of information subject to the requirements of the PRA. This collection has been approved by OMB under Control Number 0694–0088 (Multi-Purpose Application), which carries a burden hour estimate of 58 minutes to prepare and submit form BIS–748. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to David Rostker, Office of Management and Budget (OMB), by e-mail to *David_Rostker@omb.eop.gov,* or by fax to (202) 395–7285; and to the Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, P.O. Box 273, Washington, DC 20044.

3. This rule does not contain policies with Federalism implications as that term is defined under E.O. 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the UnitedStates (5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under the Administrative Procedure Act or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Sharron Cook, Office of Exporter Services, Bureau of Industry and Security, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects

15 CFR Part 740

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements.

15 CFR Part 748

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements.

15 CFR Part 774

Exports, Reporting and recordkeeping requirements.

■ Accordingly, parts 740, 748, and 774 of the Export Administration Regulations (15 CFR parts 730–799) are amended as follows:

PART 740—[AMENDED]

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

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

■ 2. Section 740.7 is revised to read as follows:

§ 740.7 Computers (CTP).

(a) *Scope.* (1) *Commodities.* License Exception CTP authorizes exports and reexports of computers, including ''electronic assemblies'' and specially designed components therefor controlled by ECCN 4A003, *except* ECCN 4A003.e (equipment performing analog-to-digital conversions exceeding the limits in ECCN 3A001.a.5.a), exported or reexported separately or as part of a system for consumption in Computer Tier countries as provided by this section. When evaluating your computer to determine License Exception CTP eligibility, use the CTP parameter to the exclusion of other technical parameters in ECCN 4A003. Computers controlled for missile technology (MT) reasons are not eligible for License Exception CTP.

(2) *Technology and software.* License Exception CTP authorizes exports of technology and software controlled by ECCNs 4D001 and 4E001 specially designed or modified for the ''development'', ''production'', or ''use'' of computers, including ''electronic assemblies'' and specially designed components therefor classified in ECCN 4A003, *except* ECCN 4A003.e (equipment performing analog-to-digital conversions exceeding the limits in ECCN 3A001.a.5.a), to Computer Tier countries as provided by this section. Technology and software for computers

controlled for missile technology (MT) reasons are not eligible for License Exception CTP.

(b) *Restrictions.* (1) Related equipment controlled under ECCN 4A003.g may not be exported or reexported under this License Exception when exported or reexported separately from eligible computers authorized under this License Exception.

(2) *Access and release restrictions.* (i) *Computers and software.* Computers and software eligible for License Exception CTP may not be accessed either physically or computationally by nationals of Cuba, Iran, Libya, North Korea, Sudan, or Syria, except that commercial consignees described in Supplement No. 3 to part 742 of the EAR are prohibited only from giving such nationals user-accessible programmability.

(ii) *Technology and source code.* Technology and source code eligible for License Exception CTP may not be released to nationals of Cuba, Iran, Libya, North Korea, Sudan, or Syria.

(3) Computers and software eligible for License Exception CTP may not be reexported or transferred (in country) without prior authorization from BIS, *i.e.*, a license, a permissive reexport, another License Exception, or ''No License Required''. This restriction must be conveyed to the consignee, via the Destination Control Statement, see § 758.6 of the EAR. Additionally, the end-use and end-user restrictions in paragraph (b)(5) of this section must be conveyed to any consignee in Computer Tier 3.

(4) You may not use this License Exception to export or reexport items that you know will be used to enhance the CTP beyond the eligibility limit allowed to your country of destination.

(5) License Exception CTP does not authorize exports and reexports for nuclear, chemical, biological, or missile end-users and end-uses subject to license requirements under § 744.2, § 744.3, § 744.4, and § 744.5 of the EAR. Such exports and reexports will continue to require a license and will be considered on a case-by-case basis. Reexports and transfers (in country) to these end-users and end-uses in eligible countries are strictly prohibited without prior authorization.

(6) Foreign nationals in an expired visa status are not eligible to receive deemed exports of technology or source code under this License Exception. It is the responsibility of the exporter to ensure that, in the case of deemed exports, the foreign national maintains a valid U.S. visa, if required to hold a visa from the United States.

(c) *Computer Tier 1 destinations.* (1) *Eligible destinations.* The destinations that are eligible to receive exports and reexports under paragraph (c) of this section include: Antigua and Barbuda, Argentina, Aruba, Australia, Austria, Bahamas (The), Bangladesh, Barbados, Belgium, Belize, Benin, Bhutan, Bolivia, Botswana, Brazil, Brunei, Burkina Faso, Burma, Burundi, Cameroon, Cape Verde, Central African Republic, Chad, Chile, Colombia, Congo (Democratic Republic of the), Congo (Republic of the), Costa Rica, Cote d'Ivoire, Cyprus, Czech Republic, Denmark, Dominica, Dominican Republic, East Timor, Ecuador, El Salvador, Equatorial Guinea, Eritrea, Estonia, Ethiopia, Fiji, Finland, France, Gabon, Gambia (The), Germany, Ghana, Greece, Grenada, Guatemala, Guinea, Guinea-Bissau, Guyana, Haiti, Honduras, Hong Kong, Hungary, Iceland, Indonesia, Ireland, Italy, Jamaica, Japan, Kenya, Kiribati, Korea (Republic of), Latvia, Lesotho, Liberia, Liechtenstein, Lithuania, Luxembourg, Madagascar, Malawi, Malaysia, Maldives, Mali, Malta, Marshall Islands, Mauritius, Mexico, Micronesia (Federated States of), Monaco, Mozambique, Namibia, Nauru, Nepal, Netherlands, Netherlands Antilles, New Zealand, Nicaragua, Niger, Nigeria, Norway, Palau, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Poland, Portugal, Romania, Rwanda, St. Kitts & Nevis, St. Lucia, St. Vincent and the Grenadines, Sao Tome & Principe, Samoa, San Marino, Senegal, Seychelles, Sierra Leone, Singapore, Slovakia, Slovenia, Solomon Islands, Somalia, South Africa, Spain, Sri Lanka, Surinam, Swaziland, Sweden, Switzerland, Taiwan, Tanzania, Togo, Tonga, Thailand, Trinidad and Tobago, Turkey, Tuvalu, Uganda, United Kingdom, Uruguay, Vatican City, Venezuela, Western Sahara, Zambia, and Zimbabwe.

(2) *Eligible commodities.* All computers, including electronic assemblies and specially designed components therefor are eligible for export or reexport under License Exception CTP to Tier 1 destinations, subject to the restrictions in paragraph (b) of this section.

(3) *Eligible technology and software.* (i) Technology and software described in paragraph (a)(2) of this section for computers of unlimited CTP are eligible for export or reexport under License Exception CTP to: Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Japan, Luxembourg, Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, Turkey, or the United Kingdom; and

(ii) Technology and source code described in paragraph (a)(2) of this section for computers with a CTP less than or equal to 190,000 MTOPS are eligible for deemed exports under License Exception CTP to foreign nationals of Tier 1 destinations, other than the destinations that are listed in paragraph (c)(3)(i) of this section, subject to the restrictions in paragraph (b) of this section.

(d) *Computer Tier 3 destinations.* (1) *Eligible destinations.* Eligible destinations under paragraph (d) of this section are: Afghanistan, Albania, Algeria, Andorra, Angola, Armenia, Azerbaijan, Bahrain, Belarus, Bosnia & Herzegovina, Bulgaria, Cambodia, China (People's Republic of), Comoros, Croatia, Djibouti, Egypt, Georgia, India, Iraq, Israel, Jordan, Kazakhstan, Kuwait, Kyrgyzstan, Laos, Lebanon, Macau, Macedonia (The Former Yugoslav Republic of), Mauritania, Moldova, Mongolia, Morocco, Oman, Pakistan, Qatar, Russia, Serbia and Montenegro, Saudi Arabia, Tajikistan, Tunisia, Turkmenistan, Ukraine, United Arab Emirates, Uzbekistan, Vanuatu, Vietnam, and Yemen.

(2) *Eligible commodities.* None.

(3) *Eligible technology and source code.* Technology and source code described in paragraph (a)(2) of this section for computers with a CTP less than or equal to 75,000 MTOPS are eligible for deemed exports under License Exception CTP to foreign nationals of Tier 3 destinations as described in paragraph (d)(1) of this section, subject to the restrictions in paragraph (b) and the provisions of paragraph (d)(4) of this section.

(4) *Foreign National Review (FNR) requirement for deemed exports.* (i) *Submission requirement.* Prior to disclosing eligible technology or source code to a foreign national of a Computer Tier 3 country that is not also a country listed in Country Group B in Supplement No. 1 to part 740 of the EAR under this License Exception, you must submit a Foreign National Review (FNR) request to BIS, as required under § 748.8(s) of the EAR. Your FNR request must include information about the foreign national required under § 748.8(t) of the EAR and set forth in Supplement No. 2 of part 748 of the EAR.

(ii) *Confirmation of eligibility.* You may not use License Exception CTP, until you have obtained confirmation of eligibility by calling the System for Tracking Export License Applications (STELA), see § 750.5 for how to use STELA, or electronically from the Simplified Network Application Procedure (SNAP), see *http://*

www.bis.doc.gov/SNAP/index.htm for more information about SNAP.

(iii) *Action by BIS.* Within nine business days of the registration of the FNR request, BIS will electronically refer the FNR request for interagency review, or if necessary return the FNR request without action (*e.g.*, if the information provided is incomplete). Processing time starts at the point at which the notification is registered into BIS's electronic system.

(iv) *Review by other departments or agencies.* The Departments of Defense, State, Energy, and other agencies, as appropriate, may review the FNR request. Within 30 calendar days of receipt of the BIS referral, the reviewing agency will provide BIS with a recommendation either to approve or deny the FNR request. A reviewing agency that fails to provide a recommendation within 30 days shall be deemed to have no objection to the final decision of BIS.

(v) *Action on the FNR Request.* After the interagency review period, BIS will promptly notify the applicant regarding the FNR request, *i.e.*, whether the FNR request is approved, denied, or more time is needed to consider the request.

(e) *Reporting requirements.* See § 743.1 of the EAR for reporting requirements of certain items under License Exception CTP.

PART 748—[AMENDED]

■ 3. The authority citation for part 748 is revised to read as follows:

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

■ 4. Section 748.8 is amended by revising the heading, and adding paragraphs (r), (s), and (t), to read as follows:

§ 748.8 Unique application and submission requirements.

* * * * *

(r) Encryption review requests.

(s) Foreign National Review Request.

(t) Foreign National Support Statement for deemed exports.

■ 5. Supplement No. 2 to part 748 is amended by revising the heading and adding paragraphs (s) and (t), to read as follows:

Supplement No. 2 to Part 748—Unique Application and Submission Requirements

* * * * *

(s) *Foreign National Review Request.* (1) *BIS–748P ''Multipurpose Application'' form.* If you are submitting a Foreign National Review (FNR) request for the deemed export of technology or source code, you must include the following information on the BIS–748P ''Multipurpose Application'' form:

(i) In Block 1 through 3, insert name, telephone, and facsimile of the person that is most knowledgeable about the foreign national;

(ii) In Block 4 (Date of Application), enter the date;

(iii) In Block 5 (Type of Application), place an ''X'' in the box marked ''Other'';

(iv) In Block 6 (Documents Submitted with Application), place an ''X'' in ''Other'' to signify that you are submitting the Foreign National Review Support Statement(s) with the BIS–748P, and place an ''X'' in ''BIS–748P–B'' if you are submitting this FNR for multiple foreign nationals;

(v) In Block 9 (Special Purpose), insert the phrase ''Foreign National Review (FNR)'';

(vi) In Block 14 (Applicant), insert the name of the applicant;

(vii) In Block 18 (Ultimate Consignee), insert the name and address of the Foreign National;

(viii) In Block 21 (Specific End-Use), insert any information which may be of interest regarding the export of the technology or source code;

(ix) In Block 24 (Additional Information), insert contact email information;

(x) In Block 25 (Signature), sign the BIS–748P, and insert the name and title of the signer; and

(xi) All other Blocks on the application may be left blank.

(2) *Multiple Foreign Nationals.* If you are submitting a Foreign National Review Request for more than one individual, you may add other foreign nationals by completing and attaching form BIS–748P–B ''End-User Appendix.''

(t) *Foreign National Review Support Statement.* To request review of your FNR, you must submit to BIS a FNR support statement as set forth below on company letterhead, along with Form BIS–748P (Multipurpose Application), or its electronic equivalent. For FNRs that include multiple foreign nationals, an FNR support statement must be submitted for each foreign national.

(1) Case number (Z number): Zxxxxxx;

(2) Name, and all other names ever used;

(3) Date of birth: dd/mm/yyyy;

(4) Place of birth: city, state/province, and country;

(5) U.S. Address: street address, city, state, zip;

(6) Overseas Address: street address, city, province, country;

(7) Visa type (with expiration date and place issued, if available): type, dd/mm/yyyy, city, country;

(8) I–94 No. xxxxxxx, dd/mm/yyyy;

(9) Passport and Country of Issue: xxxxxxxx, country;

(10) U.S. Education (schools, degrees, and dates received) (if any): degree, subject, university, city, state, country, month/year–month/year;

(11) Foreign Education: degree, subject, university, city, state, country, month/year–month/year;

(12) Employer (applicant) and address: company, street address, city, state, zip;

(13) Detailed explanation of position requirements and individual's qualifications related to the position; and

(14) Prior Employment Record, (including overseas employment) addresses and dates; explain any periods of unemployment.

PART 774—[AMENDED]

■ 6. The authority citation for part 774 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.*, 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; Sec. 901–911, Pub. L. 106–387; Sec. 221, Pub. L. 107–56; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 6, 2004, 69 FR 48763 (August 10, 2004).

Supplement No. 1 to Part 774 [Amended]

■ 7. In Supplement No. 1 to part 774 (the Commerce Control List), Category 4—Computers, Export Control Classification Number (ECCN) 4D001 is amended by revising the License Exception section, to read as follows:

4D001 ''Software'' specially designed or modified for the ''development'', ''production'' or ''use'' of equipment or ''software'' controlled by 4A001 to 4A004, or 4D (except 4D980, 4D993 or 4D994), and other specified software, see List of Items Controlled.

* * * * *

License Exceptions

CIV: N/A

TSR: Yes, except software for commodities controlled by ECCN 4A003.b or ECCN 4A003.c is limited to software for computers or electronic assemblies with a CTP equal to or less than 33,000 MTOPS.

CTP: Yes to specific countries (see § 740.7 of the EAR for eligibility criteria)

* * * * *

■ 8. In Supplement No. 1 to part 774 (the Commerce Control List), Category 4—Computers, Export Control Classification Number (ECCN) 4E001 is amended by revising the License Exception section, to read as follows:

4E001 ''Technology'' according to the General Technology Note, for the ''development'', ''production'' or ''use'' of equipment or ''software'' controlled by 4A (except 4A980, 4A993 or 4A994) or 4D (except 4D980, 4D993, 4D994), and other specified technology, see List of Items Controlled.

* * * * *

License Exceptions

CIV: N/A

TSR: Yes, except technology for commodities controlled by ECCN 4A003.b or ECCN 4A003.c is limited to technology for

computers or electronic assemblies with a CTP equal to or less than 33,000 MTOPS.

CTP: Yes to specific countries (see § 740.7 of the EAR for eligibility criteria)

* * * * *

Dated: October 28, 2004.

Peter Lichtenbaum,

Assistant Secretary for Export Administration.

[FR Doc. 04–24679 Filed 11–4–04; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 740 and 774

Docket No. 041018284–4284–01

RIN 0694–AD04

Microprocessor Technology Eligible for Export Under License Exception

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Industry and Security (BIS) is expanding the availability of License Exception CIV for certain deemed exports of microprocessor technology on the Commerce Control List (CCL) of the Export Administration Regulations (EAR) under Export Classification Control Numbers (ECCN) 3E001 and 3E002. These ECCNs control technology that can be used for the development and production of microprocessors. This final rule partially implements a proposed rule published on October 24, 2003. The proposed rule included the export and reexport of general purpose microprocessor technology under License Exception CIV, while this final rule limits License Exception CIV eligibility to deemed exports for certain microprocessor technology. BIS has determined that further liberalization of controls on exports of microprocessor technology must await agreement in the Wassenaar Arrangement. This rule also establishes a ''Foreign National Review (FNR)'' requirement under License Exception CIV for deemed exports of microprocessor technology to certain eligible foreign nationals.

DATES: This rule is effective on November 5, 2004.

FOR FURTHER INFORMATION CONTACT: Sharron Cook, Senior Export Policy Analyst, Office of Exporter Services, Regulatory Policy Division, Bureau of Industry and Security, Telephone: (202) 482–2440.

SUPPLEMENTARY INFORMATION:

Background

On October 24, 2003, BIS published a proposed rule with request for comments (68 FR 60891) from industry to assist BIS in evaluating microprocessor technology controlled under ECCN 3E002, as well as computer technology and software controls. BIS received eleven comments in response to this request. While the proposed rule covered both microprocessor technology and computer technology and software, BIS has decided to address computer technology and software and microprocessor technology in two different rules. This final rule implements the license exception expansion for microprocessor technology. The corresponding rule on license exception eligibility for computer technology is published elsewhere in this issue of the **Federal Register**.

Current Controls on Microprocessor Technology

Technology for the development and production of microprocessors that have a CTP exceeding 530 MTOPS and an arithmetic logic unit with an access width of 32 bits or more are controlled by ECCN 3E002, pursuant to agreement by members of the Wassenaar Arrangement (WA). License Exception TSR is available for the export and reexport of technology for microprocessors of unlimited CTP to all Country Group B countries (*see* Supplement No. 1 to part 740 of the EAR), if all the criteria of License Exception TSR are met (*see* section 740.6 of the EAR for License Exception TSR requirements).

In addition, technology for the development or production of microprocessors that have more than one data or instruction bus or serial communication port that provides a direct external interconnection between parallel ''microprocessor microcircuits'' with a transfer rate exceeding 150 Megabytes per second are controlled by ECCN 3E001, because ''microprocessor microcircuits'', ''micro-computer microcircuits'' and microcontroller microcircuits having this characteristic are controlled under ECCN 3A001.a.3.c. License Exception TSR is available for the export and reexport of technology for microprocessors of unlimited transfer rate to all Country Group B countries (*see* Supplement No. 1 to part 740 of the EAR), if all the criteria of License Exception TSR are met (*see* section 740.6 of the EAR for License Exception TSR requirements).

Deemed Export Revisions

While the original **Federal Register** notice proposed expanding License Exception availability for actual exports and reexports of microprocessor technology, this final rule expands License Exception CIV availability for deemed exports only. Generally, Wassenaar countries do not have in-country transfer controls (deemed export controls), with the exception of classified material.

Microprocessor technology is listed by the Wassenaar Arrangement on the Basic List (530 MTOPS). Accordingly adjustments in control limits for actual exports and reexport of microprocessor technology should be implemented based on agreement with the United States' Wassenaar partners. Therefore, the United States may discuss raising the level of controls for actual export and reexport of microprocessor technology in the Wassenaar Arrangement.

The EAR defines ''export'' to include, among other things, the release of technology or source code subject to the EAR to a foreign national within the United States. Such release is ''deemed'' to be an export to the home country or countries of the foreign national. The deemed export rule does not apply to persons lawfully admitted for permanent residence in the United States and does not apply to persons who are protected individuals under the Immigration and Naturalization Act (8 U.S.C. 1324b(a)(3)). Deemed export license applications for foreign nationals with dual citizenship should be based on the most recently obtained country citizenship. Applications for foreign nationals with temporary or permanent residence status of a third country (*i.e.*, non-U.S. and a temporary or permanent residence status other than a foreign national's country of origin) should be based on the foreign national's country of citizenship.

Because the United States is one of the only WA country members to implement deemed export controls, U.S. industry has been required to obtain license authorization for these deemed exports when other WA member countries have not imposed such controls on their industries. Expanding the availability of a License Exception for general purpose microprocessor technology provides relief from licensing burdens for U.S. industry and levels the playing field in global competition. BIS has found that the expansion of license exception availability under the technology parameters set forth below will not have

an adverse impact on the U.S. national security.

Expansion of License Exception CIV for Certain Deemed Exports of Microprocessor Technology Controlled Under ECCNs 3E001 and 3E002

This rule authorizes under License Exception CIV deemed exports of technology controlled under ECCN 3E001 for the development and production of microprocessors controlled under ECCN 3A001.a.3.c.with a CTP less than or equal to 40,000 MTOPS (regardless of word length or access width) to Country Group D:1 nationals. License Exception CIV does not apply to ECCN 3E001 technology for ECCN 3A001.a.3.c required for the development or production of other items controlled under ECCNs beginning with 3A, 3B, or 3C, or to ECCN 3E001 technology also controlled under ECCN 3E003.

In addition, this rule authorizes under License Exception CIV deemed exports of technology controlled under ECCN 3E002 for the development and production of microprocessors having a CTP less than or equal to 40,000 MTOPS (regardless of word length or access width) to Country Group D:1 nationals. License Exception CIV does not apply to ECCN 3E002 technology also required for the development or production of items controlled under ECCNs beginning with 3A, 3B, or 3C, or to ECCN 3E002 technology also controlled under ECCN 3E003.

Requirements for Use of License Exception CIV for Deemed Exports of Eligible Microprocessor Technology

License Exception CIV may not be used for military end-users or to known military uses. In addition to conventional military activities, military uses include any proliferation activities described in part 744 of the EAR. Deemed exports under License Exception CIV are not authorized to foreign nationals in an expired visa status. It is the responsibility of the exporter to ensure that, in the case of deemed exports, the foreign national maintains a valid U.S. visa, if required to hold a visa from the United States.

This rule makes License Exception CIV available for deemed exports of eligible microprocessor technology to any Country Group D:1 foreign national once a Foreign National Review (FNR) request has been submitted to BIS and confirmation of eligibility has been obtained from the System for Tracking Export License Applications (STELA) or the Simplified Network Application Procedure (SNAP). FNR requests must be submitted using Form BIS–748P (Multipurpose Application), or its electronic equivalent, and must include information about the foreign national who is to receive the microprocessor technology. The information required for the FNR request is set forth in paragraphs (s) and (t) of Supplement No 2 to part 748 of the EAR. BIS will refer the FNR request for interagency review within nine business days or, if necessary, return the FNR request without action to the applicant, *e.g.*, if more information is necessary. The agencies have 30 days in which to return a recommendation to BIS.

Exporters who have current licenses for deemed exports of such technology to Country Group D:1 foreign nationals that become eligible for License Exception CIV are no longer bound by conditions on their licenses, as provided under section 750.7 of the EAR. Termination of license conditions does not relieve an exporter of its responsibility for violations that occurred prior to the availability of the License Exception.

Although most licenses for microprocessor technology have been issued to companies who employ Country Group D:1 foreign nationals in their U.S. facilities and who hold work visas issued by the U.S. Government, the availability of License Exception CIV for deemed exports is not confined to employer releases of technology to employees. It is also available for deemed exports of technology to Country Group D:1 foreign national visitors and customers, provided that their backgrounds have been checked under the procedures set forth in License Exception CIV.

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

Comments

The comments that were received by BIS may be found at *http://efoia.bis.doc.gov/pubcomm/Computer%20Tech%20and%20Software/Final.pdf*. Set forth below are the questions that were posed to industry in the proposed rule and a summary of the comments BIS received and, where applicable, BIS's response to those comments.

1. What impact would the proposed revision of computer technology and software controls have on your company?

Comments in response to this question are addressed in the final rule for computer technology export controls.

2. Is there another proposal regarding computer technology and software, and microprocessor technology controls that you would like Commerce to consider? If so, describe your proposal in detail and please give technical and other justifications for your proposal.

BIS received many comments from industry suggesting that BIS eliminate MTOPS controls for microprocessor technology and instead use end-user and end-use based controls to harmonize with the export controls of microprocessor chips implemented by BIS.

Technology and software for the development and production of microprocessor chips is listed on the Sensitive List (Annex 1) of the Wassenaar Arrangement, *i.e.*, 33 member countries have agreed that this technology must not only be on the List of Dual-use Good and Technologies, but must be carefully monitored because of the usefulness of this technology and software in producing and developing conventional arms. The controlling parameters that have been approved by the Wassenaar member countries are Composite Theoretical Performance (CTP) in Millions of Operations per Second (MTOPS), composition material (compound semiconductor), clock frequency in MHz, and number of data or instruction bus or serial communication ports and related data transfer rate in Mbyte/s. On the other hand, the CTP parameter has been removed from the Wassenaar List for microprocessor chips, which is why BIS decided to implement an end-user/use control for microprocessor chips, *i.e.*, a license is required only when sent to military or weapons of mass destruction (proliferation) end-uses or end-users. Therefore, the microprocessor technology and hardware are controlled in two different ways, and BIS will not change the control parameters for microprocessor technology absent a change to the Wassenaar List.

Others suggested that BIS implement a license exception for microprocessor technology along the same lines as License Exception ENC: *i.e.*, to (a) permit U.S. information technology (IT) companies to transfer controlled knowledge to their foreign subsidiaries; and (b) permit U.S. IT companies to

transfer controlled knowledge to their lawfully admitted foreign national employees working within the United States. In return, companies would commit to implement fundamental safeguards on the internal movement of technology.

This technology is already eligible for export or reexport under License Exception TSR to countries listed in Country Group B. However, because of the usefulness of this technology in producing and developing conventional arms and the sensitivity placed on it by the Wassenaar Arrangement, BIS has decided that it would not be prudent to make such technology eligible for export or reexport under a license exception to end-users located in countries that the United States has determined pose a national security concern, *i.e.*, Country Group D:1 countries. Nonetheless, because other Wassenaar member countries do not require licenses for deemed exports of this technology, this rule will make certain microprocessor technology eligible for License Exception CIV after the foreign national has been approved via a Foreign National Review by BIS.

While BIS has decided to only allow deemed exports of this technology under license exception at this time, BIS recognizes that certain licensing requirements for microprocessor technology may be limiting. Therefore, BIS has discussed with other agencies a possibility of allowing the export, reexport, or transfer of this technology through a ''Special Intra-company License (SIL).'' The goal is to create a license that will ease the flow of certain authorized technology and source code within the global corporate structure, based on an approved Technology Control Plan, *i.e.*, an internal control program.

3. What is the highest CTP level for microprocessors currently being manufactured by your company?

Many respondents either said that this information was proprietary or that they had already submitted this information to BIS. Some respondents provided CTPs in the range of 2,700–24,170 MTOPS.

4. What should be the CTP MTOPS limitation for microprocessor technology under the proposed License Exception CIV? Please provide detailed technical and other justification for your proposal.

Most respondents said License Exception CIV should have a CTP with unlimited MTOPS. This rule makes deemed exports of microprocessor technology at a certain MTOPs level eligible for License Exception CIV. While BIS believes that deemed exports are more easily enforced, because they take place in the United States, BIS is not naive about efforts of other countries to obtain this integrated circuit technology, see 69 F.R. 26360 5/12/04 regarding Suntek Microwave, Inc. Therefore, BIS has set a limit on the MTOPS level eligible under License Exception CIV.

In addition, at least two respondents requested that if we do not eliminate the CTP parameter altogether, then the CTP should be set at twice the MTOPS of what is in current production. They estimated that this would result in a CTP threshold of 50,000 MTOPS. This final rule adopts the 40,000 MTOPS threshold for eligibility of deemed exports under License Exception CIV, because the projected future trends of technology thresholds, which were provided by industry, did not justify adopting a higher MTOPS level at this time.

Respondents said in support of the proposed rule that the export control level for microprocessor technology should match that of microprocessor hardware. One of the controlling parameters for microprocessor chips, CTP, was removed from the Wassenaar List in 2003, which is why BIS decided to implement an end-user/use control for microprocessor chips, *i.e.*, a license is required only when sent to military or weapons of mass destruction (proliferation) end-uses or end-users. On the other hand, technology and software for the development and production of microprocessor chips is listed on the Sensitive List (Annex 1) of the Wassenaar Arrangement, *i.e.*, 33 member countries have agreed that this technology must not only be on the List of Dual-use Good and Technologies, but must be carefully monitored because of the usefulness of this technology and software in producing and developing conventional arms. The controlling parameter for microprocessor technology that has been approved by the Wassenaar member countries under ECCN 3E002 is 530 MTOPS. Therefore, BIS, in keeping with its agreements to the Wassenaar Arrangement, will not be eliminating the CTP parameter for technology to match the no longer existent CTP parameter for microprocessor hardware.

A few respondents claimed that microprocessor technology controlled under the EAR is already available abroad, because microprocessors and like commodities (graphics chips, IDE controllers, and network routers) ''require a broad set of design elements'' (Arithmetic logic unit (ALU), memory, clock frequency, and control unit). One respondent wrote, ''All of the elements are present and required in all of the technologies and each requires application of knowledge in each or all of the elements. For example, a current generation graphics processor chip contains ALU's capable of 100 Gf of 32 Bit FP performance. This level of performance would be approximately 50K CTP if the graphics chip were to be subjected to CTP analysis. Export controls for all of the example products, except for the microprocessor, are limited to anti-terrorism (AT) controls. There are no multi-national controls on those other products. Thus, countries of concern in Computer Tier 3 Country Group can easily obtain the needed component technology and then simply re-package it as a microprocessor.''

If this were feasible and simple to do, then countries around the world would be producing microprocessor chips and not buying U.S. microprocessors. However, we have found that this is not the case, and countries around the world greatly seek not only U.S. manufactured microprocessors, but the technology to produce and develop them. In addition, gathering bits and pieces of technology from different sources, while not easy in itself, does not provide enough comprehensive knowledge to produce a high quality microprocessor chip.

5. How do other countries license the transfer of computer technology and software, and microprocessor technology? Have there been instances where your company has been placed at a competitive disadvantage based on current U.S. license requirements?

The majority of respondents stated that they did not have access to specific procedures or regulations of other countries' export policies with regard to computer technology and software, and microprocessor technology. Some commented that the technology was widely available from non-U.S. sources and that the majority of other countries impose minimal export restrictions on this type of technology.

6. What are your predictions for the CTP level of microprocessors that will be in production 3 and 5 years from now? On what basis did you make your predictions?

Some respondents said they had already provided such information to BIS. Some respondents provided the requested predictions, based on Moore's Law and historic CTP information, as follows:

3 year predictions: 160,000 MTOPS,
250,000 MTOPS, and 400,000 MTOPS

5 year predictions: 600,000 MTOPS and 640,000 MTOPS
7 year prediction: 1,000,000 MTOPS

7. What percentage of your research and development is accomplished: (1) Outside of the United States; and (2) with the assistance of foreign nationals within the United States?

Some respondents said they had already provided such information to BIS. None of the respondents addressed this specifically, but one respondent noted that in the physical sciences and engineering, nearly 50 percent of all Masters and PhD degrees awarded by U.S. schools are earned by foreign nationals.

8. Is there an alternative method or parameter for controlling exports of computers and microprocessors and the technology and software therefore that industry believes would be more in-line with the way industry produces, develops, or measures these items?

Many of the respondents pointed out that performance-based controls are ''unsuited'' for general purpose and rapidly-advancing technologies such as semiconductors and computers. Many respondents would like to see end-use and end-user based controls. However, it has been determined by Wassenaar Arrangement members that technology and software for the development and production of microprocessors and computers warrant extra care and have placed such technology and software on the Wassenaar Sensitive List (Annex 1). These technology and software controls are based on their performance capabilities, and at this time the only metric that the regime members have agreed upon is CTP. In keeping with the Wassenaar Arrangement agreements, BIS will not adopt a unilateral end-use/user based control for microprocessor technology.

In addition to the above responses to the questions that were included in the proposed rule, BIS received some recommendations about ECCN 3A001.a.3.c, data transfer rate, another parameter that controls microprocessors. Some respondents recommended that BIS submit a proposal to Wassenaar to have this parameter removed, because it is outdated. BIS has in the past submitted proposals to Wassenaar to remove this parameter, but has not been successful in gaining unanimous agreement. BIS also received comments from industry explaining that microprocessor technology is also controlled under ECCN 3E001, because of the ECCN 3A001.a.3.c controls. Industry advised that this effort to expand CIV under ECCN 3E002 would be incomplete without a similar expansion of CIV under ECCN 3E001. BIS agrees with industry's assessment of ECCN 3E001, as it controls interconnect technology for microprocessors under ECCN 3A001.a.3.c. Therefore, this final rule adopts this recommendation by making deemed exports of certain microprocessor technology controlled under ECCNs 3E001 and 3E002 eligible for License Exception CIV.

Rulemaking Requirements

1. This final rule has been determined to be not significant for purposes of E.O. 12866.

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) ''Control Number.'' This rule contains a collection of information subject to the requirements of the PRA. This collection has been approved by OMB under Control Number 0694–0088 (Multi-Purpose Application), which carries a burden hour estimate of 58 minutes to prepare and submit form BIS–748. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to David Rostker, Office of Management and Budget (OMB), by e-mail to *David_Rostker@omb.eop.gov,* or by fax to (202) 395–7285; and to the Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, PO Box 273, Washington, DC 20044.

3. This rule does not contain policies with Federalism implications as that term is defined under E.O. 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the UnitedStates (5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under the Administrative Procedure Act or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Sharron Cook, Office of Exporter Services, Bureau of Industry and Security, Department of Commerce, PO Box 273, Washington, DC 20044.

List of Subjects

15 CFR Part 740

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements.

15 CFR Part 774

Exports, Reporting and recordkeeping requirements.

■ Accordingly, parts 740 and 774 of the Export Administration Regulations (15 CFR parts 730–799) are amended as follows:

PART 740—[AMENDED]

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

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

■ 2. Section 740.5 is revised to read as follows:

§ 740.5 Civil End-users (CIV).

(a) *Scope.* License Exception CIV authorizes exports and reexports of items on the Commerce Control List (CCL) (Supplement No. 1 to part 774 of the EAR) that have a license requirement to the ultimate destination pursuant to the Commerce Country Chart (Supplement No. 1 to part 738 of the EAR) for NS reasons only; and identified by ''CIV—Yes'' in the License Exception section of the Export Control Classification Number (ECCN), provided the items are destined to civil end-users for civil end-uses in Country Group D:1, except North Korea (Supplement No. 1 to part 740 of this part).

(b) *Restrictions.* (1) Restricted end-users and end-uses. You may not use CIV if you ''know'' the item will be or is intended to be exported, reexported, or transferred within country to military uses or military end-users. Such exports, reexports, and transfers will continue to require a license. In addition to conventional military activities, military uses include any proliferation activities described and prohibited by part 744 of the EAR.

(2) *Visa Status.* Deemed exports under License Exception CIV are not

authorized to foreign nationals in an expired visa status. It is the responsibility of the exporter to ensure that, in the case of deemed exports, the foreign national maintains a valid U.S. visa, if required to hold a visa from the United States.

(c) *Reporting Requirement.* See § 743.1 of the EAR for reporting requirements for exports of certain items under this License Exception.

(d) *Foreign National Review (FNR) requirement for deemed exports.* (1) Submission requirement. Prior to disclosing eligible technology to a foreign national under this License Exception, you must submit a Foreign National Review (FNR) request to BIS, as required under § 748.8(s) of the EAR. Your FNR request must include information about the foreign national required under § 748.8(t) of the EAR and set forth in Supplement No. 2 of part 748 of the EAR.

(2) *Confirmation of eligibility.* You may not use License Exception CIV until you have obtained confirmation of eligibility by calling the System for Tracking Export License Applications (STELA), see § 750.5 for how to use STELA, or electronically from the Simplified Network Application Procedure (SNAP), see http://www.bis.doc.gov/SNAP/index.htm for more information about SNAP.

(3) *Action by BIS.* Within nine business days of the registration of the FNR request, BIS will refer the FNR request electronically, along with all necessary documentation for interagency review, or if necessary return the FNR request without action (*e.g.*, if the information provided is incomplete). Processing time starts at the point at which the notification is registered into BIS's electronic system.

(4) *Review by other departments or agencies.* The Departments of Defense, State, Energy, and other agencies, as appropriate, may review the FNR request. Within 30 calendar days of receipt of the BIS referral, the reviewing agency will provide BIS with a recommendation either to approve or deny the FNR request. A reviewing agency that fails to provide a recommendation within 30 days shall be deemed to have no objection to the final decision of BIS.

(5) *Action on the FNR Request.* After the interagency review period, BIS will promptly notify the applicant regarding the FNR request, *i.e.,* whether the FNR request is approved, denied, or more time is needed to consider the request.

PART 774—[AMENDED]

■ 3. The authority citation for part 774 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 10 U.S.C. 7420; 10 U.S.C. 7430(e); 18 U.S.C. 2510 *et seq.;* 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.,* 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; Sec. 901–911, Pub. L. 106–387; Sec. 221, Pub. L. 107–56; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 6, 2004, 69 FR 48763 (August 10, 2004).

■ 4. In Supplement No. 1 to part 774 (the Commerce Control List), Category 3—Electronics, Export Control Classification Number (ECCN) 3E001 is amended by revising the ''CIV'' paragraph in the License Exceptions section, to read as follows:

3E001 ''Technology'' according to the General Technology Note for the ''development'' or ''production'' of equipment or materials controlled by 3A (except 3A292, 3A980, 3A981, 3A991 or 3A992), 3B (except 3B991 or 3B992) or 3C.

* * * * *

License Exceptions

CIV: Yes for deemed exports, as described in § 734.2(b)(2)(ii) of the EAR, of technology for the development or production of microprocessor microcircuits, micro-computer microcircuits, and microcontroller microcircuits having the characteristics described in 3A001.a.3.c with a CTP less than or equal to 40,000 MTOPS (regardless of word length or access width). Deemed exports under License Exception CIV are subject to a Foreign National Review (FNR) requirement, see § 740.5 of the EAR for more information about the FNR. License Exception CIV does not apply to ECCN 3E001 technology for 3A001.a.3.c required for the development or production of other items controlled under ECCNs beginning with 3A, 3B, or 3C, or to ECCN 3E001 technology also controlled under ECCN 3E003.

TSR: * * *

* * * * *

■ 5. In Supplement No. 1 to part 774 (the Commerce Control List), Category 3—Electronics, Export Control Classification Number (ECCN) 3E002 is amended by revising the ''CIV'' paragraph in the License Exceptions section, to read as follows:

3E002 ''Technology'' according to the General Technology Note other than that controlled in 3E001 for the ''development'' or ''production'' of ''microprocessor microcircuits'', ''micro-computer microcircuits'' and microcontroller microcircuits having a ''composite theoretical performance'' (''CTP'') of 530 million theoretical operations per second (MTOPS) or more and an arithmetic logic unit with an access width of 32 bits or more.

* * * * *

License Exceptions

CIV: Yes, for deemed exports, as described in § 734.2(b)(2)(ii) of the EAR, of ''technology'' for the ''development'' or ''production'' of general purpose microprocessors with a CTP less than or equal to 40,000 MTOPS (regardless of word length or access width). Deemed exports under License Exception CIV are subject to a Foreign National Review (FNR) requirement, see § 740.5 of the EAR for more information about the FNR. License Exception CIV does not apply to ECCN 3E002 technology also required for the development or production of items controlled under ECCNs beginning with 3A, 3B, or 3C, or to ECCN 3E002 technology also controlled under ECCN 3E003.

TSR: * * *

* * * * *

Dated: October 28, 2004.

Peter Lichtenbaum,

Assistant Secretary for Export Administration.

[FR Doc. 04–24680 Filed 11–4–04; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD01–04–137]

Drawbridge Operation Regulations: Connecticut River, CT

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the drawbridge operation regulations for the Amtrak Old Saybrook-Old Lyme Bridge, mile 3.4, across the Connecticut River, Connecticut. This deviation from the regulations allows the bridge to remain closed from 10 p.m. on November 15, 2004 through 10 a.m. on November 16, 2004. This deviation is necessary in order to facilitate necessary electrical repairs at the bridge.

DATES: This deviation is effective from November 15, 2004 through November 16, 2004.

FOR FURTHER INFORMATION CONTACT: Judy Leung-Yee, Project Officer, First Coast Guard District, at (212) 668–7195.

SUPPLEMENTARY INFORMATION: The Old Saybrook-Old Lyme Bridge, at mile 3.4 across the Connecticut River has a vertical clearance in the closed position of 19 feet at mean high water and 22 feet at mean low water. The existing

drawbridge operating regulations are listed at 33 CFR 117.205(b).

The owner of the bridge, Amtrak, requested a temporary deviation from the drawbridge operating regulations to facilitate electrical repairs at the bridge.

This deviation to the operating regulations allows the Old Saybrook-Old Lyme Bridge to remain closed from 10 p.m. on November 15, 2004 through 10 a.m. on November 16, 2004.

In accordance with 33 CFR 117.35(c), this work will be performed with all due speed in order to return the bridge to normal operation as soon as possible. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: October 20, 2004.

John L. Grenier,

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

[FR Doc. 04–24689 Filed 11–4–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA—2004–19523]

RIN 2127–AH75

Federal Motor Vehicle Safety Standards; Rear Impact Guards

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: In 1996, the agency established standards for underride guards for trailers and semitrailers in order to reduce the risk to passenger vehicle occupants in crashes in which a passenger vehicle impacts the rear end of a trailer or semitrailer. In establishing these standards, the agency recognized that compliance with the requirements was not practicable for a small number of vehicles due to the presence of work-performing equipment mounted on the rear of a trailer or semitrailer. These vehicles are designated as ''special purpose vehicles'' and are excluded from the standard. Today's final rule amends the definition of ''special purpose vehicle'' by adding a precise description of the cubic area in which work-performing equipment must reside in or move through while a trailer is moving. We have also determined that the addition of those specifications eliminates the need to exclude expressly vehicles equipped with specific liftgate designs. Finally, we are amending the requirements regarding the location of the rearmost surface of an impact guard as proposed.

DATES: *Effective date:* This final rule is effective November 5, 2004. Today's final rule clarifies the agency's original intent in excluding special purpose vehicles from the requirements of FMVSS No. 224. Today's document does not impact vehicles currently excluded from the underride guard requirements under FMVSS No. 224. This final rule provides additional objectivity to the application of the requirements, and we therefore, have determined it to be in the public interest for this final rule to be effective immediately.

Petitions: Petitions for reconsideration must be received by December 20, 2004 and should refer to this docket and the notice number of this document and be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590.

Note that all petitions received will be posted without change to *http://dms.dot.gov* including any personal information provided. Please see the Privacy Act heading under Rulemaking Analysis and Notices.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays

FOR FURTHER INFORMTION CONTACT: For non-legal issues, you may contact Mike Huntley, Office of Crashworthiness Standards, at (202) 366–0029, and fax him at (202) 493–2739.

For legal issues, you may contact Christopher Calamita, Office of Chief Counsel, at (202) 366–2992, and fax him at (202) 366–3820.

You may send mail to these officials at the National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

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I. Background

A. Rear Impact Guard Standards

To address the problem of rear underride crashes, the agency established two Federal motor vehicle safety standards (FMVSSs), FMVSS No. 223, *Rear impact guards*, and FMVSS No. 224, *Rear impact protection* (61 FR 2004; January 24, 1996; Docket No. 1–11). A rear underride crash is a crash in which the front end of a passenger car, light truck, or multipurpose vehicle with a gross vehicle weight rating of 4,536 kilograms (10,000 lb) or less (referred to collectively as ''passenger vehicles'') collides with and slides under (*i.e.*, underrides) the rear end of a trailer or semitrailer (referred to collectively as ''trailers''). Underride can potentially occur when a trailer chassis is higher than the hood of a passenger vehicle. In the worst cases, referred to as passenger compartment intrusion (PCI) crashes, the passenger vehicle underrides so far that the rear end of the trailer breaks the vehicle's windshield and enters its passenger compartment. PCI crashes generally result in injuries and fatalities to the passenger vehicle occupants due to their contact with the rear of the trailer. In 1996, when the underride guard standards were established, we estimated that about 11,551 rear-end crashes with trailers occurred annually, resulting in approximately 423 passenger vehicle occupant fatalities and about 5,030 non-fatal injuries.[1]

To reduce the number of injuries and fatalities resulting from rear underride crashes, the two Federal underride guard standards operate together. The first standard, FMVSS No. 223 (the ''equipment standard''), specifies performance requirements that rear impact guards (guards) must meet before they can be installed on new trailers. The standard specifies strength requirements and test procedures that are used to demonstrate compliance with those requirements. The standard also requires equipment manufacturers to provide instructions on the proper installation of the guard and to permanently label the guard certifying that it meets all the performance requirements of the equipment standard.

The second standard, FMVSS No. 224 (the ''vehicle standard'') requires that most new trailers with a GVWR of 4,536

[1] In early 2005, the agency plans to begin a two-year data collection of crashes involving a passenger car, light truck and sport utility vehicle or van rear-ending a medium/heavy duty truck or heavy trailer. This information will be used to determine the effectiveness of the underride guard standards since they went into effect.

kilograms (10,000 pounds) or more be equipped with a rear impact guard meeting the specifications of FMVSS No. 223. The vehicle standard specifies requirements for the location of the guard relative to the sides and rear end of the trailer. A rear impact guard must extend outboard to within 100 millimeters (4 inches) of the side extremities of the vehicle, but may not extend beyond the side extremities. The vertical distance from the ground to the bottom edge of the horizontal member of the guard may not exceed 560 mm (22 inches) at any point across the full width of the horizontal member. The guard's rear surface must be located as close as practical to the rear extremity of the vehicle, but not more than 305 mm (12 inches) forward of the rear extremity. Finally, the vehicle standard requires that the guard be mounted on the trailer in accordance with the instructions furnished by the guard manufacturer.

In establishing the vehicle standard, the agency recognized that compliance with it was not practicable for a limited number of trailer designs. Accordingly, the agency provided that the vehicle standard does not apply to: pole trailers, pulpwood trailers, low chassis vehicles, special purpose vehicles, wheels back vehicles, and temporary living quarters. FMVSS No. 224 defines a special purpose vehicle as ''a trailer or semitrailer having work-performing equipment that, while the vehicle is in transit, resides in or moves through the area that could be occupied by the horizontal member of the rear underride guard.''

B. Petition for Rulemaking

On June 24, 1998, we received a petition from Thieman Tailgates, Inc. (Thieman), requesting that we amend Standard No. 224 to exclude vehicles with rear-mounted lift gates. Specifically, Thieman was concerned about two liftgate designs, tuckunder and rail-type. A tuckunder liftgate consists of a loading platform, which operates from its stowed position by swinging out to the rear of the trailer where it may be hydraulically raised and lowered to load heavy deliveries. Tuckunder liftgates are stowed under the body of the trailer while not in use, thus freeing the rear of the trailer for light deliveries and dock operations with elevated bays. Rail-type liftgates consist of a loading platform that typically moves vertically along two permanently mounted rails on the rear of the trailer. With rail-type liftgates, the platform swings up and stows along the rear of the trailer body while not in use.

The petitioner stated that, although the definition of ''special purpose vehicle'' is based on the area that should be occupied by the horizontal member of the rear impact guard, FMVSS No. 224 does not contain a specific definition of that area. As a result, the petitioner claimed, truck equipment dealers are confused as to whether trailers with tuckunder and rail-type liftgates are required to be equipped with rear impact guards, or fall within the ''special purpose vehicle'' exclusion. Therefore, the petitioner requested that FMVSS No. 224 explicitly exclude vehicles equipped with rear-mounted liftgates.

In the alternative, the petitioner requested that the agency expressly exclude tuckunder and rail-type liftgates from the energy absorption requirements of FMVSS No. 223. The petitioner stated that the energy absorption requirements would be ''nearly impossible'' to meet because rear impact guards on trailers with liftgates must be mounted in a manner that allows the guard to swing out of the way when the liftgate is being operated. Thus, the guard must have numerous parts that move freely, causing the guard to ''give'' a few inches before deflection starts to occur.

C. Notice of Proposed Rulemaking

In a February 27, 2004 notice of proposed rulemaking (NPRM), the agency denied Thieman's petition, but proposed: (1) To define ''special purpose vehicle'' to include a more precise description of the cubic area at the rear of a trailer in which work-performing equipment must reside or travel through while the trailer is in transit, (2) to specifically exclude trailers equipped with ''tuckunder'' liftgates, as defined by the proposal, from FMVSS No. 224, and (3) to clarify the requirements related to the location of the rearmost surface of the rear impact guard (69 FR 9288; Docket No. NHTSA–1998–4369).

In the February 2004 NPRM, the agency proposed a definition of ''special purpose vehicle'' as follows:

> Special purpose vehicle means a trailer or semitrailer having work-performing equipment that, while the vehicle is in transit, resides in or moves through any portion of the cubic area extending: (1) Vertically from the ground to a horizontal plane 660 mm above the ground; (2) laterally the full width of the trailer, determined by the trailer's side extremities as defined in S4 of this section; and (3) from the rear extremity of the trailer as defined in S4 of this section to a transverse vertical plane 305 mm forward of the rear extremity of the trailer.

The proposed cubic area in which work-performing equipment would have to reside in or move through for a trailer to qualify as a special purpose vehicle differs from the area in which the horizontal member of a rear impact guard must reside, as defined by S5.1.1 through S5.1.3 of FMVSS No. 224. The proposed 660 mm (26 inches) vertical specification incorporates the 560 mm (22 inches) minimum height from the ground as required in S5.1.2 of FMVSS No. 224 and the 100 mm (4 inches) minimum guard vertical height requirement in S5.1 of Standard No. 223. Horizontally, the proposed cubic area extends laterally the full width of the trailer. Conversely, S5.1.1 of FMVSS No. 224 permits the outermost surfaces of the horizontal member of a guard to be inside the side extremities of the vehicle by up to 100 mm. Thus, the proposed cubic area is larger both vertically and horizontally than the area defined by S5.1.1 through S5.1.3.

The proposed cubic area for the special purpose vehicle definition also differs from the ''guard zone'' defined in an interpretation letter sent to the National Truck Equipment Association (NTEA).[2] The difference between the ''guard zone'' and the proposed zones is with the height of the area. The proposal defined the vertical area as extending from the ground to a horizontal plane 660 mm (26 inches) above the ground, while our interpretation letter defined the vertical area as extending from the ground to a horizontal plane tangent to the bottom of the trailer.

In addition to clarifying what constitutes a special purpose vehicle, the proposal also sought to exclude vehicles equipped with ''tuckunder liftgates'' from the standard. In the February 2004 NPRM, the agency proposed the following definition of ''tuckunder liftgate:''

> [A]n item of work-performing equipment consisting of a loading platform that operates

[2] On September 9, 1998, we issued a letter stating that the area that could be occupied by the horizontal member of the rear impact guard (the ''guard zone'') is a three-dimensional space defined as follows:

1. Width. The horizontal member may extend laterally as far as the side extremities of the trailer as defined in S4 of Standard No. 224.

2. Height. The bottom edge of the horizontal member must be no more than 560 mm above the ground. The horizontal member must have a vertical height of at least 100 mm. This combination results in a vertical area that extends from the ground upward to a horizontal plane tangent to the bottom of the trailer.

3. Depth. The rearward boundary of the guard zone is the transverse vertical plane tangent to the rear extremity of the trailer as defined in S4 of Standard No. 224. The forward boundary of the guard zone is the transverse vertical plane 305 mm forward of that plane.

from its stowed position by swinging out to the rear of the vehicle where it may be hydraulically raised and lowered and, while the vehicle is in transit, resides completely between the unaltered vehicle's rear-most axle and rear extremity, as defined in S4 of this section, and beneath a horizontal plane 1,500 mm from the ground.

Finally, the agency proposed to amend S5.1.3 of FMVSS No. 224 in order to clarify the required distance of the rear most surface of a guard from a trailer's rear extremity. While S5.1.3 has consistently been interpreted in the proper manner, the current language could be read as not being applicable to a guard surface that is completely below a height of 560 mm (22 inches) from the ground.

II. Comments

In response to the NPRM, the agency received divergent comments on the proposal from two truck equipment manufacturers, an industry association, and two consumer safety organizations. One truck equipment manufacturer, Waltco Truck Equipment Co. (Waltco), supported the exclusion for tuckunder liftgate equipped vehicles but requested that the agency clarify the term ''tuckunder liftgate'' to avoid potential confusion with brand name lifts. The industry association, the NTEA, stated that all but one of its members concurred with Waltco. Additionally, the NTEA requested that the agency maintain the specifications as described in the September 1998 interpretation letter. The NTEA stated that the specifications in the letter had already created a fair amount of confusion for manufacturers and expressed concern that any changes would result in further confusion.

One truck equipment manufacturer and both consumer safety organizations objected to the proposed rulemaking. Maxon Lift Corp. (Maxon), a truck equipment manufacturer, objected to an exclusion for vehicles equipped with tuckunder liftgates. Maxon stated that it has designed a tuckunder liftgate that is compatible with the current standards and that a new exclusion is not necessary. The two consumer safety organizations, Advocates for Highway and Auto Safety (Advocates) and Public Citizen, objected to the proposed rulemaking generally. Both organizations stated that there was inadequate evidence of any need to expand the exclusion under FMVSS No. 224. Further, both organizations stated that the agency failed to demonstrate that the proposal would not reduce the safety benefits of the current standards.

III. Final Rule

Today's final rule amends FMVSS No. 224 in order to reflect more clearly the intent of the standard as originally established. Today's document specifies the cubic area in which work-performing equipment must reside in or move through, while the vehicle is in transit, in order for a vehicle to be excluded from the standards as a ''special purpose vehicle'' as proposed in the February 2004 NPRM. As explained below, we have determined that the specifications established here sufficiently address concerns with rear mounted liftgates in general. Therefore, a specific exclusion for vehicles equipped with ''tuckunder liftgates'' is not required. Finally, we are amending the guard rear surface provision to remove ambiguous wording.

A. Special Purpose Vehicles

Today's final rule establishes the cubic area in which work-performing equipment must reside or move through while a trailer is in transit in order for that vehicle to be classified as a special purpose vehicle as proposed in the February 2004 notice. The cubic area defined in this final rule clarifies the agency's longstanding intent to exclude from FMVSS No. 224 trailers equipped with work performing equipment that is located in the area occupied by a guard.

While the cubic area defined by today's final rule is different than that described in the agency's September 1998 letter, the difference in area ensures that vehicles equipped with lift designs that are compatible with the rear impact guard requirements remain subject to the standard. As explained above, the difference between the area described in the September 1998 letter and the area established in the final rule is the height. The interpretation letter described the vertical area as extending from the ground to a horizontal plane tangent to the bottom of the trailer. The vertical area specified in today's final rule extends from the ground to a horizontal plane 660 mm above the ground. If the cubic area extended to the bottom of a trailer, as specified in the interpretation letter, a trailer with any portion of work-performing equipment located just underneath the trailer would not be required to have a guard. For example, a trailer with a rail-type liftgate would be excluded from the requirements of the standard if only a small portion of it were mounted at a minimal distance below the trailer bed. As stated in the final rule establishing FMVSS No. 224, the agency never intended to exclude rail-type liftgates (*see* 61 FR 2022).

Additionally, we do not agree with NTEA that specifying the cubic area as proposed will cause confusion as to which vehicles are ''special purpose vehicles.'' The specifications established today are incorporated directly into the standard, as opposed to an interpretation letter. This provides manufacturers with the necessary information on the face of FMVSS No. 224 so that they no longer need to look beyond the standard. Further, as explained above, the difference between the previous specifications and those established today help ensure that the special purpose vehicle exclusion is not broader than originally intended.

B. ''Tuckunder Liftgates''

The agency is not establishing an exclusion expressly mentioning vehicles equipped with tuckunder lifts. While the agency has always intended for vehicles with tuckunder lifts to be excluded, we have determined that carving out an express exclusion would be redundant, given the cubic area established above. Tuckunder liftgates, by design, should continue to qualify a vehicle for the special purpose vehicle exclusion.

In objecting to the NPRM by stating that a new exclusion is not required, Maxim apparently misinterpreted FMVSS No. 224. The term ''special purpose vehicles'' has always been defined to exclude vehicles equipped with tuckunder lifts from the requirements of the standards. The preamble to the January 1996 final rule stated that, ''vehicles equipped with rail type lifts * * * are not excluded, *while vehicles equipped with tuckunder and other types of incompatible liftgates are excluded* (61 FR 2022, emphasis added).'' Consequently, the tuckunder liftgate exclusion proposed in the NPRM would not have created a new exclusion.

Further, the agency does not believe that the tuckunder liftgate exclusion was too narrow or would have been confusing, as stated by Waltco and the NTEA. Both Waltco and the NTEA stated that ''tuckunder liftgate'' is often used as a product name and that several other types of lifts (*e.g.*, ''flipaway,'' ''stowaway,'' ''slider'' and ''cantilever'' liftgates) also interfere with rear impact guards.

In the proposed rulemaking, the agency defined ''tuckunder liftgate'' as a type of design and not a brand name. The proposed definition of this design would have included the liftgate designs raised by commenters as also requiring consideration for exclusion. However, we understand how the phrase might have resulted in confusion, given the

industry's current use of the phrase as a brand name.

While the agency believes the ''tuckunder liftgate'' exclusion would have clarified the agency's intended application of the standard, we have determined the cubic area specifications established above already address the issue. The special purpose vehicle definition excludes vehicles equipped with tuckunder liftgates as well as similar liftgates that result in compatibility problems with the standard. Although Maxon stated that it has designed tuckunder liftgates that do not conflict with the requirements of FMVSS No. 224, not all tuckunder liftgates are compatible with the standard.[3] The cubic area specified by this final rule provides an objective method for determining which vehicles are excluded from FMVSS No. 224. Again, the cubic area established today clarifies the agency's longstanding intent to exclude a small number of vehicles for which compliance with FMVSS No. 224 is impracticable.

C. ''Guard Rear Surface'' and Trailer ''Rear Extremity''

We are amending the S5.1.3, *Guard rear surface*, of FMVSS No. 224 as proposed in the NPRM to remove potentially ambiguous language. However, we are not revising the definition of the rear extremity of a vehicle as requested by the NTEA. Although S5.1.3 has been properly interpreted to apply to all guards across their entire rear surface, the language in S5.1.3 indicates that it applies only to the portion of the guard rear surface that is at a height greater than 560 mm (22 inches) from the ground. To correct this, we are removing the introductory clause from the first sentence so that the sentence reads as follows:

> S5.1.3 Guard rear surface. The rearmost surface of the horizontal member of the guard shall be located as close as practical to a transverse vertical plane tangent to the rear extremity of the vehicle, but no more than 305 mm forward of that plane.

We are not revising the definition of ''rear extremity'' to accommodate trailers equipped with rail liftgates that are more than 12 inches deep as requested by NTEA. As stated in the NPRM, we note that rail-type liftgates may cause confusion as to whether the rear extremity of the trailer is located at the rear of the trailer itself or the rear of the rail-type liftgate. This is significant because Standard No. 224 requires the guard to be located not more than 12 inches forward of the rear extremity of the trailer.

''Rear extremity'' is defined at S4 of FMVSS No. 224 as:

> The rearmost point on a vehicle that is above a horizontal plane located 560 mm above the ground and below a horizontal plane located 1,900 mm above the ground when the vehicle is configured as specified in S5.1 of this section and when the vehicle's cargo doors, tailgate, or other permanent structures are positioned as they normally are when the vehicle is in motion. Nonstructural protrusions such as taillights, rubber bumpers, hinges and latches are excluded from the determination of the rearmost point.

The agency has previously explained that the common attributes among the examples of nonstructural protrusions listed in the definition are that they are relatively small and localized and would not have a major impact on a colliding passenger vehicle (see, 69 FR 9293). Rail-type liftgates, in contrast, are neither small nor localized, and they would be expected to have a major impact on a colliding passenger vehicle. Thus, we consider rail-type liftgates to be part of the trailer structure. As such, the rear of the rail-type liftgate is the rear extremity of the trailer, and the guard on such trailers must be no more than 12 inches forward of the rear of the rail-type liftgate.

As noted in the NPRM, some rail-type liftgates may be more than 12 inches deep. On trailers equipped with such liftgates, a guard would have to be installed either on the liftgate or on the trailer so that it extends rearward to within 12 inches of the rear of the liftgate.

D. Impacted Vehicle Population

Contrary to statements made by Advocates and Public Citizen, today's final rule does not change the number or type of vehicles excluded from FMVSS No. 224. The cubic area established in this document merely provides a more precise description of the area at the rear of the trailer in which work-performing equipment must reside in or move through while the trailer is in transit to qualify for the special purpose vehicle exclusion.

The percentage of vehicles excluded from the requirements of FMVSS No. 224 as a result of being equipped with a rear mounted liftgate remains comparable to the percent excluded when the agency first proposed FMVSS No. 224 (46 FR 2136; January 8, 1981). In 1981, the NTEA estimated that 2,500 of the 150,000 trailers built each year were equipped with rear-mounted liftgates, comprising 1.7 percent of the market. For the year 2002, the NTEA estimated that 2,899 of the 139,000 trailers manufactured that year were equipped with rear-mounted liftgates, or 2.1 percent of the market. We expect the number of vehicles actually excluded from FMVSS No. 224 to be a lower percentage because the 2002 estimate includes all liftgates, even those that may not qualify a vehicle as a special purpose vehicle (*e.g.*, rail-type liftgates).

Further, we do not believe that today's final rule will encourage customers to purchase one type of liftgate over another as a means to avoid the underride guard requirements. Vehicles are equipped with a particular liftgate design based on its performance capabilities. We do not expect that vehicles will be equipped with one liftgate design over another simply to be excluded from the underride guard requirements. Again, as stated above, we are not excluding vehicles equipped with a liftgate design that have not previously been excluded. The agency is merely clarifying our longstanding intent to exclude tuckunder and similarly functioning liftgates. Therefore, today's final rule does not diminish the safety benefits of FMVSS No. 224.

IV. Effective Date

The amendments adopted in today's document are effective immediately upon publication of this notice in the **Federal Register**. Today's final rule merely clarifies the existing underride guard requirements. This document does not alter the vehicle population previously excluded from the requirements of FMVSS No. 224. The definition of ''special purpose vehicle'' adopted today clarifies the agency's original intent and provides additional objectivity to existing requirements. Today's amendments will not result in previously compliant vehicles becoming non-compliant.

V. Rulemaking Analyses and Notices

A. Vehicle Safety Act

Under 49 U.S.C. Chapter 301, *Motor Vehicle Safety* (49 U.S.C. 30101 *et seq.*), the Secretary of Transportation is responsible for prescribing motor vehicle safety standards that are practicable, meet the need for motor vehicle safety, and are stated in objective terms. 49 U.S.C. 30111(a). When prescribing such standards, the Secretary must consider all relevant, available motor vehicle safety information. 49 U.S.C. 30111(b). The Secretary must also consider whether a proposed standard is reasonable, practicable, and appropriate for the type

[3] Maxon's website offers tuckunder liftgate designs that have a ''built-in underride guard,'' as well as liftgate designs that offer underride guards as optional equipment and liftgate designs without any notation regarding underride guards. (*See*, inset Maxon's Web site)

of motor vehicle or motor vehicle equipment for which it is prescribed and the extent to which the standard will further the statutory purpose of reducing traffic accidents and associated deaths. *Id.* Responsibility for promulgation of Federal motor vehicle safety standards was subsequently delegated to NHTSA. 49 U.S.C. 105 and 322; delegation of authority at 49 CFR 1.50.

The agency carefully considered these statutory requirements in amending FMVSS No. 224.

We believe that the amendments to FMVSS No. 224 do not affect its practicability. The specifications added to the definition of ''special purpose vehicle'' clarify an existing exclusion from the standard that is based on the impracticability of applying the standard to a small number of vehicles equipped with work-performing equipment.

The dimensional specifications adopted in this final rule provide additional objectivity for determining which vehicles are special purpose vehicles.

Finally, this final rule ensures that FMVSS No. 224 is applied to vehicles for which the standard is appropriate by clarifying which vehicles are excluded. Today's final rule maintains the safety benefits of the standard as originally established.

B. Executive Order 12866 and DOT Regulatory Policies and Procedures

Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993), provides for making determinations whether a regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and to the requirements of the Executive Order. The Order defines a ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

We have considered the impact of this rulemaking action under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document was not reviewed by the Office of Management and Budget under E.O. 12866, ''Regulatory Planning and Review.'' The rulemaking action is also not considered to be significant under the Department's Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

We have concluded that this rulemaking action does not create an inconsistency or otherwise interfere with an action taken or planned by another agency. The Federal Motor Carrier Safety Administration requires rear impact guards on trailers and semitrailers with a gross vehicle weight rating of 4,536 kilograms (10,000 pounds) or more manufactured on or after January 26, 1998 (49 CFR 393.86). However, that standard incorporates FMVSS Nos. 223 and 224 by reference, and also excludes ''special purpose vehicles'' as defined in FMVSS No. 224. Thus, this rulemaking action will not create an inconsistency with the FMCSA rear impact guard standard. Moreover, FMCSA has advised NHTSA that it will consider amendments to 49 CFR 393.86 and any relevant definitions under 49 CFR 393.5, in order to ensure consistency between 49 CFR 393.86 and Standard No. 224.

Further, this rulemaking action will not have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities. This document clarifies the definition of ''special purpose vehicle'' so that trailers with rear-mounted, work-performing equipment that is not compatible with a guard would be excluded from FMVSS No. 224.

By adding a quantified definition of the cubic area which work-performing equipment must move through or reside in for a trailer to meet the definition of ''special purpose vehicle,'' the agency is providing a more objective basis for determining which vehicles are excluded. This final rule does not have a substantive effect on the determination of whether a trailer qualifies as a special purpose vehicle and does not impose any additional cost burden on manufacturers of trailers equipped with work-performing equipment.

C. Regulatory Flexibility Act

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

We have considered the effects of this rulemaking action under the Regulatory Flexibility Act. Many of the businesses that manufacture trailers equipped with work-performing equipment are considered small businesses. However, as explained above in the discussion under E.O. 12866, this final rule does not substantively impact the determination of which vehicles are excluded from the requirements in FMVSS No. 224. Therefore, I hereby certify that this final rule does not have a significant economic impact on a substantial number of small entities.

D. National Environmental Policy Act

NHTSA has analyzed these amendments for the purposes of the National Environmental Policy Act and determined that they will not have any significant impact on the quality of the human environment.

E. Executive Order 13132 (Federalism)

The agency has analyzed this rulemaking in accordance with the principles and criteria contained in Executive Order 13132 and has determined that it does not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. The final rule has no substantial effects on the States, or on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various local officials.

F. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 requires agencies to prepare a

written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $109 million annually (adjusted for inflation with base year of 1995). Because this final rule does not have a $100 million effect, no Unfunded Mandates assessment has been prepared.

G. Executive Order 12778 (Civil Justice Reform)

This final rule does not have any retroactive effect. Under section 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

H. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. This rule does not establish any new information collection requirements.

I. Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

J. Executive Order 13045

Executive Order 13045 applies to any rule that: (1) Is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental, health or safety risk that NHTSA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by us.

This final rule is not economically significant and does not concern an environmental health or safety risk that disproportionately affects children.

K. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272) directs us to use voluntary consensus standards in our regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies, such as the Society of Automotive Engineers (SAE). The NTTAA directs us to provide Congress, through OMB, explanations when we decide not to use available and applicable voluntary consensus standards.

There are no relevant voluntary consensus standards available at this time. However, we will consider any such standards when they become available.

L. Privacy Act

Anyone is able to search the electronic form of all submissions received into any of our dockets by the name of the individual submitting the comment or petition (or signing the comment or petition, 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.*

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Reporting and recordkeeping requirements, Tires.

■ In consideration of the foregoing, NHTSA amends 49 CFR Chapter V as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS [AMENDED]

■ 1. The authority citation for Part 571 of Title 49 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

■ 2. Section 571.224 is amended by revising the definition of ''Special purpose vehicle'' in S4 to read as follows:

§ 571.224 Standard No. 224; Rear impact protection.

* * * * *

S4. *Definitions.*

* * * * *

Special purpose vehicle means a trailer or semitrailer having work-performing equipment that, while the vehicle is in transit, resides in or moves through any portion of the cubic area extending:

(1) Vertically from the ground to a horizontal plane 660 mm above the ground;

(2) Laterally the full width of the trailer, determined by the trailer's side extremities as defined in S4 of this section; and

(3) From the rear extremity of the trailer as defined in S4 of this section to a transverse vertical plane 305 mm forward of the rear extremity of the trailer.

* * * * *

Issued on: November 2, 2004.

Jeffrey W. Runge,

Administrator.

[FR Doc. 04–24737 Filed 11–4–04; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 574

[Docket No. NHTSA–2004–19557]

RIN 2127–AH10

Tire Safety Information; Correction

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule; correcting amendment.

SUMMARY: On July 8, 1999, the National Highway Traffic Safety Administration (NHTSA) published in the **Federal Register** (64 FR 36807), a final rule amending the tire identification and recordkeeping regulation, which requires that each tire be labeled with a tire identification number (TIN). In amending the TIN requirements, we inadvertently removed a provision for tires of less than 13 inches bead diameter or those of less than 6 inches

cross section width. This document corrects this inadvertent removal.

DATES: Effective December 6, 2004.

FOR FURTHER INFORMATION CONTACT: Mr. George Feygin, Office of Chief Counsel (Telephone: 202–366–2992) (Fax: 202–366–3820), 400 7th, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: NHTSA's tire identification and recordkeeping regulation requires that new tire manufacturers and tire retreaders mark their tires with the TIN on at least one sidewall. The TIN consists of (a) the manufacturer's or retreader's identification code, (b) the tire size symbol, (c) optional tire type code, and (d) the date of the manufacture (date code). On July 8, 1999, NHTSA amended this regulation to require that the date code portion of the TIN consist of four digits, instead of the previously required three digits.[1]

The change to the TIN requirements necessitated that the figure in the regulatory text depicting the TIN be revised. The old figure contained a footnote that allowed a smaller TIN size for tires of less than 6 inches cross section width and tires of less than 13 inches bead diameter.[2] However, when the agency published the July 8, 1999, final rule, we inadvertently removed this footnote from the new figure.[3] The inadvertent nature of this removal is apparent from the preamble to the Notice of Proposed Rulemaking preceding the July 8, 1999, final rule, and from the preamble to the final rule itself. In both documents, NHTSA reiterated that § 574.5 permits tires of less than 13 inches bead diameter or those of less than 6 inches cross section width to have the smaller TIN size.[4] This error was brought to our attention by Japan Automobile Tyre Manufacturers Association and Goodyear Tire & Rubber Company.[5]

We note that in a recent document, NHTSA indicated that the TIN size requirements, adopted for other tires subsequent to the July 8, 1999, final rule, apply to tires of less than 13 inches bead diameter or those of less than 6 inches cross section width.[6] That discussion, which was prepared before we recognized the error made in the July 8, 1999, final rule, is inaccurate. The new TIN size requirements were not intended to apply to tires of less than 13 inches bead diameter or those of less than 6 inches cross section width.

This notice corrects the CFR by adding the inadvertently removed footnote to 49 CFR 574.5. Instead of correcting the figure, the agency is adding the contents of the missing footnote to the regulatory text after Section (d).

This correction will not impose or relax any substantive requirements or burdens on manufacturers. Therefore, NHTSA finds for good cause that any notice and opportunity for comment on these correcting amendments are not necessary.

List of Subjects in 49 CFR Part 574

Labeling, Motor vehicle safety, Reporting and recordkeeping requirements, Tires.

■ 49 CFR part 574 is corrected by making the following correcting amendment:

PART 574—[CORRECTED]

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

Authority: 49 U.S.C. 322, 30111, 30115, 30117, 30166; delegation of authority at CFR 1.50.

■ 2. Add new paragraph (e) to § 574.5 to read as follows:

§ 574.5 Tire identification requirements.

* * * * *

(e) *Tire identification number height.* Notwithstanding Figures 1 and 2, each character in the tire identification number on tires with less than 6 inches in cross section width or tires with less than 13 inches bead diameter may be any size of 5/32 inches (4 mm) or greater.

Issued: November 2, 2004.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 04–24774 Filed 11–4–04; 8:45 am]

BILLING CODE 4910–59–P

[1] *See* 64 FR 36807.

[2] *See* 49 CFR 574.5 (1998).

[3] *See* 64 FR 36807 at 36813.

[4] *See* 63 FR 55832 at 55834 (October 19, 1998); *see also* 64 CFR 36807 at 36810.

[5] *See* Docket Numbers NHTSA–2004–17917–8 and NHTSA–2004–17917–9, at *http://dms.dot.gov/search/searchFormSimple.cfm*.

[6] *See* 69 FR 31306 at 31309 (June 3, 2004).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 040429134–4135–01; I.D. 102504C]

Fisheries Off West Coast States and in the Western Pacific; West Coast Salmon Fisheries; Inseason Action #13 - Adjustments of the Recreational Fisheries from the U.S.-Canada Border to Cape Falcon, Oregon

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

ACTION: Closure and modification of fishing seasons; request for comments.

SUMMARY: NMFS announces that the recreational salmon fishery in the area from the U.S.-Canada Border to Cape Alava, WA (Neah Bay Subarea), was modified to close at midnight on Thursday, September 2, 2004. To allow for the Neah Bay Subarea to remain open until September 2, 2004, 3,100 coho were transferred to the Neah Bay coho quota on an impact neutral basis from the Queets River to Leadbetter Point, WA (Westport Subarea) coho quota. These actions were necessary to conform to the 2004 management goals. The intended effect of these actions was to allow the fishery to operate within the seasons and quotas specified in the 2004 annual management measures.

DATES: Transfer of quota to the U.S.-Canada Border to Cape Alava, WA effective August 26, 2004; closure for the area from the U.S.-Canada Border to Cape Alava, WA effective 2359 hours local time September 2, 2004; after which the fishery will remain closed until opened through an additional inseason action for the west coast salmon fisheries, which will be published in the **Federal Register**, or until the effective date of the next scheduled open period announced in the 2005 annual management measures. Comments will be accepted through November 22, 2004.

ADDRESSES: Comments on these actions must be mailed to D. Robert Lohn, Regional Administrator, Northwest Region, NMFS, NOAA, 7600 Sand Point Way N.E., Bldg. 1, Seattle, WA 98115–0070; or faxed to 206–526–6376; or Rod McInnis, Regional Administrator, Southwest Region, NMFS, NOAA, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802–4132; or faxed to 562–980–4018. Comments can also be submitted via e-mail at the *2004salmonIA13.nwr@noaa.gov* address, or through the internet at the Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments, and include [docket number and/or RIN number] in the subject line of the message. Information relevant to this document is available for public review during business hours at the Office of the Regional Administrator, Northwest Region, NMFS.

FOR FURTHER INFORMATION CONTACT: Christopher Wright, 206–526–6140.

SUPPLEMENTARY INFORMATION: The NMFS Regional Administrator (RA) adjusted the recreational salmon fishery

in the area from the U.S.-Canada Border to Cape Alava, WA (Neah Bay Subarea) to close at midnight on Thursday, September 2, 2004. To allow for the Neah Bay Subarea to remain open until September 2, 3,100 coho were transferred to the Neah Bay coho quota on an impact neutral basis from the Queets River to Leadbetter Point, WA (Westport Subarea), coho quota. On August 19 the Regional Administrator had determined the available catch and effort data indicated that the adjusted quota of 30,750 coho salmon would be reached, and that a transfer of quota from the Westport to the Neah Bay Subarea could be done without impacting the fishers from Westport.

All other restrictions remained in effect as announced for 2004 ocean salmon fisheries and previous inseason actions. These actions were necessary to conform to the 2004 management goals. Automatic season closures based on quotas are authorized by regulations at 50 CFR 660.409(a)(1). Modification of quotas and/or fishing seasons is authorized by regulations at 50 CFR 660.409(b)(1)(i).

In the 2004 annual management measures for ocean salmon fisheries (69 FR 25026, May 5, 2004), NMFS announced the recreational fishery in the area from the U.S.-Canada Border to Cape Alava, WA (Neah Bay Subarea) would open June 27 through the earlier of September 19 or a 21,050–coho subarea quota, with a subarea guideline of 3,700 chinook; and that the area from the Queets River to Leadbetter Point, WA (Westport Subarea) would open June 27 through the earlier of September 19 or a 74,900 coho subarea quota, with a subarea guideline of 30,800 chinook.

The recreational fishery in the area from the Queets River, WA, to Cape Falcon, OR (Westport and Columbia River Subareas) was modified by Inseason Action #7 to be open 7 days per week, with a modified daily bag limit of all salmon, two fish per day, and all retained coho must have a healed adipose fin clip, effective Friday, July 23, 2004, thus allowing for the retention of two chinook per day (69 FR 52448, August 26, 2004).

The recreational fisheries in the area from Cape Alava, WA to Cape Falcon, OR (La Push, Westport, and Columbia River Subareas) were modified by Inseason Action #10 to have a minimum size limit for chinook of 24 inches (61.0 cm) total length; and for the area from Cape Alava to Queets River, WA (La Push Subarea) the daily bag limit was modified to: ''all salmon, two fish per day, and all retained coho must have a healed adipose fin clip,'' thus allowing for the retention of two chinook per day. In addition, 40,000 coho were reallocated from Queets River to Leadbetter Point, WA (Westport Subarea) quota, by transferring the coho on an impact neutral basis, to the coho quota in the subarea from the U.S.-Canada Border to Cape Alava, WA (Neah Bay Subarea), which increased the Neah Bay Subarea quota by 6,600 coho (69 FR 54047, September 7, 2004).

The recreational salmon fishery from the Queets River to Leadbetter Point, WA (Westport Subarea) was modified by Inseason Action numsign;11, effective Sunday, August 29, 2004, to allow for the retention of all legal sized coho until the earlier of September 19 or a quota of 10,000 coho (69 FR 63333, November 1, 2004). Unmarked coho could only be possessed and landed in the Westport Subarea. In addition, 20,000 coho from the quota of the commercial fishery from the U.S.-Canada Border to Cape Falcon was traded for 5,000 chinook from the Westport Subarea quota.

On August 26, 2004, the RA consulted with representatives of the Pacific Fishery Management Council, Washington Department of Fish and Wildlife, and Oregon Department of Fish and Wildlife by conference call. Information related to catch to date, the coho and chinook catch rates, and effort data indicated that it was likely that the Neah Bay Subarea coho quota would be reached soon, and that the Westport Subarea catch was much lower than was predicted preseason, with the result that a significant portion of the subarea coho quota would remain un-caught at the end of the season. As a result, on August 26 the states recommended, and the RA concurred, that 7,100 coho be reallocated from the Westport Subarea quota, by transferring the coho on an impact neutral basis, to the coho quota in the Neah Bay Subarea, thus increasing its quota by 3,100 coho; and that the Neah Bay Subarea be closed at midnight on Thursday, September 2, 2004. All other restrictions that apply to this fishery remained in effect as announced in the 2004 annual management measures.

The RA determined that the best available information indicated that the catch and effort data, and projections, supported the above inseason actions recommended by the states. The states manage the fisheries in state waters adjacent to the areas of the U.S. exclusive economic zone in accordance with these Federal actions. As provided by the inseason notice procedures of 50 CFR 660.411, actual notice to fishers of the already described regulatory action was given, prior to the date the action was effective, by telephone hotline number 206–526–6667 and 800–662–9825, and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF-FM and 2182 kHz.

These actions do not apply to other fisheries that may be operating in other areas.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), finds that good cause exists for this notification to be issued without affording prior notice and opportunity for public comment under 5 U.S.C. 553(b)(B) because such notification would be impracticable. As previously noted, actual notice of the regulatory action was provided to fishers through telephone hotline and radio notification. These actions comply with the requirements of the annual management measures for ocean salmon fisheries (69 FR 25026, May 5, 2004), the West Coast Salmon Plan, and regulations implementing the West Coast Salmon Plan 50 CFR 660.409 and 660.411. Prior notice and opportunity for public comment was impracticable because NMFS and the state agencies have insufficient time to provide for prior notice and the opportunity for public comment between the time the fishery catch and effort data are collected to determine the extent of the fisheries, and the time the fishery closure must be implemented to avoid exceeding the quota. Because of the rate of harvest in this fishery, failure to close the fishery upon attainment of the quota would allow the quota to be exceeded, resulting in fewer spawning fish and possibly reduced yield of the stocks in the future. For the same reasons, the AA also finds good cause to waive the 30–day delay in effectiveness required under U.S.C. 553(d)(3).

These actions are authorized by 50 CFR 660.409 and 660.411 and are exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 1, 2004.

Bruce C. Morehead,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 04–24760 Filed 11–4–04; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 69, No. 214
Friday, November 5, 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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 307

RIN 3206–AJ90

Veterans Readjustment Appointments

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management (OPM) proposes to revise its regulations regarding Veterans Readjustment Appointments to implement the provisions of the Jobs for Veterans Act, signed into law on November 7, 2002. We are also using this opportunity to propose a plain language rewrite of these regulations as part of a broader review of OPM's regulations, the purpose of which is to make the regulations more readable.

DATES: We will consider comments received on or before January 4, 2005.

ADDRESSES: Send or deliver written comments to Mark Doboga, Deputy Associate Director for Talent and Capacity Policy, U.S. Office of Personnel Management, Room 6551, 1900 E Street, NW., Washington, DC 20415–9700; e-mail *employ@opm.gov;* fax: (202) 606–2329.

FOR FURTHER INFORMATION CONTACT: Ms. Pam Galemore, by telephone at (202) 606–0830; by TTY at (202) 606–3134; by fax at (202) 606–0390; or by e-mail at *pamela.galemore@opm.gov.*

SUPPLEMENTARY INFORMATION: The Jobs for Veterans Act (Public Law 107–288), among other things, amends 38 U.S.C. 4214 to make a major change in the eligibility criteria for obtaining what previously was called a Veterans Readjustment Appointment and will now be called a Veterans Recruitment Appointment (VRA). Under the revised law, the following veterans are eligible for a noncompetitive VRA:

- Disabled veterans;
- Veterans who served on active duty in the Armed Forces during a war, or in a campaign or expedition for which a campaign badge has been authorized;
- Veterans who, while serving on active duty in the Armed Forces, participated in a United States military operation for which an Armed Forces Service Medal was awarded; and
- Recently separated veterans.

The law removes the requirement that an eligible veteran must be appointed within 10 years of his or her last separation from active duty. In addition, in accordance with the Act's definition of ''recently separated,'' a veteran is now considered to be ''recently separated'' during the 3-year period beginning on the date of such veteran's discharge or release from active duty. The law also removes the requirement that an eligible veteran's last discharge must have been from active duty lasting 90 days or more. As noted above, the Act also changes the name of such appointments from Veterans Readjustment Appointments to Veterans Recruitment Appointments.

The Jobs for Veterans Act makes no mention of the character of service needed to obtain a VRA. OPM, however, has the authority to regulate the conditions under which a VRA may be issued. Exercising this authority, OPM proposes to establish as an eligibility requirement that a veteran's release or separation from active duty must be under honorable conditions. Such a requirement is consistent with the spirit and principle of veterans' preference, which also requires that military service be under honorable conditions.

We are also proposing to re-establish in regulation that a veteran's military service is considered qualifying for a VRA at the GS–3 level or equivalent, regardless of the position held by the veteran in the military. In 1971, pursuant to Executive Order 11521, OPM promulgated regulations specifying that a veteran's military experience, whatever its nature, could meet the qualification standards for positions at the GS–3 level. In light of the sacrifices that each and every veteran makes for our country, as well as the experience gained by individuals who serve in the military, this policy was designed to ensure that any veteran would be eligible for appointment to a GS–3 position. Over the years, Executive Order 11521 was amended several times. To eliminate the need for revising our regulations each time an amendment to the executive order was made, we began to publish updated policy and guidance in the Federal Personnel Manual (FPM). Because the FPM has since been abolished, however, we have decided to re-establish this long-standing policy in regulation.

The following aspects of the VRA authority remain the same: the maximum grade level at which such appointments may be made remains GS–11 or equivalent; veterans must be ''qualified''—i.e., able to perform the essential functions of the position (with or without reasonable accommodation, for a person with a disability); veterans who have completed less than 15 years of education must still receive training or education; and veterans who satisfactorily complete 2 years of employment under a VRA must have their appointments converted to career conditional.

The eligibility criteria established by law for obtaining Veterans Recruitment Appointments are effective as of the date the law was signed.

To enhance readability, the proposed regulations revise the existing sections of part 307 as follows:

Purpose

OPM has added a ''purpose'' section to explain the purpose of these regulations.

Definitions

Although many of the terms defined in this section are defined in title 38, United States Code, OPM has included the definitions in this section for the convenience of the reader.

In addition, OPM is adding a definition of the term ''substantially continuous service'' because OPM uses this term to describe the circumstances under which agencies must convert individuals serving under VRAs to competitive appointments. Until now, OPM has not defined that term with respect to this part.

Coverage and General Responsibilities

OPM is incorporating the pertinent provisions into a revised section 307.103, entitled ''Nature of VRAs.'' This section explains what VRAs are, how they are to be used, and what limitations apply to these appointments.

Appointing Authority

OPM is incorporating the pertinent provisions into a revised section

307.104, entitled ''Treatment of Individuals Serving Under VRAs.'' This new section explains the relationship between those serving under VRAs and the competitive service, as well as the conditions under which these individuals may be promoted or moved to other positions. This section also provides that an individual who receives a VRA and has less than 15 years of education must receive training or education prescribed by the agency.

Appeal Rights

OPM has not made any substantive revisions to this part. To enhance the readability of the regulations, however, OPM has amended this section to refer readers to the appropriate sections of this chapter pertaining to appeal rights.

OPM believes that this revised organization of the regulations makes the information clearer and more understandable. OPM will consider comments on these aspects of this proposal, as indicated above.

E.O. 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it would apply only to Federal agencies and employees.

List of Subjects in 5 CFR Part 307

Government employees, Veterans.

Kay Coles James,

Director, Office of Personnel Management.

Accordingly, OPM proposes to revise 5 CFR part 307 as follows:

PART 307—VETERANS RECRUITMENT APPOINTMENTS

Sec.

307.101 Purpose.
307.102 Definitions.
307.103 Nature of VRAs.
307.104 Treatment of individuals serving under VRAs.
307.105 Appeal rights.

Authority: 5 U.S.C. 3301, 3302; E.O. 11521, 3 CFR, 1970 Comp., p. 912; 38 U.S.C. 4214.

§ 307.101 Purpose.

This part implements 38 U.S.C. 4214 and Executive Order 11521, which authorize agencies to appoint qualified covered veterans to positions in the competitive service under Veterans Recruitment Appointments (VRAs) without regard to the competitive examining system.

§ 307.102 Definitions.

For purposes of this part—

Agency, as defined in 38 U.S.C. 4211(5), means any agency of the Federal Government or the District of Columbia, including any Executive agency as defined in section 105 of title 5, and the United States Postal Service and Postal Rate Commission.

Covered veteran, as defined in 38 U.S.C. 4212(a)(3), means any of the following:

(1) Disabled veterans;

(2) Veterans who served on active duty in the Armed Forces during a war or in a campaign or expedition for which a campaign badge has been authorized;

(3) Veterans who, while serving on active duty with the Armed Forces, participated in a United States military operation for which an Armed Forces Service Medal was awarded pursuant to Executive Order 12985 (61 FR 1209); and

(4) Recently separated veterans.

Disabled veteran, as defined in 38 U.S.C. 4211, means:

(1) A veteran who is entitled to compensation (or who, but for the receipt of military retired pay, would be entitled to compensation) under laws administered by the Secretary of Veterans Affairs; or

(2) A person who was discharged or released from active duty because of a service-connected disability.

Qualified, as defined in 38 U.S.C. 4212(a)(3), with respect to employment in a position, means having the ability to perform the essential functions of the position with or without reasonable accommodation for an individual with a disability.

Recently separated veteran, as defined in 38 U.S.C. 4211(6), means any veteran during the three-year period beginning on the date of such veteran's discharge or release from active duty.

Substantially continuous service is defined in 5 CFR 315.201(b)(3).

§ 307.103 Nature of VRAs.

VRAs are excepted appointments, made without competition, to positions otherwise in the competitive service. The veterans' preference procedures of part 302 of this chapter apply when there are preference eligible candidates being considered for a VRA. Qualified covered veterans who were separated under honorable conditions may be appointed to any position in the competitive service for which the individual is qualified, at grade levels up to and including GS–11 or equivalent. For purposes of a VRA, any military service is qualifying at the GS–3 level or equivalent. Upon satisfactory completion of 2 years of substantially continuous service, the incumbent's VRA must be converted to a career or career conditional appointment.

§ 307.104 Treatment of individuals serving under VRAs.

(a) Because VRAs are made to positions otherwise in the competitive service, the incumbents, like competitive service employees, may be reassigned, promoted, demoted, or transferred in accordance with the provisions of part 335 of this chapter.

(b) A veteran with less than 15 years of education must receive training or education prescribed by the agency.

(c) Appointments are subject to investigation by OPM. A law, Executive order, or regulation that disqualifies a person for appointment in the competitive service also disqualifies a person for a VRA.

§ 307.105 Appeal rights.

Individuals serving under VRAs have the same appeal rights as excepted service employees under parts 432 and 752 of this chapter. In addition, as established in section 315.806, any individual serving under a VRA, whose employment under the appointment is terminated within 1 year after the date of such appointment, has the same right to appeal that termination as a career or career-conditional employee has during the first year of employment.

[FR Doc. 04–24779 Filed 11–3–04; 8:45 am]

BILLING CODE 6325–38–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–19542; Directorate Identifier 2003–NM–282–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B4–622R and A300 F4–622R Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Airbus Model A300 B4–622R and A300 F4–622R airplanes. This proposed AD would require doing a one-time inspection to determine if lower guide fittings for the forward doors are installed in the correct positions, and corrective action if

necessary. This proposed AD is prompted by reports that lower guide fittings for the forward doors were found installed in the wrong positions at frames 14 and 16A. We are proposing this AD to prevent difficulty opening the forward doors, which could impede an emergency evacuation and result in injury to passengers or crewmembers.

DATES: We must receive comments on this proposed AD by December 6, 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 Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France.

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

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–2004–19542; Directorate Identifier 2003–NM–282–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 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 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

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified us that an unsafe condition may exist on certain Airbus Model A300 B4–622R and A300 F4–622R airplanes. The DGAC advises that, during the delivery process of an airplane, lower guide fittings for the forward doors were found installed in the wrong positions at frames 14 and 16A. Inspections on the production line revealed that other airplanes may also have lower guide fittings for the forward doors installed in the wrong positions. This condition, if not corrected, could cause difficulty opening the forward doors, which could impede an emergency evacuation and result in injury to passengers or crewmembers.

Relevant Service Information

Airbus has issued Service Bulletin A300–53–6140, Revision 01, dated November 24, 2003. The service bulletin describes procedures for a detailed visual inspection to determine if lower guide fittings for the forward doors are installed in the correct positions, based on which part number is installed in which location. Corrective action, if any lower guide fitting is installed in the wrong position, includes re-installing the lower guide fitting in the correct position, or replacing the lower guide fitting with a new, improved guide fitting, as applicable. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. The DGAC mandated the service information and issued French airworthiness directive 2003–292(B), dated August 6, 2003, to ensure the continued airworthiness of these airplanes in France.

FAA's Determination and Requirements of the Proposed AD

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. According to this bilateral airworthiness agreement, the DGAC has kept us informed of the situation described above. We have examined the DGAC's findings, evaluated all pertinent information, and determined that we need to issue an AD for products of this type design that are certificated for operation in the United States.

Therefore, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously, except as discussed under ''Difference Between the Proposed AD and Service Information.''

Difference Between the Proposed AD and Service Information

The Accomplishment Instructions of the referenced service bulletin describe procedures for reporting inspection findings to the manufacturer. This proposed AD would not require this.

Clarification of Inspection Terminology

In this proposed AD, the ''detailed visual inspection'' specified in the Airbus service bulletin is referred to as a ''detailed inspection.'' We have included the definition for a detailed inspection in a note in this proposed AD.

Costs of Compliance

This proposed AD would affect about 25 airplanes of U.S. registry. The proposed actions would take about 2 work hours per airplane, at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of the proposed AD for U.S. operators is $3,250, or $130 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):

Airbus: Docket No. FAA–2004–19542; Directorate Identifier 2003–NM–282–AD.

Comments Due Date

(a) The Federal Aviation Administration must receive comments on this AD action by December 6, 2004.

Affected ADs

(b) None.

Applicability: (c) This AD applies to Airbus Model A300 B4–622R airplanes, serial numbers 0797 and 0836; and Model A300 F4–622R airplanes, serial numbers 0805 through 0828 inclusive; certificated in any category.

Unsafe Condition

(d) This AD was prompted by reports that lower guide fittings for the forward doors were found installed in the wrong positions at frames 14 and 16A. We are issuing this AD to prevent difficulty opening the forward doors, which could impede an emergency evacuation and result in injury to passengers or crewmembers.

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.

Inspection and Corrective Action

(f) Within 600 flight hours after the effective date of this AD, do a one-time detailed inspection to determine if lower guide fittings for the forward doors are installed in the correct positions, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300–53–6140, Revision 01, dated November 24, 2003.

(1) If the lower guide fittings are installed in the correct positions: No further action is required by this AD.

(2) If any lower guide fitting is not installed in the correct position: Before further flight, re-install the lower guide fitting in the correct position, or replace the lower guide fitting with a new, improved guide fitting, as applicable, in accordance with the service bulletin.

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

Actions Accomplished in Accordance With Previous Issue of Service Bulletin

(g) Inspections and corrective actions accomplished before the effective date of this AD in accordance with Airbus Service Bulletin A300–53–6140, dated June 12, 2003, are considered acceptable for compliance with the corresponding action specified in this AD.

No Reporting Requirement

(h) The Accomplishment Instructions of Airbus Service Bulletin A300–53–6140, Revision 01, dated November 24, 2003, describe procedures for reporting inspection findings to the manufacturer. This AD does not require this.

Alternative Methods of Compliance (AMOCs)

(i) The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

Related Information

(j) French airworthiness directive 2003–292(B), dated August 6, 2003, also addresses the subject of this AD.

Issued in Renton, Washington, on October 27, 2004.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–24731 Filed 11–4–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–19530; Directorate Identifier 2002–NM–274–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 727 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede an existing airworthiness directive (AD) for certain Boeing Model 727 series airplanes. That AD currently requires repetitive detailed inspections to detect cracking, corrosion, and existing stop-drilled repairs of cracking in the upper chord of the rear spar of the wing, and repair if necessary. This proposed AD would require new repetitive inspections to detect cracks, corrosion, minor surface defects, and existing stop-drilled repairs of cracks in the upper and lower chords of the front and rear spars of the wing; and repair if

necessary. This proposed AD is prompted by our determination that further rulemaking action is necessary to require additional actions specified in the referenced service bulletin. We are proposing this AD to prevent structural failure of the wing and fuel leaks in the airplane due to stress corrosion cracking of the wing spar chords.

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

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

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

You can get the service information identified in this proposed AD from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207.

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

FOR FURTHER INFORMATION CONTACT: Daniel F. Kutz, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6456; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

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–2004–19530; Directorate Identifier 2002–NM–274–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

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

Examining the Docket

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

Discussion

On November 20, 2002, we issued AD 2002–24–05, amendment 39–12970 (67 FR 71808, December 3, 2002) (a final rule correction was published in the **Federal Register** on January 2, 2003 (68 FR 10)), for certain Boeing Model 727 series airplanes. That AD requires repetitive detailed inspections to detect cracking, corrosion, and existing stop-drilled repair of cracking in the upper chord of the rear spar of the wing, and repair if necessary. That AD was prompted by reports of spanwise stress corrosion cracking of the upper chord of the rear spar of the wing between wing buttock line (WBL) 70.5 and the wing tip. Investigation revealed that some cracks were up to 14 inches long. Furthermore, one of the cracks was almost long enough to jeopardize the residual strength capability of the upper chord of the rear spar. We issued that AD to prevent structural failure of the wing and fuel leaks in the airplane due to stress corrosion cracking of the wing spar chords.

Actions Since Existing AD Was Issued

In the preamble of AD 2002–24–05, we indicated that the actions required by that AD were considered ''interim action,'' and that further rulemaking action was being considered to require additional actions specified in the referenced service bulletin (*i.e.*, Boeing Alert Service Bulletin 727–57A0145, Revision 2, dated October 24, 2002). We have now determined that further rulemaking action is indeed necessary, and this proposed AD follows from that determination.

Relevant Service Information

We have reviewed Boeing Alert Service Bulletin 727–57A0145, Revision 2, dated October 24, 2002. The service bulletin describes procedures for performing various inspections to detect cracks, corrosion, minor surface defects, and previously stop-drilled repairs in the upper and lower chords of the front and rear spars of the wings; and repair if necessary. The service bulletin also describes procedures for applying a wet layer of BMS 3–23 organic corrosion inhibiting compound or Boeing equivalent after any inspection or repair. We have determined that accomplishment of the actions specified in the service information will adequately address the unsafe condition.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other products of this same type design. Therefore, we are proposing this AD, which would supersede AD 2002–24–05 to require accomplishment of all actions specified

in the service bulletin described previously, except as described below.

Differences Between the Service Bulletin and the Proposed AD

Operators should note that, although the service bulletin specifies that the manufacturer may be contacted for disposition of certain repair conditions, this proposed AD would require that those conditions be done in accordance with a method approved by the FAA, or in accordance with 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.

Clarification of Inspection Terminology

In this proposed AD, the ''detailed visual inspection'' specified in the Boeing service bulletin is referred to as a ''detailed inspection.'' We have included the definition for a detailed inspection in a note in the proposed AD.

Change to Existing AD

This proposed AD would retain certain requirements of AD 2002–24–05. Since that AD 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 2002–24–05	Corresponding requirement in this proposed AD
Paragraph (a)	Paragraph (g).
Paragraph (a)(1)	Paragraph (g).
Paragraph (a)(2)	Paragraph (k).
Paragraph (a)(3)	Paragraph (i).
Paragraph (a)(4)	Paragraph (j).

Costs of Compliance

This Proposed AD would affect about 1,426 Model 727 series airplanes worldwide. This Proposed AD would affect about 946 airplanes of U.S. registry.

For Group 1 airplanes identified in the service bulletin, the actions (Part 1 of the Accomplishment Instructions of the service bulletin) that are required by AD 2002–24–05 and retained in this Proposed AD take about 8 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 $520 per airplane.

The following table provides the estimated costs for U.S. operators to comply with the new actions proposed by this AD. The average labor rate is $65 per work hour.

ESTIMATED COSTS

For airplanes identified in the service bulletin as—	Actions in—	Work hours—	Per airplane cost, per inspection cycle—
Group 1	Part 2 of the Accomplishment Instructions of the service bulletin	30	$1,950
Group 1	Part 3 of the Accomplishment Instructions of the service bulletin	21	1,365
Group 1	Part 4 of the Accomplishment Instructions of the service bulletin	68	4,420
Group 1	Part 8 of the Accomplishment Instructions of the service bulletin	8	520
Group 1	Part 9 of the Accomplishment Instructions of the service bulletin	30	1,950
Group 2	Part 5 of the Accomplishment Instructions of the service bulletin	52	3,380
Group 2	Part 6 of the Accomplishment Instructions of the service bulletin	110	7,150

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 39–12970 (67 FR 71808, December 3, 2002) and adding the following new airworthiness directive (AD):

Boeing: Docket No. FAA–2004–19530; Directorate Identifier 2002–NM–274–AD.

Comments Due Date

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

Affected ADs

(b) This AD supersedes AD 2002–24–05, amendment 39–12970.

Applicability: (c) This AD applies to Boeing Model 727, 727C, 727–100, –100C, –200, and –200F series airplanes, line numbers 1 through 1832 inclusive; certificated in any category.

Unsafe Condition

(d) This AD was prompted by our determination that further rulemaking action is necessary to require additional actions specified in the referenced service bulletin. We are issuing this AD to prevent structural failure of the wing and fuel leaks in the airplane due to stress corrosion cracking of the wing spar chords.

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

Service Bulletin References

(f) The term ''the service bulletin,'' as used in this AD, means Boeing Alert Service

Bulletin 727–57A0145, Revision 2, dated October 24, 2002.

Inspection Requirements of AD 2002–24–05, Amendment 39–12970

Inspection

(g) For airplanes specified as ''Group 1'' airplanes in the service bulletin: Within 20 years after the date of manufacture or within 90 days after December 18, 2002 (the effective date of AD 2002–24–05, amendment 39–12970), whichever occurs later, perform an external detailed inspection for cracking, corrosion, and existing stop-drilled repairs of cracking in the upper chord on the rear spar from Wing Butt Line (WBL) 70.5 through WBL 249.3, per the service bulletin, Paragraph 3.B, ''Work Instructions,'' Part 1. Thereafter, repeat the inspection at intervals not to exceed 2 years.

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

New Actions Required by This AD

Inspections Specified in Parts 2 Through 6, and 8 and 9 of the Service Bulletin

(h) Accomplish the applicable inspection(s) specified in paragraphs (h)(1) through (h)(7) of this AD at the later of the applicable times specified in the ''Threshold'' and ''Grace Period'' columns in Table 1 of this AD, and repeat the inspection(s) at the time specified in the ''Repetitive Interval'' column of Table 1 of this AD. Accomplishment of the inspection required by paragraph (h)(1) of this AD terminates the repetitive inspection requirements of paragraph (g) of this AD.

TABLE 1.—COMPLIANCE TIMES FOR INSPECTIONS SPECIFIED IN PARTS 2 THROUGH 6, AND 8 AND 9 OF SERVICE BULLETIN

For airplanes identified in the service bulletin as—	Threshold—	Grace period—	Repetitive interval—	Do—
(1) Group 1	Before 20 years since the date of issuance of the original Airworthiness Certificate or the date of issuance of the original Export Certificate of Airworthiness, whichever occurs first.	Within 1 year after the effective date of this AD.	None	A high frequency eddy current (HFEC) inspection and detailed inspection of the upper chord of the rear spar from WBL 70.5 to wing tip for cracks, corrosion, minor surface defects, and existing stop-drilled repairs of cracking, in accordance with paragraph 3.B., Work Instructions, Part 2, of the Accomplishment Instructions of the service bulletin.
(2) Group 1	Before 20 years since the date of issuance of the original Airworthiness Certificate or the date of issuance of the original Export Certificate of Airworthiness, whichever occurs first.	Within 2 years after the effective date of this AD.	At intervals not to exceed 2 years.	A detailed inspection of the upper and lower chords of the front spar and the lower chord of the rear spar from WBL 70.5 to the wing tip for cracks, corrosion, minor surface defects, and existing stop-drilled repairs of cracking (initial inspection only), in accordance with paragraph 3.B., Work Instructions, Part 3, of the Accomplishment Instructions of the service bulletin.
(3) Group 1	Before 20 years since the date of issuance of the original Airworthiness Certificate or the date of issuance of the original Export Certificate of Airworthiness, whichever occurs first.	Within 4 years after the effective date of this AD.	At intervals not to exceed 4 years.	An HFEC inspection of the upper and lower chords of the front spar and the lower chord of the rear spar from WBL 70.5 to the wing tip for cracks, corrosion, minor surface defects, and existing stop-drilled repairs of cracking (initial inspection only), in accordance with paragraph 3.B., Work Instructions, Part 4, of the Accomplishment Instructions of the service bulletin.
(4) Group 1	Within 2 years after doing the actions required by paragraph (h)(1) of this AD.	None	At intervals not to exceed 2 years.	A detailed inspection of the upper chord of the rear spar from WBL 70.5 to the wing tip for cracks, corrosion, minor surface defects, and existing stop-drilled repairs of cracking (initial inspection only), in accordance with paragraph 3.B., Work Instructions, Part 8, of the Accomplishment Instructions of the service bulletin.
(5) Group 1	Within 4 years after doing the actions required by paragraph (h)(1) of this AD.	None	At intervals not to exceed 4 years.	An HFEC inspection of the upper chord of the rear spar from WBL 70.5 to the wing tip for cracks, corrosion, minor surface defects, and existing stop-drilled repairs of cracking (initial inspection only), in accordance with paragraph 3.B., Work Instructions, Part 9, of the Accomplishment Instructions of the service bulletin.

TABLE 1.—COMPLIANCE TIMES FOR INSPECTIONS SPECIFIED IN PARTS 2 THROUGH 6, AND 8 AND 9 OF SERVICE BULLETIN—Continued

For airplanes identified in the service bulletin as—	Threshold—	Grace period—	Repetitive interval—	Do—
(6) Group 2	Before 20 years since the date of issuance of the original Airworthiness Certificate or the date of issuance of the original Export Certificate of Airworthiness, whichever occurs first.	Within 2 years after the effective date of this AD.	At intervals not to exceed 2 years.	An exterior detailed inspection of the upper and lower chords of the front and rear spars from WBL 70.5 to the wing tip for cracks, corrosion, minor surface defects, and existing stop-drilled repairs of cracking (initial inspection only), in accordance with paragraph 3.B., Work Instructions, Part 5, of the Accomplishment Instructions of the service bulletin.
(7) Group 2	Before 20 years since the date of issuance of the original Airworthiness Certificate or the date of issuance of the original Export Certificate of Airworthiness, whichever occurs first.	Within 4 years after the effective date of this AD.	At intervals not to exceed 4 years.	An HFEC inspection of the upper and lower chords of the front and rear spars from WBL 70.5 to the wing tip for cracks, corrosion, minor surface defects, and existing stop-drilled repairs of cracking (initial inspection only), in accordance with paragraph 3.B., Work Instructions, Part 6, of the Accomplishment Instructions of the service bulletin.

Corrective Actions

(i) If any crack, corrosion, or minor surface defect is detected during any inspection required by this AD, before further flight, do the applicable corrective actions in accordance with Part 7 of the Accomplishment Instructions of the service bulletin, except as provided by paragraph (j) of this AD.

(j) If any crack or corrosion is detected during any inspection required by this AD that exceeds the limits specified in the service bulletin, and the bulletin specifies to contact Boeing for appropriate Action: Before further flight, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved, the approval must specifically reference this AD.

(k) If any existing stop-drilled repair of previous cracking is detected during any inspection required by this AD, before further flight, permanently repair crack in accordance with paragraph 3.B., Work Instructions, Part 7, paragraph 2., ''Crack Repair'' of the Accomplishment Instructions of the service bulletin.

(l) Before further flight following any inspection or repair required by this AD, apply a wet layer of BMS 3–23 organic corrosion inhibiting compound or Boeing equivalent, in accordance with the Accomplishment Instructions of the service bulletin.

Alternative Methods of Compliance (AMOCs)

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

(2) Alternative methods of compliance, approved previously in accordance with AD 2002–24–05, amendment 39–12970, are approved as alternative methods of compliance with this AD.

(3) 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 such findings. For a repair method to be approved, the approval must specifically reference this AD.

Issued in Renton, Washington, on October 26, 2004.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–24730 Filed 11–4–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–19541; Directorate Identifier 2004–NM–129–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–8 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 DC–8 airplanes. This proposed AD would require an inspection of the pushrod assemblies for the left and right elevator control tabs to determine if the pushrod assemblies are made of aluminum or steel, replacing any assembly made of aluminum with an assembly made of steel or modifying existing steel assemblies, and other specified actions. This proposed AD would also require an inspection of the crank assemblies for the inboard and outboard geared tabs of the elevator to determine if the crank assemblies are made of aluminum or steel, replacing any assembly made of aluminum with an assembly made of steel, and other specified actions. This proposed AD is prompted by an accident involving a DC–8 airplane. The probable cause of the accident was a loss of pitch control resulting from the disconnection of the pushrod for the right elevator control tab. The pushrod dropped down and jammed in front of the control tab crank, causing a large deflection of the control tab. We are proposing this AD to minimize the possibility of a control tab offset. A control tab offset could cause elevator deflection, an elevator airplane-nose-up condition, and reduced controllability of the airplane. This proposed AD is also prompted by a report that the elevator on a McDonnell Douglas Model DC–8 airplane did not respond to command inputs from the flightcrew. We are also proposing this AD to minimize the possibility of crank

assembly failure when the assembly is exposed to abnormal load conditions. Failure of a crank assembly could result in a jammed elevator and consequent reduced controllability of the airplane.

DATES: We must receive comments on this proposed AD by December 20, 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. This docket number is FAA–2004–19541; the directorate identifier for this docket is 2004–NM–129–AD.

FOR FURTHER INFORMATION CONTACT:

Technical Information: Maureen Moreland, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5238; 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–2004–19541; Directorate Identifier 2004–NM–129–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

On February 16, 2000, a McDonnell Douglas Model DC–8–71F was involved in an accident shortly after takeoff, while attempting to return to Sacramento Mather Airport, Rancho Cordova, California, for an emergency landing. The National Transportation Safety Board determined that the probable cause of the accident was a loss of pitch control resulting from the disconnection of the right elevator control tab. The disconnection was caused by the failure to properly secure and inspect the attachment bolt. The disconnected control tab pushrod dropped down and jammed in front of the control tab crank, resulting in a large deflection of the control tab. A control tab offset could cause elevator deflection, an elevator airplane-nose-up condition, and reduced controllability of the airplane.

We have also received a report that the elevator on a McDonnell Douglas Model DC–8 airplane did not respond to command inputs from the flightcrew. The flightcrew had to perform a rejected take-off. Investigation revealed that, prior to departure, the left elevator was shifted to an abnormal position by engine blast from another airplane. A preliminary inspection of the affected airplane revealed a broken geared-tab mechanism on the inboard aluminum crank assembly. The inspection also revealed a broken drive mechanism on the outboard aluminum crank assembly. Broken crank assemblies, if not corrected, could result in a jammed elevator and consequent reduced controllability of the airplane.

Relevant Service Information

We have reviewed Boeing Alert Service Bulletin DC8–27A281, dated June 2, 2004. The service bulletin describes procedures for visually inspecting the pushrod assemblies for the left and right elevator control tabs to determine whether the pushrod assemblies are made of aluminum or steel, or using a magnet to make this determination. The service bulletin also describes procedures for replacing any assembly made of aluminum with an assembly made of steel or modifying existing steel assemblies, and other specified actions. Depending on the inspection results, the airplanes are divided into two groups, Condition 1 and Condition 2. Condition 1 airplanes have aluminum pushrod assemblies installed, and Condition 2 airplanes have steel pushrod assemblies installed. Depending on whether the airplane is Condition 1 or Condition 2, the other specified actions include:

• Installing new steel pushrod assemblies, or modifying existing steel pushrod assemblies by installing new aft end assemblies, as applicable.
• Identifying modified pushrod assemblies.
• Performing balance checks on the elevators.
• Calculating the weight and balance of the airplane with the new steel assemblies installed to determine if the values for the elevator nose heavy over balance limits are within the specified limits.
• Performing an elevator and tab inspection/check on the left and right sides of the airplane.

We have also reviewed Boeing Alert Service Bulletin DC8–27A280, dated June 2, 2004. The service bulletin describes procedures for a general visual inspection of the inboard and outboard geared tab crank assemblies on the left and right elevators to determine whether the crank assemblies are made of aluminum or steel, or using a magnet to make that determination. The service bulletin also describes procedures for replacing any assembly made of aluminum with an assembly made of steel, and other specified actions. The other specified actions include removing aluminum crank assemblies and installing steel crank assemblies. Depending on the inspection results, the airplanes are divided into three groups, Condition 1 airplanes, Condition 2 airplanes, and Condition 3 airplanes. Condition 1 airplanes have steel crank assemblies installed. Condition 2 airplanes have aluminum crank assemblies installed and replacement of the assemblies with steel crank assemblies will exceed the ''nose heavy over balance'' limits. Condition 3 airplanes have aluminum crank assemblies installed and replacement of the assemblies with steel crank assemblies will not exceed the nose heavy over balance limits. Depending on whether the airplane is Condition 1, Condition 2, or Condition 3, the other specified actions include:

• Calculating the weight and balance of the airplane to determine if the values are within the specified limits.
• Performing a balance check of the affected elevator.
• Performing an elevator and tab inspection/check on the left and right sides of the airplane.

Accomplishing the actions specified in the service information 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 an inspection to determine if the pushrod assemblies for the left and right elevator control tabs are made of aluminum or steel, replacing any assembly made of aluminum with an assembly made of steel, and other specified actions. This proposed AD would also require an inspection to determine if the crank assemblies for the inboard and outboard elevator geared tabs are made of aluminum or steel, replacing any assembly made of aluminum with an assembly made of steel, and other specified actions. The proposed AD would require you to use the service information described previously to perform these actions.

Clarification of Applicability

The Summary section of the service bulletins states the effectivity as all DC–8 airplanes. However, the detailed effectivity in paragraph 1.A.1 of the service bulletins does not include DC–8–11, –12, –21, –31, and –32 airplanes. Those models are listed on the type certificate data sheet for the DC–8. We have determined that the effectivity of the service bulletins did not list those model numbers because those airplanes are permanently removed from service. The applicability of this proposed AD will be all DC–8 airplanes.

Clarification of Inspection Terminology

Boeing Alert Service Bulletin DC8–27A280 specifies to do a general visual inspection to determine the part number of the inboard and outboard geared tab crank assemblies. Boeing Alert Service Bulletin DC8–27A281 specifies to do a visual inspection to determine the part number of the pushrod assemblies. Each service bulletin includes a table that lists the applicable part numbers and whether the part is made of aluminum or steel. Both service bulletins also note that if a part number is difficult to read, a magnet may be used to determine if the part is made of aluminum or steel. This proposed AD would require an inspection of the crank and pushrod assemblies to determine if a part is made of aluminum or steel, but would not require a general visual inspection or a visual inspection.

Costs of Compliance

There are about 227 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs for U.S. operators to comply with this proposed AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Inspection, crank assemblies	1	$65	None	$65	170	$11,050
Inspection, pushrod assemblies	1	65	None	65	170	11,050

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–2004–19541; Directorate Identifier 2004–NM–129–AD.

Comments Due Date

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

Affected ADs

(b) None.

Applicability: (c) This AD applies to all McDonnell Douglas Model DC–8 airplanes, certificated in any category.

Unsafe Condition

(d) This AD was prompted by an accident involving a DC–8 airplane. The probable cause of the accident was a loss of pitch control resulting from the disconnection of the pushrod for the right elevator control tab. The pushrod dropped down and jammed in front of the control tab crank, causing a large deflection of the control tab. We are issuing this AD to minimize the possibility of a control tab offset. A control tab offset could cause elevator deflection, an elevator airplane-nose-up condition, and reduced controllability of the airplane. This AD was also prompted by a report that the elevator on a McDonnell Douglas Model DC–8 airplane did not respond to command inputs from the flightcrew. We are also issuing this AD to minimize the possibility of a crank assembly failure when the assembly is exposed to abnormal load conditions. Failure of a crank assembly could result in a jammed elevator and consequent reduced 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.

Inspection of Pushrod Assemblies and Other Specified Actions

(f) Within 24 months after the effective date of this AD: Do an inspection of the pushrod assemblies located in the left and right elevator control tabs to determine whether the assemblies are made of aluminum or steel. Replace any pushrod assembly made of aluminum with a new, improved pushrod assembly made of steel, or modify any existing steel pushrod assembly by replacing the aft end assembly with a new, improved aft end assembly, as applicable. Do the inspection, replacement or modification, and all other applicable specified actions by accomplishing all of the actions in the Accomplishment Instructions of Boeing Alert Service Bulletin DC8–27A281, dated June 2, 2004. The replacement or modification and other applicable specified actions must be done before further flight.

Inspection of Geared Tab Crank Assemblies and Other Specified Actions

(g) Within 24 months after the effective date of this AD: Do an inspection of the inboard and outboard geared tab crank assemblies, located in the left and right elevators, to determine whether the assemblies are made of aluminum or steel. Replace any crank assembly made of aluminum with a new, improved crank assembly made of steel. Do the inspection, replacement, and other applicable specified actions by accomplishing all of the actions in the Accomplishment Instructions of Boeing Alert Service Bulletin DC8–27A280, dated June 2, 2004. The replacement and other applicable specified actions must be done before further flight.

Alternative Methods of Compliance (AMOCs)

(h) The Manager, Los Angeles Aircraft Certification Office, 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 26, 2004.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–24729 Filed 11–4–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–19540; Directorate Identifier 2004–NM–110–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 757 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Boeing Model 757 airplanes. This proposed AD would require inspections of certain wire bundles in the left and right engine-to-wing aft fairings for discrepancies, and other specified and corrective actions. This proposed AD is prompted by a report indicating that a circuit breaker for the fuel shutoff valve tripped due to a wire that chafed against the structure in the flammable leakage zone of the aft fairing, causing a short circuit. We are proposing this AD to prevent chafing between the wire bundle and the structure of the aft fairing, which could result in electrical arcing and subsequent ignition of flammable vapors and possible uncontrollable fire.

DATES: We must receive comments on this proposed AD by December 20, 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, 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 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:* Thomas Thorson, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6508; 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 relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed under **ADDRESSES.** Include ''Docket No. FAA–2004–19540; Directorate Identifier 2004–NM–110–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 on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the DMS receives them.

Discussion

We have received a report indicating that a circuit breaker of the fuel shutoff valve tripped due to a wire that chafed against the structure in the flammable leakage zone of the aft fairing, causing a short circuit. This occurred on a Boeing Model 757–200 series airplane that had accumulated approximately 10,900 total flight hours and 6,225 total flight cycles. Subsequent maintenance inspections of the remainder of the operator's fleet revealed 9 out of 13 airplanes had the same type of wire chafing. The causes of that chafing were missing or incorrectly installed wire sleeving, incorrect grommet installation, and incorrect wire clamp installation. The existing design allows contact between the wire bundle and the engine strut webs. Chafing between the wire bundle and the structure of the aft fairing could result in electrical arcing and subsequent ignition of flammable vapors and possible uncontrollable fire.

The wire bundles of the fuel shutoff valves on Model 757–200PF, –200CB, and –300 series airplanes are identical to those on the affected Model 757–200 series airplanes. Therefore, all of these models may be subject to the same unsafe condition.

Relevant Service Information

We have reviewed Boeing Alert Service Bulletins 757–28A0073 (for Model 757–200, –200CB, and –200PF series airplanes) and 757–28A0074 (For Model 757–300 series airplanes), both dated November 20, 2003. The service bulletins describe procedures for inspecting for discrepancies of the wire bundles (W5100 for the left engine strut; W5200 for the right engine strut) from power plant station (PP STA) 278 aft, to the rear spar of the wing in the left and right engine-to-wing aft fairings, and other specified and corrective actions. The discrepancies include chafing of the wire bundles, missing or chafed sleeves, and incorrect installation of the caterpillar grommet. The procedures for the other specified and corrective actions include:

- Repairing any damage found, in addition to installing a new support bracket.
- Inspecting for chafed or missing sleeves at PP STA 278, 290, and 301, and adding a new wrap-on sleeve if the sleeve is chafed or missing.
- Inspecting the PP STA 278 and 301 bulkheads to ensure correct installation of the caterpillar grommet, and cleaning the area and installing a new grommet if the grommet is missing or incorrectly installed; and
- Re-routing the wire bundles.

The service bulletins also describe procedures for a functional test of the engine fuel shutoff valves. Accomplishing the actions specified in the service information 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 accomplishing the actions specified in the service information described previously.

Clarification of Inspection Terminology

In this proposed AD, the ''inspections'' of the wire bundles, as specified in the Boeing service bulletins are referred to as ''detailed inspections.'' We have included the definition for a detailed inspection in a note in the proposed AD.

Costs of Compliance

This proposed AD would affect about 613 airplanes worldwide and 335 airplanes of U.S. registry. The proposed actions would take about 16 work hours per airplane, at an average labor rate of $65 per work hour. Required parts would cost about $560 per airplane. Based on these figures, the estimated cost of the proposed AD for U.S. operators is $536,000, or $1,600 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):

Boeing: Docket No. FAA–2004–19540; Directorate Identifier 2004–NM–110–AD.

Comments Due Date

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

Affected ADs

(b) None.

Applicability

(c) This AD applies to Model 757–200, –200PF, –200CB, and –300 series airplanes; certificated in any category; as listed in Boeing Alert Service Bulletins 757–28A0073 and 757–28A0074, both dated November 20, 2003.

Unsafe Condition

(d) This AD was prompted by a report indicating that a circuit breaker for the fuel shutoff valve tripped due to a wire that chafed against the structure in the flammable leakage zone of the aft fairing, causing a short circuit. We are issuing this AD to prevent chafing between the wire bundle and the structure of the aft fairing, which could result in electrical arcing and subsequent ignition of flammable vapors and possible uncontrollable fire.

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.

One-Time Inspections/Investigative and Corrective Actions

(f) Within 60 months after the effective date of this AD: Accomplish the detailed inspections for discrepancies of the wire bundles in the left and right engine-to-wing aft fairings, and other specified and corrective actions, as applicable, by doing all the actions in the Accomplishment Instructions of Boeing Alert Service Bulletin 757–28A0073 (for Model 757–200, –200CB, and –200PF series airplanes) or 757–28A0074 (for Model 757–300 series airplanes), both dated November 20, 2003; as applicable. Any corrective actions must be done before further flight and in accordance with the applicable service bulletin.

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

Alternative Methods of Compliance (AMOCs)

(g) The Manager, Seattle 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 27, 2004.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–24728 Filed 11–4–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–19539; Directorate Identifier 2004–NM–06–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Boeing Model 737 airplanes. This proposed AD would require, for certain airplanes, a one-time detailed inspection for interference between a clamp assembly and the wires behind the P15 refuel panel, and corrective actions if necessary. For certain other airplanes, this proposed AD would require a one-time detailed inspection for discrepancies of the wires behind the P15 refuel panel; and corrective and related investigative actions if necessary. This proposed AD is prompted by evidence of chafed wiring behind the P15 refuel panel and arcing to the back of the P15 refuel panel and adjacent wing structure. We are proposing this AD to detect and correct chafing of the wiring behind the P15 refuel panel, which could lead to arcing and fire with consequent airplane damage and injury to refueling personnel.

DATES: We must receive comments on this proposed AD by December 20, 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, 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. This docket number is FAA–2004–19539; the directorate identifier for this docket is 2004–NM–06–AD.

FOR FURTHER INFORMATION CONTACT:

Technical information: Sherry Vevea, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6514; 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–2004–19539; Directorate Identifier 2004–NM–06–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 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.*

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 indicating that operators of two Boeing Model 737–700 series airplanes and one Model 737–300 series airplane were unable to refuel the airplanes automatically due to tripped circuit breakers that couldn't be reset. The operators discovered evidence of chafed wiring due to rubbing of wires against sharp edges and components behind the P15 refuel panel, and signs of arcing to the back of the P15 refuel panel and adjacent wing structure. This condition, if not corrected, could lead to arcing and fire with consequent airplane damage and injury to refueling personnel.

Relevant Service Information

We have reviewed Boeing Special Attention Service Bulletin 737–28–1193, dated April 24, 2003 (for Model 737–100, –200, –200C, –300, –400, and –500 series airplanes). The service bulletin describes procedures for performing a visual inspection of the wires in wire bundle W0024 to connector D04578P on the back of the P15 refuel panel for discrepancies, which would include chafed or burned wires, signs of arcing to the back of the P15 refuel panel and adjacent wing structure, and loose or untied wires and excessive wire loops. The service bulletin also describes procedures for corrective and related investigative actions if any discrepancy is found. Corrective actions include tying and rerouting wires and wire bundle away from sharp edges and components behind the P15 refuel panel; repairing or replacing any chafed or burned wires; and installing Teflon sleeves around the wires as needed for additional protection against chafing. The related investigative action includes measuring the electrical bonding resistance to the P15 panel and performing an operational test of the refuel quantity indicators and valve position lights.

We have also reviewed Boeing Special Attention Service Bulletin 737–28–1200, dated July 10, 2003 (for Model 737–600, –700, –700C, –800, and –900 series airplanes). For Group 1 and Group 2 airplanes, the service bulletin describes procedures for a detailed inspection for discrepancies of the clamp and T-bolt assembly on the wing thermal anti-ice (TAI) duct near the P15 refuel panel. For Group 2 airplanes only, the service bulletin also describes a detailed inspection of the wires in wire bundle W0024 to connector D04578P on the back of the P15 refuel panel for discrepancies such as inadequate clearance between wires and sharp edges, chafed or burned wires, or signs of arcing to the back of the P15 refuel panel and adjacent wing structure. This service bulletin also describes procedures for corrective and related investigative actions, which include repositioning of the clamp and T-bolt assembly on the TAI duct and performing a leak check of the TAI duct; and, as applicable, repairing or replacing any chafed or burned wires; measuring the electrical bonding resistance to the P15 refuel panel; and performing a functional test of the refuel quantity indicators, refuel valve switches, and valve position lights.

Accomplishment of the actions specified in the 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, for certain airplanes, a one-time detailed inspection for interference between a clamp assembly and the wires behind the P15 refuel panel, and corrective actions if necessary. For certain other airplanes, this proposed AD would require a one-time detailed inspection for discrepancies of the wires behind the P15 refuel panel; and corrective actions if necessary. The 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 Referenced Service Bulletins.''

Differences Between the Proposed AD and Referenced Service Bulletins

Boeing Special Attention Service Bulletin 737–28–1200, dated July 10, 2003, specifies a compliance time of 24 months from the release date of the service bulletin; while Special Attention Service Bulletin 737–28–1193, dated April 24, 2003, specifies a compliance time of 18 months from the release date of the service bulletin. We have determined that the unsafe condition is sufficiently hazardous that a compliance time of 18 months after the effective date of this proposed AD is appropriate for all affected airplanes. This difference has been coordinated with Boeing.

Although Boeing Special Attention Service Bulletin 737–28–1193, dated April 24, 2003, specifies a ''visual check,'' this proposed AD would require a ''detailed inspection.'' We have included Note 1 in this proposed AD to define that inspection.

Costs of Compliance

This proposed AD would affect about 1,653 airplanes of U.S. registry and 4,254 airplanes worldwide. The proposed inspections would take about 3 work hours per airplane, at an average labor rate of $65 per work hour. Based

on these figures, the estimated cost of the proposed AD for U.S. operators is $322,335, or $195 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):

Boeing: Docket No. FAA–2004–19539; Directorate Identifier 2004–NM–06–AD.

Comments Due Date

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

Affected ADs

(b) None.

Applicability

(c) This AD applies to the Boeing airplanes listed in Table 1 of this AD, certificated in any category:

TABLE 1.—APPLICABILITY

Airplane	Line numbers
Model 737–100, –200, –200C, –300, –400, and –500 series airplanes	1 through 3132 inclusive.
Model 737–600, –700, –700C, –800, and –900 series airplanes	0001 through 1240 inclusive.

Unsafe Condition

(d) This AD was prompted by evidence of chafed wiring behind the P15 refuel panel and arcing to the back of the P15 refuel panel and adjacent wing structure. We are issuing this AD to detect and correct chafing of the wiring behind the P15 refuel panel, which could lead to arcing and fire with consequent airplane damage and injury to refueling personnel.

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.

Inspection and Corrective Actions

(f) Within 18 months after the effective date of this AD, perform the following actions as applicable:

(1) For Model 737–100, –200, –200C, –300, –400, and –500 series airplanes: Perform a one-time detailed inspection of the wires in wire bundle W0024 to connector D04578P on the back of the P15 refuel panel for discrepancies, and do any applicable corrective and related investigative actions before further flight, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 737–28–1193, dated April 24, 2003.

(2) For Model 737–600, –700, –700C, –800, and –900 series airplanes: Perform all applicable actions listed in paragraphs (f)(2)(i) and (f)(2)(ii) of this AD in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 737–28–1200, dated July 10, 2003.

(i) For Group 1 and Group 2 airplanes as defined in Service Bulletin 737–28–1200: Perform a one-time detailed inspection for discrepancies of the clamp and T-bolt assembly on the wing thermal anti-ice duct near the P15 refuel panel and do any applicable corrective actions before further flight.

(ii) For Group 2 airplanes only: Perform a one-time detailed inspection for discrepancies of the wires in wire bundle W0024 to connector D04578P on the back of the P15 refuel panel and do any applicable corrective actions before further flight.

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.''

Alternative Methods of Compliance (AMOCs)

(g) The Manager, Seattle 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 26, 2004.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–24727 Filed 11–4–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–19538; Directorate Identifier 2003–NM–99–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede an existing airworthiness directive (AD) for certain Boeing Model 747 series airplanes. That AD currently requires inspections to detect cracks in the front spar pressure bulkhead chord, and repair, if necessary. This proposed AD would require repetitive high frequency eddy current (HFEC) inspections of the body station (BS) 1000 bulkhead chord for cracks, repetitive detailed inspections of the bathtub fittings, if installed, for cracks, and corrective action, if necessary. Accomplishment of new inspections would end the inspections of the existing AD. This proposed AD would also revise the applicability of the existing AD to include additional

airplanes. This proposed AD is prompted by reports of cracks in the BS 1000 bulkhead chord. We are proposing this AD to detect and correct fatigue cracks in the BS 1000 bulkhead chord, which, if not repaired before they reach critical length, could result in the failure of the adjacent structure and skin and lead to in-flight depressurization of the airplane.

DATES: We must receive comments on this proposed AD by December 20, 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 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:* Nick Kusz, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6432; 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–2004–19538; Directorate Identifier 2003–NM–99–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 April 19, 1990, we issued AD 90–09–09, amendment 39–6586 (55 FR 17928, April 30, 1990), for certain Boeing Model 747 series airplanes (a correction of that AD was published in the **Federal Register** on May 21, 1990 (55 FR 20894)). That AD requires repetitive high frequency eddy current (HFEC) inspections to detect cracks in the front spar pressure bulkhead chord, and repair, if necessary. That AD was prompted by a determination that accomplishing a certain modification may result in fuel leakage from the wing center section fuel tank. We issued that AD to prevent a potential fire hazard in the forward cargo compartment.

Actions Since Existing AD was Issued

Since we issued AD 90–09–09 (applicable to Boeing Model 747–100, –100B, –100B SUD, –200B, –200C, and –200F series airplanes, line numbers 1 through 201 inclusive), we have received reports of cracks in the body station (BS) 1000 bulkhead chord of Boeing Model 747 series airplanes after line number 201. We have also received reports of cracking in the chords of airplanes that received the chord replacement per Boeing Service Bulletin 747–53–2362, dated March 26, 1992 (for Model 747–100, –100B, –100B SUD, –200B, –200C, and –200F series airplanes, line numbers 1 through 201 inclusive). Boeing Service Bulletin 747–53–2362 was intended to address cracking in the chord. Fatigue cracking in the BS 1000 bulkhead chord, if not repaired before they reach critical length, could result in the failure of the adjacent structure and skin and lead to in-flight depressurization of the airplane.

Related ADs Due to Common Access

On May 23, 2000, we issued AD 2000–11–07 (65 FR 34932, June 1, 2000), applicable to certain Boeing Model 747–200, –300, and –400 series airplanes, that requires repetitive HFEC inspections to detect cracking of the front spar web of the center section of the wing, and repair, if necessary.

On October 19, 2001, we issued AD 2001–22–04 (66 FR 54422, October 29, 2001), applicable to all Boeing Model 747 series airplanes, that requires repetitive inspections for cracking of the fuselage skin adjacent to the drag splice fitting, and follow-on actions, if necessary.

The inspections in the above ADs may be accomplished concurrently with this proposed AD due to common access but they are not required by this AD.

Relevant Service Information

We have reviewed Boeing Alert Service Bulletin 747–53A2471, dated March 27, 2003. The service bulletin describes procedures for performing repetitive HFEC inspections of the BS 1000 bulkhead chord for cracks; performing repetitive detailed inspections of the bathtub fittings, if installed, for cracks; and corrective action, if necessary. Accomplishing the inspections would end the inspections required by AD 90–09–09. The corrective action includes replacing the BS 1000 bulkhead chord with a new chord and replacing the bathtub fittings with new bathtub fittings.

Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

The service bulletin also recommends concurrent accomplishment, due to common access, of the inspections specified in Boeing Service Bulletin 747–53A2444 (Boeing Service Bulletin 747–53A2444, Revision 1, dated June 15, 2000; and Boeing Alert Service Bulletin 74753A2444, Revision 2, dated May 24, 2001, are listed as relevant sources of service information for AD 2001–22–04); Boeing Service Bulletin 747–57–2297; and Boeing Service Bulletin 747–57A2298 (Boeing Alert Service Bulletin 747–57A2298, Revision 1, dated September 12, 1996; Boeing Service Bulletin 747–57A2298, Revision 2, dated October 2, 1997; and Boeing Alert Service Bulletin 747–57A2298, Revision 3, dated January 7, 1999; are listed as relevant sources of service information for AD 2000–11–07). These service bulletins are not required by this AD.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other products of this same type design. Therefore, we are proposing this AD, which would supersede AD 90–09–09. This proposed AD would continue to require repetitive HFEC inspections to detect cracks in the front spar pressure bulkhead chord, and repair, if necessary. This proposed AD would also require repetitive HFEC inspections of BS 1000 bulkhead chord for cracks, repetitive detailed inspections of the bathtub fittings, if installed, for cracks, and corrective action, if necessary. Accomplishment of new inspections would end the inspections of the existing AD. The proposed AD would also revise the applicability of the existing AD to include additional airplanes. This proposed AD would require you to use the service information described previously to perform these actions except as discussed under ''Difference Between the Proposed AD and the Service Bulletin.''

Difference Between the Proposed AD and the Service Bulletin

Operators should note that, although the service bulletin specifies that the manufacturer may be contacted for disposition of certain repair conditions, this proposed AD would require the repair of those conditions to be accomplished per a method approved by the FAA.

Clarification of Inspection Type

Where Boeing Alert Service Bulletin 747–53A2471, dated March 27, 2003, specifies to do a ''detailed visual inspection,'' this proposed AD specifies to do a ''detailed inspection.'' We have also added a note to the proposed AD to clarify the definition of detailed inspection.

Changes to Existing AD

This proposed AD would retain the requirements of AD 90–09–09. However, 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 90–09–09	Corresponding requirement in this proposed AD
Paragraph A	Paragraph (f).
Paragraph B	Paragraph (g).

Costs of Compliance

There are about 1,350 Model 747 series airplanes worldwide of the affected design. This proposed AD would affect about 245 airplanes of U.S. registry.

The actions that are required by AD 90–09–09 and retained in this proposed AD take about 84 work hours per airplane, at an average labor rate of $65 per work hour. We estimate 102 airplanes of U.S. registry are affected by AD 90–09–09. Based on these figures, the estimated cost of the currently required actions is $556,920, or $5,460 per airplane, per inspection cycle.

The new proposed inspections would take about 14 work hours per airplane, 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 $222,950, or $910 per airplane, per inspection cycle.

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 39–6586 (55 FR 20894, May 21, 1990), and adding the following new airworthiness directive (AD):

Boeing: Docket No. FAA–2004–19538; Directorate Identifier 2003–NM–99–AD.

Comments Due Date

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

Affected ADs

(b) This AD supersedes AD 90–09–09, amendment 39–6586 (55 FR 20894, May 21, 1990.

Applicability

(c) This AD applies to Model 747 series airplanes, line numbers 1 through 1307

inclusive, 1309 through 1312 inclusive, and 1314; certificated in any category.

Unsafe Condition

(d) This AD was prompted by reports of cracks in the body station (BS) 1000 bulkhead chord. We are issuing this AD to detect and correct fatigue cracks in the BS 1000 bulkhead chord, which, if not repaired before they reach critical length, could result in the failure of the adjacent structure and skin and lead to in-flight depressurization 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.

Restatement of Requirements of AD 90–09–09

(f) For airplanes listed in Boeing Service Bulletin 747–53–2064, Revision 4, dated September 23, 1983, that have not been modified in accordance with Boeing Service Bulletin 747–53–2064, dated July 25, 1972: Within the next 1,000 landings after October 15, 1984 (the effective date of AD 84–18–06, amendment 39–4912), or prior to the accumulation of 10,000 landings, whichever occurs later, and thereafter at intervals not to exceed 7,000 landings, conduct a high frequency eddy current (HFEC) inspection of the chord to detect cracks between stringers S–37 and S–39 at the chord radius, heel, and flanges adjacent to the fastener holes identified for inspection in Boeing Service Bulletin 747–53–2064, Revision 4, dated September 23, 1983. If cracks are found in the pressure bulkhead chord, accomplish the repair in accordance with the service bulletin before further flight. Repair of cracks along the chord radius under 5 inches in length, or across a chord flange that have not severed the chord flange, may be deferred 1,000 landings by stop drilling and reinspecting for crack progression every 200 landings using HFEC. If crack progression is found, repair in accordance with the service bulletin prior to further flight. Inspections are to continue at intervals not to exceed 7,000 landings after repair.

(g) For airplanes listed in Boeing Service Bulletin 747–53–2064, Revision 4, dated September 23, 1983, that have been modified in accordance with Boeing Service Bulletin 747–53–2064, dated July 25, 1972: Within the next 1,000 landings after October 15, 1984, or prior to the accumulation of 10,000 landings after the modification, whichever is later, and thereafter at intervals not to exceed 10,000 landings, conduct an HFEC inspection to detect cracks in the front spar pressure bulkhead lower chord heel from stringers S–37 to S–39, and conduct an ultrasonic inspection to detect cracks in the fuselage skin originating at the indicated fastener holes beneath the forward drag splice fitting flanges, in accordance with the service bulletin. If any cracks are found, repair in accordance with Boeing Service Bulletin 747–53–2064, Revision 4, dated September 23, 1983, before further flight. Inspections are to continue at intervals not to exceed 10,000 landings after repair.

New Requirements of This AD

Initial Inspections

(h) At the later of the times specified in paragraph (h)(1), (h)(2), or (h)(3) of this AD: Except as provided by paragraph (i) of this AD, perform an HFEC inspection of BS 1000 bulkhead chord for cracks, a detailed inspection of the bathtub fittings, if installed, for cracks, and corrective action, as applicable, by accomplishing all the actions specified in the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2471, dated March 27, 2003. Any applicable corrective action must be done before further flight. Accomplishment of the HFEC and detailed inspections required by paragraph (h) of this AD ends the requirements of paragraphs (f) and (g) of this AD.

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

(1) Prior to the accumulation of 10,000 total flight cycles.

(2) Within 18 months after the effective date of this AD.

(3) For airplanes on which the repair (*i.e.*, chord replacement) has been accomplished in accordance with Boeing Service Bulletin 747–53–2362, dated March 26, 1992, or in accordance with paragraph (f) or (g) of this AD (*i.e.*, per Boeing Service Bulletin 747–53–2064, Revision 4, dated September 23, 1983): Within 3,000 flight cycles after the replacement was accomplished.

Note 2: Repairs (*i.e.*, chord replacement) accomplished prior to the effective date of this AD in accordance with Boeing Service Bulletin 747–53–2064, Revision 1, dated May 18, 1973; Revision 2, dated February 22, 1974; Revision 3, dated September 13, 1974; Revision 5, dated July 23, 1987; or Revision 6, dated June 22, 1989; are considered to be applicable to the inspection threshold specified in paragraph (h)(3) of this AD.

(i) If any crack is found during any inspection required by paragraph (h) of this AD, and Boeing Alert Service Bulletin 747–53A2471, dated March 27, 2003, specifies contacting Boeing for additional information: Before further flight, repair per a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the Manager's approval letter must specifically refer to this AD.

Repetitive Inspections

(j) Except as provided by paragraph (k) of this AD, repeat the inspections required by paragraph (h) of this AD thereafter at intervals not to exceed 3,000 flight cycles.

(k) For airplanes on which both the chord replacement and bathtub fitting replacement were done in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2471, dated March 27, 2003: Repeat the inspections required by paragraph (h) of this AD within 6,000 flight cycles after accomplishing both replacements. Thereafter repeat the inspections at intervals not to exceed 3,000 flight cycles.

Alternative Methods of Compliance (AMOC)

(l)(1) In accordance with 14 CFR 39.19, the Manager, Seattle ACO, FAA, is authorized to AMOCs for this AD.

(2) AMOCs, approved previously in accordance with AD 90–09–09, amendment 39–6586, are approved as AMOCs with paragraph (f) or (g) of this AD, as applicable.

Issued in Renton, Washington, on October 26, 2004.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–24726 Filed 11–4–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–19537; Directorate Identifier 2004–NM–145–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B4–600, B4–600R, and F4–600R Series Airplanes; and C4–605R Variant F Airplanes (Collectively Called A300–600), and Model A310 Series Airplanes Equipped With Certain Honeywell Inertial Reference Units (IRU)

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 Airbus Model A300 B4–600, B4–600R, and F4–600R series airplanes; and C4–605R Variant F airplanes (collectively called A300–600), and Model A310 series airplanes, equipped with certain Honeywell inertial reference units (IRUs). This proposed AD would require revising the Limitations section of the Airplane Flight Manual to prohibit the use of CAT 2 and CAT 3 automatic landing and rollout procedures at certain airports. This proposed AD is prompted by a report that some magnetic deviation tables in the IRU database are obsolete and contain significant differences with the real magnetic deviations. We are proposing this AD to prevent an airplane from deviating from the runway centerline, and possibly departing the runway.

DATES: We must receive comments on this proposed AD by December 6, 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 Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France.

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

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–2004–19537; Directorate Identifier 2004–NM–145–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 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 our docket website, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You can review 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

The Direction Generale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified us that an unsafe condition may exist on certain Airbus Model A300 B4–600, B4–600R, and F4–600R series airplanes; and C4–605R Variant F airplanes (collectively called A300–600), and Model A310 series airplanes, equipped with certain Honeywell inertial reference units (IRUs). The DGAC advises that the magnetic variation table, which is implemented in certain Honeywell IRUs, is obsolete in certain airports. Studies have shown that for a given airport, a difference greater than two degrees between the real magnetic deviation and the one implemented in the IRUs could lead to an unsafe situation during CAT 2 or CAT 3 automatic landings and rollouts. This condition, if not corrected, could result in the airplane deviating from the runway centerline and possibly departing the runway.

Relevant Service Information

Airbus has issued Temporary Revisions (TRs) 6.01.03/08 (for Model A300–600 series airplanes) and 6.01.03/36 (for Model A310 series airplanes), both dated January 6, 2003. The TRs give a list of airports concerned and a date from which automatic landings (AUTOLAND) and automatic taxiing after touchdown (rollout) procedures are prohibited. The DGAC mandated the service information and issued French airworthiness directive F–2004–093, issued June 23, 2004, to ensure the continued airworthiness of these airplanes in France.

FAA's Determination and Requirements of the Proposed AD

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. We have examined the DGAC's findings, evaluated all pertinent information, and determined that we need to issue an AD for products of this type design that are certificated for operation in the United States.

Therefore, we are proposing this AD, which would require revising the Limitations section of the airplane flight manual (AFM) to prohibit the use of CAT 2 and CAT 3 automatic landing and rollout procedures at certain airports. The proposed AD would require you to use the service information described previously to perform these actions. After accomplishing the replacement of the Honeywell IRU required by AD 2003–20–01, amendment 39–13319 (68 FR 55814, September 29, 2003), the AFM revision may be removed.

Costs of Compliance

This proposed AD would affect about 136 airplanes of U.S. registry. The proposed AFM revision would take

about 1 work hour per airplane, at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of the proposed AD for U.S. operators is $8,840, or $65 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):

Airbus: Docket No. FAA–2004–19537; Directorate Identifier 2004–NM–145–AD.

Comments Due Date

(a) The Federal Aviation Administration must receive comments on this AD action by December 6, 2004.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus airplanes, certificated in any category; as listed in Table 1:

TABLE 1.—APPLICABILITY

Model—	Equipped with any Honeywell airplanes inertial reference unit (IRU) having part number—			Excluding airplanes modified in accordance with—
A300 B4–600, B4–600R, and F4–600R series airplanes; and C4–605R Variant F airplanes (collectively called A300–600).	HG1050BD01, HG1050BD05.	HG1050BD02,	or	Airbus modification 12304 in production.
A310 series airplanes	HG1050BD01, HG1050BD05.	HG1050BD02,	or	Airbus modification in production.

Unsafe Condition

(d) This AD was prompted by a report that some magnetic deviation tables in the IRU database are obsolete and contain significant differences with the real magnetic deviations. We are issuing this AD to prevent an airplane from deviating from the runway centerline, and possibly departing the runway.

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.

Airplane Flight Manual (AFM) Revision

(f) Within 10 days after the effective date of this AD, revise the Limitations section of the AFM by inserting a copy of the applicable Airbus Airplane Flight Manual Temporary Revision listed in Table 2 of this AD into the AFM.

Note 1: When Airbus includes these TRs in general revisions of the AFM, the general revisions may be inserted in the AFM, provided the relevant information in the general revision is identical to that in TRs 6.01.03/08 and 6.01.03/36.

TABLE 2.—AFM TRS

Model—	Airbus—	Dated—
(1) A300 B4–600, B4–600R, and F4–600R series airplanes; and C4–605R Variant F airplanes (collectively called A300–600).	A300–600 Flight Manual TR 6.01.03/08	February 9, 2003.
(2) A310 series airplanes	A310 Flight Manual TR6.01.03/36	February 9, 2003.

Terminating Action

(g) After replacing the Honeywell inertial reference units (IRUs) with new or modified Honeywell IRUs in accordance with the requirements of AD 2003–20–01, amendment 39–13319 (68 FR 55814), the AFM revision required by paragraph (f) of this AD may be removed.

Alternative Methods of Compliance (AMOCs)

(h) The Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

Related Information

(i) French airworthiness directive F–2004–093 (B), issued June 23, 2004, also addresses the subject of this AD.

Issued in Renton, Washington, on October 28, 2004.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–24725 Filed 11–4–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–19536; Directorate Identifier 2004–NM–86–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–8–11, DC–8–12, DC–8–21, DC–8–31, DC–8–32, DC–8–33, DC–8–41, DC–8–42, and DC–8–43 Airplanes; DC–8–50 Series Airplanes; DC–8F–54 and DC–8F–55 Airplanes; DC–8–60 Series Airplanes; DC–8–60F Series Airplanes; DC–8–70 Series Airplanes; and DC–8–70F Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede an existing airworthiness directive (AD) for certain McDonnell Douglas Model DC–8–70 and –70F series airplanes. That AD currently requires repetitive inspections for cracking of the lower cargo doorjamb corners, and corrective action if necessary. That AD provides for optional terminating action for certain repetitive inspections for certain airplanes. For certain other airplanes, that AD requires modification of the lower cargo doorjamb corners. This proposed AD would add airplanes to the applicability. The existing AD was prompted by reports of fatigue cracks in the fuselage skin in the lower cargo doorjamb corners; this proposed AD is prompted by the inadvertent omission of certain airplanes from the existing applicability. We are proposing this AD to ensure that the unsafe condition will be addressed on all affected airplanes so that cracking in the lower cargo doorjamb corners is detected and corrected before it can result in rapid decompression of the fuselage and consequent reduced structural integrity of the airplane.

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

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

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

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

You may examine the contents of the AD docket on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Jon Mowery, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5322; fax (562) 627–5210.

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–2004–19536; Directorate Identifier 2004–NM–86–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

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

Examining the Docket

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

Discussion

On March 12, 2004, we issued AD 2004–06–06, amendment 39–13532 (69 FR 15234, March 25, 2004), for certain McDonnell Douglas Model DC–8–70 and –70F series airplanes. That AD requires repetitive inspections for cracking of the lower cargo doorjamb corners, and corrective action if necessary. For certain airplanes, that AD provides for optional terminating action for certain repetitive inspections. For certain other airplanes, that AD requires modification of the lower cargo doorjamb corners. That AD was prompted by reports of fatigue cracks in the fuselage skin in the lower cargo doorjamb corners. We issued that AD to detect and correct cracking in the lower cargo doorjamb corners, which could result in rapid decompression of the fuselage and consequent reduced structural integrity of the airplane.

Actions Since Existing AD Was Issued

Since we issued AD 2004–06–06, we learned that certain airplanes had been inadvertently omitted from the

applicability. That AD's applicability includes only ''Model DC–8–70 and –70F series airplanes.'' That applicability does not precisely identify the affected airplanes: Model DC–8 series 70 ''and prior'' airplanes.

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 to supersede AD 2004–06–06.

This proposed AD would continue to require repetitive inspections for cracking of the lower cargo doorjamb corners, and corrective action if necessary. This proposed AD would continue to provide for optional terminating action for certain repetitive inspections for certain airplanes. For certain other airplanes, this proposed AD would continue to require modification of the lower cargo doorjamb corners.

This proposed AD would clarify the applicability and ensure compliance of all affected airplanes by adding the affected airplanes that were inadvertently omitted from the existing AD.

This proposed AD would require using the service information described previously to perform these actions, except as discussed below under ''Differences Between the Proposed AD and the Service Bulletin.''

The proposed AD would continue to require that operators send us a report of the results of each inspection.

Differences Between the Proposed AD and the Service Bulletin

McDonnell Douglas Service Bulletin DC8–53–078 (described in the preamble to AD 2004–06–06) specifies that the manufacturer may be contacted for disposition of certain repair conditions. This proposed AD would continue to require that those repairs be done in accordance with an FAA-approved method, or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative whom we have authorized to make such findings.

Additional Changes to Existing AD

This proposed AD would retain the requirements of AD 2004–06–06. Since we issued that AD, we have revised the AD format. As a result, we have rearranged certain paragraphs and changed the corresponding paragraph identifiers in this proposed AD, as listed in the following table:

REIDENTIFIED PARAGRAPHS

Paragraph identifier in AD 2004–06–06:	New paragraph identifier in this proposed AD:
(a)	(f)
(b)	(g)
(c)	(h)
(d)	(i)
(e)	(j)
(f)	(k)
(g)	(l)

Costs of Compliance

This proposed AD would affect about 264 airplanes worldwide. The following table provides the estimated costs for U.S. operators to comply with this proposed AD, which adds no economic burden above that imposed by AD 2004–06–06. The current costs for this AD are repeated for the convenience of affected operators, as follows:

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	No. of affected U.S.-registered airplanes	Fleet cost
Pre-modification inspections	24	$65	None required	$1,560, per inspection cycle	Unknown	Unknown.
Modification	520	65	$25,000	58,800	Unknown	Unknown.
Post-modification inspections.	40	65	None required	2,600, per inspection cycle	244	$634,400, per inspection cycle.

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 39–13532 (69 FR 15234, March 25, 2004) and adding the following new airworthiness directive (AD):

McDonnell Douglas: Docket No. FAA–2004–19536; Directorate Identifier 2004–NM–86–AD.

Comments Due Date

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

Affected ADs

(b) This AD supersedes AD 2004–06–06, amendment 39–13532.

Applicability

(c) This AD applies to the following McDonnell Douglas airplanes, certificated in any category; as listed in McDonnell Douglas Service Bulletin DC8–53–078, Revision 01, dated January 25, 2001:

(1) Model DC–8–11, DC–8–12, DC–8–21, DC–8–31, DC–8–32, DC–8–33, DC–8–41, DC–8–42, and DC–8–43 airplanes.
(2) Model DC–8–50 series airplanes.
(3) Model DC–8F–54 and DC–8F–55 airplanes.
(4) Model DC–8–60 series airplanes.
(5) Model DC–8–60F series airplanes.
(6) Model DC–8–70 series airplanes.
(7) Model DC–8–70F series airplanes.

Unsafe Condition

(d) This AD was prompted by reports of fatigue cracks in the fuselage skin in the lower cargo doorjamb corners. We are issuing this AD to detect and correct cracking in the lower cargo doorjamb corners, which could result in rapid decompression of the fuselage and consequent reduced structural integrity 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.

Restatement of Requirements of AD 2004–06–06

Note 1: This AD is related to AD 93–01–15, amendment 39–8469, and will affect Principal Structural Elements (PSEs) 53.08.042 and 53.08.043 of the DC–8 Supplemental Inspection Document (SID), Report L26–011, Volume II, Revision 7, dated April 1993.

Group 1 Airplanes: Inspections and Optional Terminating Action

(f) Except as provided by paragraph (m) of this AD: For airplanes identified as Group 1 in McDonnell Douglas Service Bulletin DC8–53–078, Revision 01, dated January 25, 2001:
(1) Within 2,000 landings or 3 years after April 29, 2004 (the effective date of AD 2004–06–06, amendment 39–13532), whichever occurs first, perform applicable inspections for cracking of the lower cargo doorjamb corners, in accordance with the Accomplishment Instructions of the service bulletin.
(i) If no crack is detected during any inspection required by this paragraph: Repeat the inspections within the intervals specified in paragraph 1.E. of the service bulletin.
(ii) If any crack is detected during any inspection required by this paragraph: Repair before further flight in accordance with the Accomplishment Instructions of the service bulletin.
(2) Modification of the lower cargo doorjamb corners in accordance with the Accomplishment Instructions of the service bulletin terminates the repetitive inspection requirement of paragraph (f)(1)(i) of this AD.
(3) For airplanes repaired or modified in accordance with paragraph (f)(1)(ii) or (f)(2) of this AD: Within 17,000 landings after the repair or modification, perform an eddy current inspection for cracks of the doorjamb corners, in accordance with the Accomplishment Instructions of the service bulletin (Drawing SN08530001). Repeat the inspection at intervals not to exceed 4,400 landings.

Group 2 Airplanes: Modification

(g) Except as provided by paragraph (m) of this AD, for airplanes identified as Group 2 in McDonnell Douglas Service Bulletin DC8–53–078, Revision 01, dated January 25, 2001:
(1) Within 2,000 landings or 3 years after April 29, 2004, whichever occurs first, modify the lower cargo doorjamb corners in accordance with the Accomplishment Instructions of the service bulletin.
(2) Within 17,000 landings after the modification required by paragraph (g)(1) of this AD, perform applicable inspections for cracking of the doorjamb corners, in accordance with the Accomplishment Instructions of the service bulletin. Repeat the inspections at intervals not to exceed 4,400 landings.

Group 3 and Group 4 Airplanes: Inspections

(h) For airplanes identified as Group 3 and Group 4 in McDonnell Douglas Service Bulletin DC8–53–078, Revision 01, dated January 25, 2001: Within 17,000 landings following accomplishment of the modification specified in the service bulletin, perform applicable inspections for cracking of the lower cargo doorjamb corners, in accordance with the Accomplishment Instructions of the service bulletin. Repeat the inspections at intervals not to exceed 4,400 landings.

All Airplanes: Repair Following Post-Modification Inspections

(i) If any cracking is detected during any inspection required by paragraph (f)(3), (g)(2), or (h) of this AD: Repair before further flight in accordance with a method approved by the Manager, Los Angeles 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, Los Angeles ACO, to make such findings. For a repair method to be approved, the approval must specifically refer to this AD.

Credit for Prior Accomplishment

(j) Inspections done before the effective date of April 29, 2004, in accordance with McDonnell Douglas Service Bulletin DC8–53–078, dated February 6, 1996, are acceptable for compliance with the applicable inspections required by this AD.
(k) Inspections and repairs specified in this AD of areas of PSEs 53.08.042 and 53.08.043 are acceptable for compliance with the applicable requirements of paragraphs (a) and (b) of AD 93–01–15. The remaining areas of the affected PSEs must be inspected and repaired as applicable, in accordance with AD 93–01–15.

Report

(l) At the applicable time specified in paragraph (l)(1) or (l)(2) of this AD: Submit a report of the findings (both positive and negative) of each inspection required by this AD to the Manager, Los Angeles ACO. Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements contained in this AD and has assigned OMB Control Number 2120–0056.
(1) For an inspection done after April 29, 2004: Submit the report within 10 days after the inspection.
(2) For an inspection done before April 29, 2004: Submit the report within 10 days after April 29, 2004.

Requirements for Newly Added Airplanes

(m) For airplanes not subject to the requirements of AD 2004–06–06, the reference time for compliance is the effective date of this new AD, rather than April 29, 2004 (the effective date of AD 2004–06–06).

Alternative Methods of Compliance

(n)(1) In accordance with 14 CFR 39.19, the Manager, Los Angeles ACO, FAA, is authorized to approve alternative methods of compliance (AMOCs) for this AD.
(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 DER who has been authorized by the Manager, Los Angeles ACO, to make such findings.

Material Incorporated by Reference

(o) None.

Related Information

(p) None.

Issued in Renton, Washington, on October 26, 2004.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–24724 Filed 11–4–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–19535; Directorate Identifier 2004–NM–78–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–300, 747SP, and 747SR Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede an existing airworthiness directive (AD) for certain Boeing Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–300, 747SP, and 747SR series airplanes. That AD currently requires one-time inspections for cracking in certain upper deck floor beams and follow-on actions. This proposed AD would expand the existing inspection area, and would require inspecting fastener holes in certain areas of airplanes modified previously, and

taking corrective actions if necessary. This action also would define new sources for instructions for repairs and post-modification/repair inspections. This proposed AD is prompted by reports of fatigue cracking of the upper chord of certain upper deck floor beams. We are proposing this AD to find and fix cracking in certain upper deck floor beams, which could extend and sever floor beams adjacent to the body frame and result in rapid depressurization and loss of controllability of the airplane.

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

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

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

You can get the service information identified in this proposed AD from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207.

You may examine the contents of this AD docket on the Internet at *http://dms.dot.gov*, or at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., room PL–401, on the plaza level of the Nassif Building, Washington, DC. This docket number is FAA–2004–19535; the directorate identifier for this docket is 2004–NM–78–AD.

FOR FURTHER INFORMATION CONTACT: Ivan Li, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6437; fax (425) 917–6432.

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–2004–19535; Directorate Identifier 2004–NM–78–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

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

Examining the Docket

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

Discussion

On August 30, 2002, we issued AD 2002–18–04, amendment 39–12878 (67 FR 57510, September 11, 2002), for certain Boeing Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–300, 747SP, and 747SR series airplanes. That AD requires one-time inspections for cracking in certain upper deck floor beams and follow-on actions. That AD was prompted by reports of fatigue cracking on the left and right ends of the upper chord of the station (STA) 340 upper deck floor beam on several Boeing Model 747 series airplanes. We issued that AD to find and fix cracking in certain upper deck floor beams. Such cracking could extend and sever floor beams adjacent to the body frame and result in rapid depressurization and loss of controllability of the airplane.

Relevant Service Information

We've reviewed Boeing Service Bulletin 747–53A2459, Revision 1, dated March 11, 2004. Revision 1 of the service bulletin describes certain inspection procedures that are similar to those described in Boeing Alert Service Bulletin 747–53A2459, dated January 11, 2001, which AD 2002–18–04 refers to as the applicable source of service information for certain actions required by that AD. Revision 1 of the service bulletin, however, expands the inspection area to include fastener holes inboard of the body frame.

Part 5 of Revision 1 of the service bulletin describes procedures for post-modification/repair inspections. These inspections use the open-hole high-frequency eddy current (HFEC) inspection method. These inspections are intended to find cracking of the STA 340 and STA 360 upper deck floor beams at fastener holes common to the upper chord, reinforcement straps, and body frame. The service bulletin also describes procedures for surface HFEC inspections for cracking along the lower edge of the upper chord and reinforcement straps of the floor beams, which you can use as an alternative to the post-modification/repair open-hole HFEC inspections. (AD 2002–18–04 specifies that you must do post-modification/repair inspections in accordance with a method that we approve, or in accordance with data meeting the type certification basis of the airplane approved by an authorized Boeing Company Designated Engineering Representative (DER).) The service bulletin specifies repeating the inspection at intervals of 1,000 flight cycles (if you used the surface HFEC method for the most recent inspection), or 3,000 or 6,000 flight cycles,

depending on fastener location (if you used the open-hole HFEC method for the most recent inspection).

Part 5 of the service bulletin also describes procedures for corrective actions if you find cracking during the post-modification/repair inspections. These corrective actions include repairing cracking of the floor beam and body frame, or replacing, with new parts:

- The outboard end of the upper chord (if you find cracking of the upper chord).
- The outboard end of the web (if you find cracking of the floor beam web).
- The reinforcement strap (if you find cracking of the reinforcement strap).

Part 6 of Revision 1 of the service bulletin describes procedures for doing a one-time open-hole HFEC inspection of the fastener holes common to the reinforcement straps on airplanes that were modified in accordance with the original issue of the service bulletin, and taking corrective actions if necessary. The corrective actions in Part 6 are the same as those in Part 5, which we describe in the preceding paragraph.

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

FAA's Determination and Requirements of the Proposed AD

We've 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're proposing this AD, which would supersede AD 2002–18–04. This proposed AD would continue to require one-time inspections for cracking in certain upper deck floor beams, and other specified actions. This proposed AD would expand the existing inspection area to include fastener holes inboard of the body frame, and would require performing a one-time inspection for cracking of fastener holes in certain areas of airplanes modified previously, and taking corrective actions if necessary. This action also would define new sources for instructions for repairs and post-modification/repair inspections. This proposed AD would require you to use the service information described previously to do these actions, except as discussed under ''Differences Between the Proposed AD and Service Bulletin.''

Differences Between the Proposed AD and Service Bulletin

The service bulletin specifies doing the initial post-modification/repair inspections in accordance with Figures 12 and 13 of the service bulletin within 6,000 flight cycles after doing the modification or permanent repair. We've added a grace period of 1,000 flight cycles after the effective date of this AD for this inspection, to ensure that operators of airplanes that have accumulated close to or more than 6,000 flight cycles since the modification or permanent repair was done have sufficient time to perform these proposed inspections.

The service bulletin specifies that you may contact the manufacturer for instructions on how to repair certain conditions, but this proposed AD would require you to repair those conditions in one of the following ways:

- Using a method that we approve; or
- Using data that meet the type certification basis of the airplane, and that have been approved by a Boeing Company DER whom we've authorized to make such findings.

Although the Accomplishment Instructions of Boeing Service Bulletin 747–53A2459, Revision 1, describe procedures for reporting certain body frame cracks found on certain airplanes, this proposed AD would not require those actions. We don't need this information from operators.

For airplanes inspected previously in accordance with Boeing Alert Service Bulletin 747–53A2459 (but not previously modified or repaired), Boeing Service Bulletin 747–53A2459, Revision 1, does not specify a compliance time for inspecting the fastener holes inboard of the body frame that were added in Revision 1. Paragraph (j) of this proposed AD specifies these compliance times for that inspection:

COMPLIANCE TIMES FOR PARAGRAPH (J)

Total number of accumulated flight cycles as of the effective date of this AD	Compliance time
22,000 or fewer	Within 5,000 flight cycles after the initial open-hole HFEC inspection for cracking in accordance with paragraph (f) of this AD, or within 1,000 flight cycles after the effective date of this AD, whichever is later.
22,001 or more	Prior to the accumulation of 25,000 total flight cycles, or within 1,000 flight cycles after the effective date of this AD, whichever is later.

In developing an appropriate compliance time for this inspection, we considered the manufacturer's recommended compliance times for the other inspections in this proposed AD, and the degree of urgency associated with the subject unsafe condition. In light of these factors, we find that the specified compliance times represent an appropriate interval of time for affected airplanes to continue to operate without compromising safety.

Changes to Existing AD

This proposed AD would retain all requirements of AD 2002–18–04. Since AD 2002–18–04 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 2002–18–04	Corresponding requirement in this proposed AD
paragraph (a)	paragraph (f).
paragraph (b)	paragraph (g).
paragraph (c)	paragraph (h).
paragraph (d)	paragraph (i).

Also, AD 2002–18–04 estimated that the number of work hours necessary for the post-modification/repair inspection was 8 work hours per inspection cycle. We reached that estimate based on the best-available data at the time. As explained previously, Revision 1 of the service bulletin includes procedures for these inspections and estimates that they will take about 24 work hours. We've revised the ''Costs of Compliance'' section of this proposed AD accordingly.

Costs of Compliance

This proposed AD would affect about 433 airplanes worldwide. The following table provides the estimated costs for U.S. operators to comply with this proposed AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Cost per airplane	No. of U.S.-registered airplanes	Fleet cost
Initial inspections (required by AD 2002–18–04).	8	$65	$520	125	$65,000
Modification/permanent repair (required by AD 2002–18–04).	24	65	1,560	125	195,000
Post-mod/repair inspections (required by AD 2002–18–04).	24, per inspection cycle.	65	1,560, per inspection cycle.	125	195,000, per inspection cycle.
One-time inspection of fastener holes inboard of the body frame (new requirement).	24	65	1,560	N/A	1,560, 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 removing amendment 39–12878 (67 FR 57510, September 11, 2002) and adding the following new airworthiness directive (AD):

Boeing: Docket No. FAA–2004–19535; Directorate Identifier 2004–NM–78–AD.

Comments Due Date

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

Affected ADs

(b) This AD supersedes AD 2002–18–04, amendment 39–12878.

Applicability

(c) This AD applies to Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–300, 747SP, and 747SR series airplanes; line numbers 1 through 810 inclusive; certificated in any category; and not equipped with a nose cargo door.

Unsafe Condition

(d) This AD was prompted by reports of fatigue cracking of the upper chord of certain upper deck floor beams. We are issuing this AD to find and fix cracking in certain upper deck floor beams, which could extend and sever floor beams adjacent to the body frame and result in rapid depressurization and 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 2002–18–04

Inspections

(f) At the compliance time specified in paragraph (f)(1) or (f)(2) of this AD, as applicable, perform one-time detailed and open-hole high-frequency eddy current (HFEC) inspections for cracking in the upper deck floor beams at station (STA) 340 and STA 360, in accordance with Boeing Alert Service Bulletin 747–53A2459, dated January 11, 2001; or Boeing Service Bulletin 747–53A2459, Revision 1, dated March 11, 2004. As of the effective date of this AD, only Revision 1 may be used. For the purposes of this AD, flight cycles with a cabin differential pressure of 2.0 psi or less are not calculated into the compliance thresholds specified in this AD. However, all cabin pressure records must be maintained for each airplane, and no fleet averaging of cabin pressure is allowed.

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) For airplanes with 22,000 or fewer total flight cycles as of October 16, 2002 (the effective date of AD 2002–18–04, amendment 39–12878): Do the inspections prior to the accumulation of 16,000 total flight cycles, or within 1,500 flight cycles after October 16, 2002, whichever is later.

(2) For airplanes with more than 22,000 total flight cycles as of the effective date of this AD: Do the inspections within 500 flight cycles after October 16, 2002.

Modification

(g) If no crack is found during the inspections in accordance with paragraph (f) of this AD: Within 5,000 flight cycles after the initial inspections, modify the upper deck floor beams at STA 340 and STA 360, in accordance with Boeing Alert Service Bulletin 747–53A2459, dated January 11, 2001; or Boeing Service Bulletin 747–53A2459, Revision 1, dated March 11, 2004. As of the effective date of this AD, only Revision 1 may be used. If this modification is not done before further flight after the inspections required by paragraph (f) of this AD, those inspections must be repeated one time, immediately before accomplishing the modification in this paragraph. If any crack is found during these repeat inspections, before further flight, accomplish paragraph (h)(2) of this AD.

Repair

(h) If any crack is found during the inspections in accordance with paragraph (f) of this AD: Before further flight, repair in accordance with either paragraph (h)(1) or (h)(2) of this AD.

(1) Accomplish repairs in accordance with paragraphs (h)(1)(i) and (h)(1)(ii) of this AD.

(i) Accomplish a time-limited repair (including removing certain fasteners and the existing strap, performing open-hole HFEC inspections of the chord and web, stop-drilling web cracks, replacing the outboard section of the web, if applicable, and installing new straps) in accordance with Boeing Alert Service Bulletin 747–53A2459, dated January 11, 2001; or Boeing Service

Bulletin 747–53A2459, Revision 1, dated March 11, 2004; except where the service bulletin specifies to contact Boeing for appropriate action, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or in accordance with 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. As of the effective date of this AD, only Revision 1 may be used.

(ii) Within 18 months or 1,500 flight cycles after installation of the time-limited repair in accordance with paragraph (h)(1)(i) of this AD, whichever is first, do paragraph (h)(2) of this AD.

(2) Accomplish a permanent repair in accordance with Boeing Alert Service Bulletin 747–53A2459, dated January 11, 2001; or Boeing Service Bulletin 747–53A2459, Revision 1, dated March 11, 2004; except where the service bulletin specifies to contact Boeing for appropriate action, repair in accordance with a method approved by the Manager, Seattle ACO; or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company 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. As of the effective date of this AD, only Revision 1 may be used.

Repetitive Inspections: Post-Modification/Repair

(i) Within 15,000 flight cycles after modification of the upper deck floor beams in accordance with paragraph (g) of this AD or after permanent repair of the upper deck floor beams in accordance with paragraph (h) of this AD, as applicable: Perform either open-hole HFEC inspections for cracking of fastener holes common to the upper chord, reinforcement straps, and the body frame; or surface HFEC inspections for cracking along the lower edge of the upper chord of the floor beam at the intersection with the body frame; and repeat these inspections at the interval specified in paragraph (i)(1) or (i)(2) of this AD, as applicable, until the initial inspection required by paragraph (l) of this AD is complete. Perform these inspections and repair any cracking found during these inspections in accordance with a method approved by the Manager, Seattle ACO, or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company DER who has been authorized by the Manager, Seattle ACO, to make such findings. For an inspection or repair method to be approved as required by this paragraph, the approval must specifically reference this AD.

(1) If the most recent inspection used the surface HFEC method: Repeat the inspection within 1,000 flight cycles.

(2) If the most recent inspection used the open-hole HFEC method: Repeat the inspection every 3,000 flight cycles.

Note 2: There is no terminating action at this time for the repetitive post-modification/repair inspections in accordance with paragraph (i) of this AD, and instructions for these inspections are not provided in the original issue of Boeing Alert Service Bulletin 747–53A2459, dated January 11, 2001.

New Requirements of This AD

One-Time Inspection for Airplanes Inspected Previously

(j) For airplanes on which the inspection in paragraph (f) of this AD has been done prior to the effective date of this AD in accordance with Boeing Alert Service Bulletin 747–53A2459, dated January 11, 2001, but the modification specified in paragraph (g) or the permanent repair specified in paragraph (h) of this AD has not been done: At the applicable time specified in Table 1 of this AD, do one-time detailed and open-hole HFEC inspections for cracking of the fastener holes inboard of the body frame that were not previously inspected on the STA 340 and STA 360 upper deck floor beams. Do this inspection in accordance with Part 1 of the Accomplishment Instructions of Boeing Service Bulletin 747–53A2459, Revision 1, dated March 11, 2004.

TABLE 1.—COMPLIANCE TIMES FOR PARAGRAPH (J)

Total number of accumulated flight cycles as of the effective date of this AD	Compliance time
22,000 or fewer	Within 5,000 flight cycles after the initial open-hole HFEC inspection for cracking in accordance with paragraph (f) of this AD, or within 1,000 flight cycles after the effective date of this AD, whichever is later.
22,001 or more	Prior to the accumulation of 25,000 total flight cycles, or within 1,000 flight cycles after the effective date of this AD, whichever is later.

One-Time Inspection for Airplanes Modified/Repaired Previously

(k) For airplanes on which the modification specified in paragraph (g) or the permanent repair specified in paragraph (h) of this AD has been done prior to the effective date of this AD in accordance with Boeing Alert Service Bulletin 747–53A2459, dated January 11, 2001: At the applicable time specified in Table 2 of this AD, do a one-time open-hole HFEC inspection for cracking of fastener holes common to the modification straps, in accordance with Part 6 of the Accomplishment Instructions of Boeing Service Bulletin 747–53A2459, Revision 1, dated March 11, 2004.

TABLE 2.—COMPLIANCE TIMES FOR PARAGRAPH (K)

Total number of accumulated flight cycles when the modification or permanent repair was done	Compliance time
22,000 or fewer	Within 3,000 flight cycles after doing the modification or permanent repair, or 1,000 flight cycles after the effective date of this AD, whichever is later.
22,001 or more	Within 1,500 flight cycles after doing the modification or permanent repair, or 1,000 flight cycles after the effective date of this AD, whichever is later.

Repetitive Inspections: Post-Modification/Repair

(l) Do open-hole HFEC inspections for cracking of the STA 340 and STA 360 upper deck floor beams at fastener holes common to the upper chord, reinforcement straps, and body frame; or do surface HFEC inspections for cracking along the lower edge of the upper chord and reinforcement straps of the floor beams. Do the applicable inspection in accordance with Part 5 of the Accomplishment Instructions of Boeing Service Bulletin 747–53A2459, Revision 1, dated March 11, 2004. Do the initial inspections at the applicable times specified in Table 3 of this AD, and repeat the inspection at the applicable interval specified

in Figure 9 of the service bulletin. Completing the initial inspection required by this paragraph terminates the repetitive inspections required by paragraph (i) of this AD. For airplanes on which paragraph (i) of this AD has not been done, doing the initial inspection required by this paragraph at the specified compliance time eliminates the need to comply with paragraph (i) of this AD.

TABLE 3.—COMPLIANCE TIMES FOR INITIAL INSPECTION REQUIRED BY PARAGRAPH (L)

For the inspections identified in the following figures referenced in figure 9 of the service bulletin—	For these airplanes—	Do the inspection—
Figure 10 or 11	Airplanes not inspected previously in accordance with paragraph (i) of this AD.	Within 15,000 flight cycles after doing the modification or permanent repair.
Figure 10 or 11	Airplanes inspected previously in accordance with paragraph (i) of this AD using the surface HFEC method for the most recent inspection.	Within 1,000 flight cycles after the most recent inspection.
Figure 10 or 11	Airplanes inspected previously in accordance with paragraph (i) of this AD using the open-holeHFEC method for the most recent inspection.	Within 3,000 flight cycles after the most recent inspection.
Figure 12 or 13	All airplanes	Within 6,000 flight cycles after doing the modification or permanent repair, or within 1,000 flight cycles after the effective date of this AD, whichever is later.

Repair

(m) If any crack is found during any inspection required by paragraph (j), (k), or (l) of this AD: Before further flight, repair in accordance with the Accomplishment Instructions of Boeing Service Bulletin 747–53A2459, Revision 1, dated March 11, 2004; except where the service bulletin specifies to contact Boeing for appropriate action, repair in accordance with a method approved by the Manager, Seattle ACO; or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company DER who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved, the approval must specifically reference this AD.

Reporting Not Required

(n) Although Boeing Service Bulletin 747–53A2459, Revision 1, dated March 11, 2004, specifies to report certain body frame cracks on certain airplanes, this AD does not include that requirement.

Alternative Methods of Compliance (AMOCs)

(o)(1) The Manager, Seattle ACO, has the authority to approve AMOCs for this AD, if requested using 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 such findings.

(3) AMOCs approved previously in accordance with AD 2002–18–04, amendment 39–12878, are approved as alternative methods of compliance with paragraphs (f), (g), (h), and (i) of this AD.

Issued in Renton, Washington, on October 26, 2004.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–24723 Filed 11–4–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–19534; Directorate Identifier 2004–NM–99–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B2 and B4 Series Airplanes; Model A300 B4–600, B4–600R, and F4–600R Series Airplanes, and Model A300 C4–605R Variant F Airplanes (Collectively Called A300–600); and Model A310 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Airbus airplane models, as specified above. This proposed AD would require modifying the thermal insulation system of certain fuselage frames, and modifying the fuselage drainage system. This proposed AD would also require revising the FAA-approved maintenance inspection program to include inspections for corrosion or cracking in the subject areas. This proposed AD is prompted by reports of corrosion in the lower part of the pressure bulkhead at certain fuselage frames. We are proposing this AD to prevent accumulation of condensation in the insulation blankets of certain fuselage frames, which could cause corrosion that could result in reduced structural integrity of the fuselage and consequent rapid decompression of the airplane.

DATES: We must receive comments on this proposed AD by December 6, 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 Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France.

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

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–2004–19534; Directorate Identifier 2004–NM–99–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 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 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 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

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified us that an unsafe condition may exist on certain Airbus Model A300 B2 and B4 series airplanes; Model A300 B4–600, B4–600R, and F4–600R series airplanes, and Model A300 C4–605R Variant F airplanes (collectively called A300–600); and Model A310 series airplanes. The DGAC advises that corrosion has been found in the lower part of the pressure bulkhead at fuselage frame (FR) 54 and, on certain airplanes, FR 39. Investigation revealed that the rear face of FR 54, and the front face of FR 39 on certain airplanes, are completely thermally insulated; no drainage is provided at the insulation blankets. The lack of drainage results in condensation being trapped. This condition, if not corrected, could result in corrosion that could result in reduced structural integrity of the fuselage and consequent rapid decompression of the airplane.

Relevant Service Information

Airbus has issued the service bulletins listed in the table below, which describe procedures for modifying the thermal insulation system using the specific procedures identified in the table below.

SERVICE BULLETINS FOR MODIFYING THE THERMAL INSULATION SYSTEM

Airbus model	Airbus service bulletin	Specific procedures described
A300 B2 and B4 series	A300–21–0116, Revision 02, dated June 13, 2003.	Permanently removing insulation blankets from the front face of FR 39 and the rear face of FR 54 between the cargo compartment floor and the fuselage lower wall and removing insulation blankets between FR 54 and FR 54.1 and stringers 50 through 56 inclusive on the left and right sides of the airplane; installing bracket assemblies to raise the blankets in this area; and re-installing these insulation blankets.
A300 B4–600, B4–600R, and F4–600R series; and A300 C4–605R Variant F (collectively called A300–600).	A300–21–6025, Revision 01, dated June 13, 2003.	Permanently removing insulation blankets from the rear face of FR 54 between the cargo compartment floor and the fuselage lower wall and removing insulation blankets between FR 54 and FR 54.1 and stringers 50 through 56 inclusive on the left and right sides of the airplane; installing bracket assemblies to raise the blankets in this area; and reinstalling these insulation blankets.

SERVICE BULLETINS FOR MODIFYING THE THERMAL INSULATION SYSTEM—Continued

Airbus model	Airbus service bulletin	Specific procedures described
A310 series	A310–21–2041, Revision 02, dated June 13, 2003.	Permanently removing insulation blankets from the rear face of FR 54 between the cargo compartment floor and the fuselage lower wall and removing insulation blankets between FR 54 and FR 54.1 and stringers 50 through 56 inclusive on the left and right sides of the airplane; installing bracket assemblies to raise the blankets in this area; and reinstalling these insulation blankets and testing the additional center fuel tank, if installed.

Airbus has also issued the service bulletins listed in the table below, which describe procedures for modifying the fuselage drainage system using the specific procedures identified in the table below.

SERVICE BULLETINS FOR MODIFYING THE FUSELAGE DRAINAGE SYSTEM

Airbus model	Airbus service bulletin	Specific procedures described
A300 B2 and B4 series	A300–53–0201, Revision 04, dated May 2, 2003.	Replacing all existing drain valves in the lower fuselage and upper deck cargo door with new, improved (plastic) drain valves; installing one additional drain valve; and drilling additional drain holes in the stringers.
A300 B4–600, B4–600R, and F4–600R series; and A300 C4–605R Variant F (collectively called A300–600).	A300–53–6008, Revision 05, dated July 15, 2004.	Replacing all existing drain valves in the lower fuselage and upper deck cargo door with new, improved (plastic) drain valves; installing one additional drain valve; and drilling additional drain holes in the stringers.
A310 series	A310–53–2027, Revision 04, dated July 15, 2004.	Replacing all existing drain valves in the lower fuselage with new, improved (plastic) drain valves; installing additional drain valves; and drilling additional drain holes in the stringers.

Airbus has also issued Maintenance Planning Documents containing Task Numbers 538295–0603–01 (for Airbus Model A300 B2 and B4 series airplanes), and 541531–01–1 and 531533–01–1 (for Airbus Model A300–600 and Model A310 series airplanes). These task numbers describe procedures for repetitive detailed visual inspections for corrosion or cracking of fuselage structure from FR 38.2 to 39, and at FR 54, as applicable. These tasks are necessary for airplanes modified in accordance with the service information described previously.

Accomplishing the actions specified in the applicable service information is intended to adequately address the unsafe condition. The DGAC mandated the service information and issued French airworthiness directive 2003–317(B), dated August 20, 2003, to ensure the continued airworthiness of these airplanes in France.

FAA's Determination and Requirements of the Proposed AD

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. We have examined the DGAC's findings, evaluated all pertinent information, and determined that we need to issue an AD for products of this type design that are certificated for operation in the United States.

Therefore, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously. This proposed AD would also require revising the FAA-approved maintenance inspection program to include detailed inspections for corrosion and cracking in the area of FRs 39 and 54, as described in the Maintenance Planning Document task numbers identified previously.

Differences Between the Proposed AD and French Airworthiness Directive

The applicability of French airworthiness directive 2003–317(B) excludes airplanes that accomplished Airbus Service Bulletin A300–53–0201, A300–53–6008, or A310–53–2027 in service. However, we have not excluded those airplanes in the applicability of this proposed AD; rather, this proposed AD includes a requirement to accomplish the actions specified in those service bulletins. This requirement would ensure that the actions specified in the service bulletins and that would be required by this proposed AD are accomplished on all affected airplanes. Operators must continue to operate the airplane in the configuration that would be required by this proposed AD unless we approve an alternative method of compliance.

French airworthiness directive 2003–317(B) specifies that airplanes modified in accordance with the service

information described previously must be inspected in accordance with the Maintenance Planning Document tasks described previously. However, no compliance time is given for revising the maintenance program. This proposed AD would require revising the maintenance program to include these tasks within 90 days after doing the modifications specified in the service information described previously, or within 90 days after the effective date of the AD, whichever is later. We find that this represents an appropriate interval of time in which this action may be accomplished by all affected operators without jeopardizing continued flight safety.

Clarification of Inspection Terminology

In this proposed AD, the ''detailed visual inspections'' specified in Maintenance Planning Document Task Numbers 538295–0603–01 (for Airbus Model A300 B2 and B4 series airplanes), and 541531–01–1 and 531533–01–1 (for Airbus Model A300 B4–600, B4–600R, and F4–600R series airplanes, and A300 C4–605R Variant F airplanes (collectively called A300–600); and Model A310 series airplanes), are referred to as ''detailed inspections.'' We have included the definition for a detailed inspection in a note in the proposed AD.

Costs of Compliance

The following table provides the estimated costs for U.S. operators to comply with this proposed AD, at an average labor rate of $65 per work hour.

ESTIMATED COSTS

Action	Models	Work hours	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Modifying the Thermal Insulation System.	A300 B2/B4	5	$567	$892	23	$20,516
Modifying the Thermal Insulation System.	A300 B4–600, B4–600R, and F4–600R series; and A300 C4–605R Variant F (collectively called A300–600).	4	567	827	116	95,932
Modifying the Thermal Insulation System.	A310	4	567	827	47	38,869
Modifying the Fuselage Drainage System.	A300 B2/B4	38	1,857	4,327	23	99,521
Modifying the Fuselage Drainage System.	A300 B4–600, B4–600R, and F4–600R series; and A300 C4–605R Variant F (collectively called A300–600).	36	1,378	3,718	116	431,288
Modifying the Fuselage Drainage System.	A310	27	1,451	3,206	47	150,682
Maintenance Program Revision.	All	1	None	65	186	12,090

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):

Airbus: Docket No. FAA–2004–19534; Directorate Identifier 2004–NM–99–AD.

Comments Due Date

(a) The Federal Aviation Administration must receive comments on this AD action by December 6, 2004.

Affected ADs

(b) None.

Applicability: (c) This AD applies to Airbus Model A300 B2 and B4 series airplanes; A300 B4–600, B4–600R, and F4–600R series airplanes, and A300 C4–605R Variant F airplanes (collectively called A300–600); and A310 series airplanes; certificated in any category; except those on which Airbus Modification 5946 was done during production.

Unsafe Condition

(d) This AD was prompted by reports of corrosion in the lower part of the pressure bulkhead at fuselage frames (FR) 39 and 54. We are issuing this AD to prevent accumulation of condensation in the insulation blankets of certain fuselage FRs, which could cause corrosion that could result in reduced structural integrity of the fuselage and consequent rapid decompression 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.

Modification of Thermal Insulation and Fuselage Drainage Systems

(f) Within 22 months after the effective date of this AD, modify the thermal insulation system of applicable fuselage frames and modify the fuselage drainage system, by doing all actions in the Accomplishment Instructions of the applicable service bulletins specified in Table 1 of this AD.

TABLE 1.—RELEVANT SERVICE BULLETINS

For Airbus models	Modify the thermal insulation according to Airbus Service Bulletin	And modify the fuselage drainage system according to Airbus Service Bulletin
A300 B2 and B4 series	A300–21–0116, Revision 02, dated June 13, 2003.	A300–53–0201, Revision 04, dated May 2, 2003.
A300 B4–600, B4–600R, and F4–600R series; A300 C4–605R Variant F (collectively called A300–600).	A300–21–6025, Revision 01, dated June 13, 2003.	A300–53–6008, Revision 05, dated July 15, 2004.
A310 series	A310–21–2041, Revision 02, dated June 13, 2003.	A310–53–2027, Revision 04, dated July 15, 2004.

Modifications Accomplished According to Previous Issues of Service Bulletins

(g) Modifications accomplished before the effective date of this AD according to Airbus Service Bulletin A300–53–6008, Revision 03, dated November 6, 1990, or Revision 04, dated April 28, 2003 (for Model A300 B4–600, B4–600R, and F4–600R series airplanes; and A300 C4–605R Variant F airplanes (collectively called A300–600)); or Airbus Service Bulletin A310–53–2027, Revision 02, dated November 6, 1990, or Revision 03, dated May 2, 2003 (for Model A310 series airplanes); are considered acceptable for compliance with the corresponding action specified in this AD.

Maintenance Program Revision

(h) Within 90 days after doing the actions required by paragraph (f) of this AD, or within 90 days after the effective date of this AD, whichever is later: Incorporate into the FAA-approved maintenance inspection program repetitive detailed inspections for corrosion or cracking of fuselage structure from FR 38.2 to 39, and at FR 54, as applicable, as described in Airbus Maintenance Planning Document Task Numbers 538295–0603–01 (for Airbus Model A300 B2 and B4 series airplanes), and 541531–01–1 and 531533–01–1 (for Airbus Model A300 B4–600, B4–600R, and F4–600R series airplanes, and A300 C4–605R Variant F airplanes (collectively called A300–600); and Model A310 series airplanes). Then, thereafter, comply with the applicable requirements.

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

Alternative Methods of Compliance (AMOCs)

(i) The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

Related Information

(j) French airworthiness directive 2003–317(B), dated August 20, 2003, also addresses the subject of this AD.

Issued in Renton, Washington, on October 26, 2004.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–24722 Filed 11–4–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–19533; Directorate Identifier 2004–NM–31–AD]

RIN 2120–AA64

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Boeing Model 737–300, –400, and –500 series airplanes. This proposed AD would require repetitive inspections for cracking of the crown area of the fuselage skin, and corrective actions, if necessary. This proposed AD is prompted by a 737 fuselage structure test and fatigue analysis that indicate fuselage skin cracking could occur between 21,000 and 42,000 total flight cycles. We are proposing this AD to detect and correct fatigue cracking of the fuselage skin, which could cause the fuselage skin to fracture and fail, and could result in rapid decompression of the airplane.

DATES: We must receive comments on this proposed AD by December 20, 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, 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. This docket number is FAA–2004–19533; the directorate identifier for this docket is 2004–NM–31–AD.

FOR FURTHER INFORMATION CONTACT:

Technical Information: Sue Lucier, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6438; 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–2004–19533; Directorate Identifier 2004–NM–31–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 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.*

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 the results of a 737 fuselage structure test and fatigue analysis conducted by the airplane manufacturer. The results indicate that fatigue cracking is expected to occur between body station (BS) 360 and BS 1016 common to the chem-milled step of the upper skin above the S–4 and S–10 lap joints, when the airplane accumulates between 21,000 to 42,000 total flight cycles. This kind of cracking is caused by fatigue from high bending stresses at the edge of the chem-milled step. This condition, if not detected and corrected, could cause the fuselage skin to fracture and fail, and could result in rapid decompression of the airplane.

Other Related Rulemaking

On August 26, 2004, we issued AD 2004–18–06, amendment 39–13784 (69 FR 54206, September 8, 2004), applicable to certain Boeing Model 737–200, –200C, –300, –400, and –500 series airplanes, which requires repetitive inspections to find fatigue cracking of certain upper and lower skin panels of the fuselage, and follow-on and corrective actions, if necessary. That AD was prompted by reports indicating that cracks were found along the edges of the chem-milled pockets in the upper skin at stringer S–12, and above the S–4, S–10, and S–14 lap joints, on several Boeing Model 737 series airplanes. The actions required by that AD are intended to find and fix fatigue cracking of the skin panels, which could result in sudden fracture and failure of the skin panels of the fuselage, and consequent rapid decompression of the airplane. AD 2004–18–06 does not affect the requirements of this AD.

Relevant Service Information

We have reviewed Boeing Special Attention Service Bulletin 737–53–1234, dated June 13, 2002, which describes doing repetitive external detailed and eddy current inspections for cracking of the crown area of the fuselage skin just above the S–4 and S–14 lap joints from station 360 to station 1016, and doing either the permanent repair or a time-limited repair. Doing either repair ends the repetitive inspections for the repaired area. The service bulletin specifies that the inspections are not necessary in certain areas and to contact Boeing if certain repairs are found.

The permanent repair, which is subject to certain limitations, consists of the following related investigative and corrective actions:

1. Doing eddy current inspections of the fuselage skin for cracking;
2. Doing detailed inspections of the fastener holes common to the lower row/remaining rows of fasteners in the lap joint for cracking;
3. Doing general visual, detailed, and eddy current inspections of the skin and lap joint for cracking, corrosion, or disbonding;
4. Contacting Boeing for repair if any cracking, corrosion, or disbonding is found or if Hi-locks, lockbolts, or bolts are installed in the area of a crack; and
5. Reporting any cracking to Boeing.

The time-limited repair, which is subject to certain limitations, consists of the following related investigative and corrective actions:

1. Doing external detailed inspections of the skin in each adjacent bay in the area of chem-milled step for cracks;
2. Doing external detailed inspections of the skin and lap joint in the area of the repair for corrosion or disbonding; and
3. Contacting Boeing for repair if any cracking, corrosion, or disbonding is found.

If the time-limited repair is done, the service bulletin describes doing these related investigative and corrective actions at times varying from 3,000 flight cycles to 10,000 flight cycles after the time-limited repair is done:

1. Doing repetitive general visual inspections for loose or missing fasteners;
2. Replacing missing or loose fasteners with new fasteners;
3. Doing one-time inspections of the skin and lap joint of the repaired area for cracking or corrosion (includes doing a general visual inspection of the lap joint for corrosion and eddy current inspections of the skin and the skin under the tear strap for cracking);
4. Contacting Boeing for repair if any cracking or corrosion is found; and
5. Doing a permanent modification of the time-limited repair (includes doing detailed inspections of the fastener holes for cracking, doing a detailed inspection of the skin for corrosion or disbonded doublers; and contacting Boeing for any applicable repair). Doing a permanent modification ends the need for the repetitive general visual inspections for the repaired area only.

The service bulletin recommends the following approximate compliance times for the initial detailed and eddy

current inspections: Within 21,000 to 42,000 total flight cycles, depending on the applicable site of the fuselage skin; or within 4,500 cycles after release of this service bulletin; whichever is later.

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 repetitive inspections for cracking of the crown area of the fuselage skin, and permanent or time-limited repair if necessary. The 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 service bulletin specifies that you may contact the manufacturer for instructions on how to repair certain conditions, but this proposed AD would require you to repair those conditions in one of the following ways:

- Using a method that we approve; or
- Using data that meet the type certification basis of the airplane, and that have been approved by a Boeing Company Designated Engineering Representative who has been authorized by the FAA to make such findings.

You should note that, although the service bulletin describes procedures for reporting information to the manufacturer, this proposed AD would not require those actions. We do not need this information.

Interim Action

This is considered to be interim action until final action is identified, at which time we may consider further rulemaking.

Costs of Compliance

There are about 579 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs for U.S. operators to comply with this proposed AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Cost per airplane, per inspection cycle	Number of U.S.-registered airplanes	Fleet cost, per inspection cycle
Inspections	94	$65	$6,110	175	$1,069,250

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):

Boeing: Docket No. FAA–2004–19533; Directorate Identifier 2004–NM–31–AD.

Comments Due Date

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

Affected ADs

(b) None.

Applicability: (c) This AD applies to Boeing Model 737–300, –400, and –500 series airplanes, certificated in any category; as listed in Boeing Special Attention Service Bulletin 737–53–1234, dated June 13, 2002.

Unsafe Condition

(d) This AD was prompted by a 737 fuselage structure test and fatigue analysis that indicate fuselage skin cracking could occur between 21,000 and 42,000 total flight cycles. We are issuing this AD to detect and correct fatigue cracking of the fuselage skin, which could cause the fuselage skin to fracture and fail, and could result in rapid decompression 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.

Service Bulletin References

(f) The term ''service bulletin,'' as used in this AD, means Boeing Special Attention Service Bulletin 737–53–1234, dated June 13, 2002.

Initial and Repetitive Inspections

(g) At the later of the times specified in paragraphs (g)(1) and (g)(2) of this AD, perform detailed and eddy current inspections for cracking of the crown area of the fuselage skin in accordance with Part 1, including the ''Note,'' of the Work Instructions of the service bulletin, except as provided by paragraph (j) of this AD.

(1) Before the accumulation of the applicable total flight cycles specified in the ''Threshold'' column of Table 1 of Figure 1 of the service bulletin.

(2) Within 4,500 flight cycles after the effective date of this AD.

(h) Repeat either the detailed or eddy current inspections specified in paragraph (g) of this AD at the applicable intervals specified in paragraph (h)(1) or (h)(2) of this AD until paragraph (i)(1) or (i)(2) of this AD has been done, as applicable.

(1) Repeat the detailed inspections thereafter at intervals not to exceed 1,200 flight cycles.

(2) Repeat the eddy current inspections thereafter at intervals not to exceed 3,000 flight cycles.

Permanent or Time-Limited Repair

(i) If any cracking is found during any inspection required by paragraph (g) or (h) of this AD, do the actions specified in paragraph (i)(1) or (i)(2) of this AD in accordance with the service bulletin, except as provided by paragraphs (j) and (k) of this AD.

(1) Before further flight, do a permanent repair (including related investigative actions and applicable corrective actions) in accordance with Part 2, including the ''Note,'' of the Work Instructions of the service bulletin. Doing a permanent repair ends the repetitive inspections required by paragraph (h) of this AD for the repaired area only.

(2) Do the actions specified in paragraphs (i)(2)(i) and (i)(2)(ii) of this AD at the time specified in the applicable paragraph. Doing a time-limited repair ends the repetitive inspections required by paragraph (h) of this AD for the repaired area only.

(i) Before further flight, do a time-limited repair (including related investigative actions and applicable corrective actions) in accordance with Part 3, including the ''Note,'' of the Work Instructions of the service bulletin.

(ii) At the times specified in Figure 8 of the service bulletin, do the related investigative and corrective actions in accordance with Part 3, including the ''Note,'' of the Work Instructions of the service bulletin.

Contact the FAA

(j) Where the service bulletin specifies to contact Boeing for appropriateaction: Before further flight, repair per a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved, the approval must specifically reference this AD.

No Reporting

(k) Although the service bulletin specifies reporting certain information to Boeing, this AD does not require that action.

Alternative Methods of Compliance (AMOCs)

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

Issued in Renton, Washington, on October 26, 2004.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–24721 Filed 11–4–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–19532; Directorate Identifier 2004–NM–87–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–100, 747–100B, 747–200B, 747–300, 747–400, 747–400D, 747SR, and 747SP Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Boeing Model 747–100, 747–100B, 747–200B, 747–300, 747–400, 747–400D, 747SR, and 747SP series airplanes. This proposed AD would require replacing or modifying the control panels for the galley cart lift and modifying related electrical cable assemblies, as applicable. This proposed AD is prompted by reports of injuries to catering personnel and flight attendants who were loading or unloading galley carts on one deck when the galley cart lift unexpectedly moved when it was activated from the other deck. We are proposing this AD to ensure that the galley cart lift can be sent only from the deck on which it is in use, which will prevent unexpected movement of the cart lift that could result in possible injury to catering personnel or flight attendants.

DATES: We must receive comments on this proposed AD by December 20, 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, 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. This docket number is FAA–2004–19532; the directorate identifier for this docket is 2004–NM–87–AD.

FOR FURTHER INFORMATION CONTACT:

Technical Information: Donald Wren, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6451; 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 relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed under **ADDRESSES.** Include ''Docket No. FAA–2004–19532; Directorate Identifier 2004–NM–87–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 injuries to catering personnel and flight attendants who were loading or unloading galley carts on one deck when the galley cart lift unexpectedly moved when it was activated from the other deck. These incidents occurred on several Boeing Model 747–100, 747–200B, and 747–400 series airplanes. Investigation revealed that the cause of these incidents was a safety interlock switch in the cart lift door that had been disabled or had malfunctioned. This condition, if not corrected, could allow unexpected movement of the galley cart lift that could result in possible injury to catering personnel or flight attendants.

The galley cart lift installations on certain Model 747–100, 747–200B, and 747–400 series airplanes are identical to those installed on certain Model 747–100B, 747–300, 747–400D, 747SR, and 747SP series airplanes. Therefore, all of these models may be subject to the identified unsafe condition.

Relevant Service Information

We have reviewed Boeing Alert Service Bulletin 747–25A3187, Revision 2, dated January 27, 2000, which describes procedures for replacing the main and upper deck control panels for the galley cart lift with new or modified control panels and accomplishing a functional test of the cart lift system.

We have also reviewed Service Bulletin 747–25A3287, Revision 2, dated September 4, 2003, which describes procedures for modifying the main and upper deck control panels and related electrical cable assemblies for the galley cart lift and accomplishing a functional test of the cart lift system.

Accomplishing the actions specified in the service information 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 accomplishing the actions specified in the service information described previously, except as discussed under ''Difference Between the Proposed AD and Service Information.''

Difference Between the Proposed AD and Service Information

Boeing Alert Service Bulletin 747–25A3287, Revision 2, recommends accomplishing the actions ''as soon as manpower, materials and facilities are available;'' Service Bulletin 747–25A3187, Revision 2, states that ''no compliance time is given.'' However, we have determined that these imprecise compliance times would not address the identified unsafe condition in a timely manner. In developing an appropriate compliance time for this AD, we considered not only the manufacturer's recommendation, but also the degree of urgency associated with addressing the subject unsafe condition, the average utilization of the affected fleet, and the time necessary to perform the modifications. In light of all of these factors, we find a compliance time of 18 months for completing the required actions to be warranted, in that it represents an appropriate interval of time for affected airplanes to continue to operate without compromising safety.

Costs of Compliance

There are about 600 airplanes of the affected design worldwide. This proposed AD would affect about 66 airplanes of U.S. registry.

About 22 Model 747–100, 747–100B, 747–200B, 747–300, 747SR, and 747SP series airplanes of U.S. registry would be affected by the proposed actions. It would take about 7 work hours per airplane to do the proposed actions, at an average labor rate of $65 per work hour. Required parts would cost about $143 per airplane. Based on these figures, the estimated cost of the proposed AD for U.S. operators is $13,156, or $598 per airplane.

About 44 Model 747–400 and 747–400D series airplanes of U.S. registry would be affected by the proposed actions. It would take about 2 work hours per airplane to do the proposed actions, at an average labor rate of $65 per work hour. Required parts would cost about $4,934 per airplane. Based on these figures, the estimated cost of the proposed AD for U.S. operators is $222,816, or $5,064 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):

Boeing: Docket No. FAA–2004–19532; Directorate Identifier 2004–NM–87–AD.

Comments Due Date

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

Affected ADs

(b) None.

Applicability: (c) This AD applies to certain Model 747–100, 747–100B, 747–200B, 747–300, 747SR, and 747SP series airplanes, as listed in Boeing Alert Service Bulletin 747–25A3287, Revision 2, dated September 4, 2003; and Model 747–400 and 747–400D series airplanes, as listed in Boeing Service Bulletin 747–25A3187, Revision 2, dated January 27, 2000; certificated in any category.

Unsafe Condition

(d) This AD was prompted by reports of injuries to catering personnel and flight attendants who were loading or unloading galley carts on one deck when the galley cart lift unexpectedly moved when it was activated from the other deck. We are issuing this AD to prevent unexpected movement of the galley cart lift that could result in possible injury to catering personnel or flight attendants.

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/Modification of Control Panel

(f) Within 18 months after the effective date of this AD, accomplish the actions required by paragraph (f)(1) or (f)(2) of this AD, as applicable.

(1) For Model 747–400 and 747–400D series airplanes: Replace the main and upper deck control panels for the galley cart lift with new or modified control panels by doing all the actions specified in Boeing Service Bulletin 747–25A3187, Revision 2, dated January 27, 2000.

(2) For Model 747–100, 747–100B, 747–200B, 747–300, 747SR, and 747SP series airplanes: Modify the main and upper deck control panels and related cable assemblies for the galley cart lift by doing all the actions specified in Boeing Alert Service Bulletin 747–25A3287, Revision 2, dated September 4, 2003.

Actions Accomplished Per Previous Issue of Service Bulletin

(g) Actions accomplished before the effective date of this AD in accordance with Boeing Alert Service Bulletin 747–25A3287, dated October 25, 2001, or Revision 1, dated April 25, 2002; or in accordance with Boeing Service Bulletin 747–25A3187, dated April 29, 1999, or Revision 1, dated September 23, 1999; are considered acceptable for compliance with the corresponding actions specified in paragraph (f) of this AD.

Alternative Methods of Compliance (AMOCs)

(h) The Manager, Seattle 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 26, 2004.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–24720 Filed 11–4–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–19531; Directorate Identifier 2004–NM–45–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–300, –400, and –500 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 all Boeing Model 737–300, –400, and –500 series airplanes. The existing AD currently requires repetitive inspections of certain connectors located in the main wheel well to detect discrepancies, and corrective action if necessary. This proposed AD would instead mandate a modification. This proposed AD is prompted by the development of a modification intended to address the unsafe condition. We are proposing this AD to prevent discrepancies of certain connectors located in the main wheel well. Those discrepancies could result in electrical arcing of the connectors, uncommanded closure of the engine fuel shut-off valves, and consequent in-flight loss of thrust or engine shutdown from lack of fuel.

DATES: We must receive comments on this proposed AD by December 20, 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: Stephen Oshiro, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6480; 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–2004–19531; Directorate Identifier 2004–NM–45–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 July 2, 2001, the FAA issued AD 2001–14–06, amendment 39–12316 (66 FR 36445, July 12, 2001), for all Boeing Model 737–300, –400, and –500 series airplanes. That AD requires repetitive inspections of certain connectors located in the main wheel well to detect discrepancies, and corrective action if necessary. That AD was prompted by reports indicating engine shutdown during flight due to uncommanded movement of the engine fuel shutoff valve. We issued that AD to detect and correct discrepancies of certain connectors located in the main wheel well, which could result in electrical arcing of the connectors, uncommanded closure of the engine fuel shut-off valves, and consequent in-flight loss of thrust or engine shutdown from lack of fuel.

Actions Since Existing AD Was Issued

Since we issued AD 2001–14–06, the manufacturer has developed a modification intended to address the unsafe condition. The modification was developed after operators of Model 737 series airplanes reported additional incidents of short circuits between the electrical contacts in the connectors located in the main wheel well. One incident involved turning the airplane around and returning to the airport due to smoke in the cockpit. The smoke emission was from the P5–2 fuel system module located in the overhead panel, and was caused by a short circuit. These operators had previously complied with the actions required by the existing AD. This has led us to determine that the currently required actions do not address the unsafe condition. A short between the outboard landing light and the engine fuel shut-off valve circuits could result in uncommanded closure of the engine fuel shut-off valves, and consequent in-flight loss of thrust or engine shutdown from lack of fuel.

Relevant Service Information

We have reviewed Boeing Special Attention Service Bulletin 737–28–1196, Revision 3, dated April 1, 2004. The service bulletin describes procedures for modification of the two electrical connectors located in the main wheel well. The modification includes, but is not limited to: Performing a close visual inspection of the plug and receptacle connectors for discrepancies (contamination, corrosion, heat discoloration, arcing, and other damage), and replacing with new connectors if any discrepancy is found.

Accomplishing the actions specified in the service information 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 products of this same type design. Therefore, we are proposing this AD, which would supersede AD 2001–14–06. This proposed AD would mandate a modification of the two electrical connectors in the main wheel well. This proposed AD would require you to use the service information described previously to perform these actions, except as discussed under ''Difference Between the Proposed AD and Service Bulletin.''

Differences Between the Proposed AD and Service Bulletin

The 18-month compliance time required by this proposed AD is the result of a technical discussion between the FAA and the airplane manufacturer. Boeing Special Attention Service Bulletin 737–28–1196, Revision 3, dated April 1, 2004, erroneously specifies a 6-month compliance time. In light of this error, the compliance times of the existing AD, and technical discussions with the manufacturer, we are proposing less restrictive compliance requirements in this AD. For airplanes that have been inspected in accordance with AD 2001–14–16, the modification would be required within 18 months after the last inspection per AD 2001–14–16, or within 6 months after the effective date of this AD, whichever is later. For airplanes that have not been inspected in accordance with AD 2001–14–16 as of the effective date of this AD, the modification would be required within 12 months after the effective date of this AD. These compliance times represent an appropriate interval of time for affected airplanes to continue to operate without compromising safety.

The service bulletin refers only to a ''close visual inspection'' for discrepancies of the plug and receptacle connectors. We have determined that the procedures in the service bulletin should be described as a ''general visual inspection.''

Costs of Compliance

There are about 1,974 Model 737–300, –400, and –500 airplanes worldwide of the affected design. This proposed AD would affect about 755 airplanes of U.S. registry.

The new proposed modification (including the operational tests) would take about 9 work hours per airplane, at an average labor rate of $65 per work hour. Required parts cost would be minimal. Based on these figures, the estimated cost of the modification specified in this proposed AD for U.S. operators is $441,675, or $585 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 removing 39–12316 (66 FR 36445, July 12, 2001) and adding the following new airworthiness directive (AD):

Boeing: Docket No. FAA–2004–19531; Directorate Identifier 2004–NM–45–AD.

Comments Due Date

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

Affected ADs

(b) This AD supersedes AD 2001–14–06, amendment 39–12316.

Applicability

(c) This AD applies to all Boeing Model 737–300, –400, and –500 series airplanes, certificated in any category.

Unsafe Condition

(d) This AD was prompted by the development of a modification intended to address the unsafe condition. We are issuing this AD to detect and correct discrepancies of certain connectors located in the main wheel well. Those discrepancies could result in electrical arcing of the connectors, uncommanded closure of the engine fuel shut-off valves, and consequent in-flight loss of thrust or engine shutdown from lack of fuel.

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.

Modification

(f) At the applicable time specified in paragraph (f)(1) or (f)(2) of this AD: Modify the electrical connectors located in the main wheel well by doing all the actions in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 737–28–1196, Revision 3, dated April 1, 2004. Any corrective action must be done before further flight in accordance with the service bulletin.

(1) For airplanes on which no inspection required by AD 2001–14–06 has been done as of the effective date of this AD: Accomplish the modification within 12 months after the effective date of this AD.

(2) For airplanes on which any inspection required by AD 2001–14–06 has been done as of the effective date of this AD: Accomplish the modification at the later of the times specified in paragraph (f)(2)(i) or (f)(2)(ii) of this AD.

(i) Within 18 months after accomplishing the last inspection.

(ii) Within 6 months after the effective date of this AD.

Modifications Done Using Previous Issues of the Service Bulletin

(g) Modifications done before the effective date of this AD in accordance with Boeing Special Attention Service Bulletin 737–28–1196, dated December 5, 2002; Revision 1, dated March 13, 2003; or Revision 2, dated August 21, 2003; are considered acceptable for compliance with paragraph (f) of this AD.

Alternative Methods of Compliance (AMOCs)

(h)(1) The Manager, Seattle 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.

(2) Alternative methods of compliance, approved previously in accordance with AD 2001–14–06, amendment 39–12316, are approved as AMOCs for this AD.

Issued in Renton, Washington, on October 26, 2004.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–24719 Filed 11–4–04; 8:45 am]

BILLING CODE 4910–13–P

INTERNATIONAL TRADE COMMISSION

19 CFR Parts 206 and 207

Investigations Relating to Global and Bilateral Safeguard Actions, Market Disruption, Trade Diversion and Review of Relief Actions; and Investigations of Whether Injury to Domestic Industries Results From Imports Sold at Less Than Fair Value or From Subsidized Exports to the United States

AGENCY: International Trade Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: On December 4, 2002, the United States International Trade Commission invited the public to provide input on specific ways in which it could improve its conduct of antidumping duty (AD) and countervailing duty (CVD) investigations (67 FR 72221, December 4, 2002). After consideration of the comments that were received, the Commission has decided to propose certain amendments to its Rules of Practice and Procedure.

DATES: *Comment Date:* To be assured of consideration, written comments must be received by 5:15 p.m. on January 4, 2005.

ADDRESSES: A signed original and 14 copies of each set of comments on these proposed amendments, along with a cover letter, should be submitted by mail or hand delivery to Marilyn R. Abbott, Secretary, United States International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436. Comments may be submitted electronically to the extent provided by section 201.8 of the Commission's rules, as amended at 67 FR 68063 (November 8, 2002) and 68 FR 32971 (June 3, 2003).

FOR FURTHER INFORMATION CONTACT: Marilyn R. Abbott, Secretary, United States International Trade Commission, telephone 202–205–2000. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal at 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*).

SUPPLEMENTARY INFORMATION: The preamble below is designed to assist readers in understanding these proposed amendments to the Commission's Rules. The preamble begins with a discussion of the background leading up to these proposed amendments, a regulatory analysis addressing government-wide statutes and issuances on rulemaking, and a description of the proposed amendments to the rules. The Commission encourages members of the public to comment—in addition to any other comments they wish to make on the proposed amendments—on whether the proposed language is sufficiently clear for users of the rules to understand. In addition to these proposed amendments, the Commission has made some changes to its internal procedures not requiring amendment to its rules, which are contained in a Notice that has been published elsewhere in today's **Federal Register**.

Background

On December 4, 2002, the United States International Trade Commission published a notice in the **Federal Register** (67 FR 72221) inviting the public to provide input on specific ways in which it could improve its conduct of AD and CVD investigations under 19

U.S.C. 1671 *et seq.* The notice requested that such comments be filed within 90 days of publication of that notice in the **Federal Register**. Nine sets of comments were received, which suggested a number of changes to Commission rules, questionnaires, opinions, hearings and other practices.

The Commission appreciates the time and effort those who provided comments took to present their views, and believes that the comments have contributed to improving Commission procedures. The comments stimulated an internal review of the Commission's rules and practices in AD and CVD proceedings. That internal review has in turn resulted in a decision to propose certain changes to the Commission's rules. Some of the changes were not specifically suggested by any comment. A few are parallel amendments to comparable rules in Part 206 of the Commission's rules dealing with certain safeguard and market disruption proceedings. As is its normal practice, the Commission will continue to evaluate its procedures on an ongoing basis and will consider modifying them as is appropriate. Although the December 4, 2002 Notice noted that a hearing on these proposals might be held, after reviewing the comments, the Commission decided that such a hearing would not be necessary.

Regulatory Analysis of Proposed Amendments to the Commission's Rules

The Commission has determined that the proposed rules do not meet the criteria described in Section 3(f) of Executive Order 12866 (58 FR 51735, Oct. 4, 1993) and thus do not constitute a significant regulatory action for purposes of the Executive Order.

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) is inapplicable to this rulemaking because it is not one for which a notice of proposed rulemaking is required under 5 U.S.C. 553(b) or any other statute. Although the Commission has chosen to publish a notice of proposed rulemaking, these proposed regulations are ''agency rules of procedure and practice,'' and thus are exempt from the notice requirement imposed by 5 U.S.C. 553(b).

These proposed rules do not contain federalism implications warranting the preparation of a federalism summary impact statement pursuant to Executive Order 13132 (64 FR 43255, Aug. 4, 1999).

No actions are necessary under the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 *et seq.*) because the proposed rules will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and will not significantly or uniquely affect small governments.

The proposed rules are not major rules as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*). Moreover, they are exempt from the reporting requirements of the Contract With America Advancement Act of 1996 (Pub. L. 104–121) because they concern rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties.

The amendments are not subject to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), since they do not contain any new information collection requirements.

Explanation of the Proposed Amendments to 19 CFR Parts 206 and 207

Section 207.3(b) provides that certain documents must be served by hand, or by overnight mail or its equivalent, upon other parties on the Commission's service lists. However, currently, requests to have a portion of the public hearing in final investigations held in camera are not explicitly mentioned as being subject to this requirement. In light of the proposed revision of rule 207.24 to allow responses to requests to have a portion of the public hearing in final investigations held in camera, and the short time provided for such comments, clarifying that hand or next-day service of those requests (and any comments on those requests) is required seems appropriate.

Section 207.7(b) describes the terms of an Administrative Protective Order (APO) that will be issued in each investigation, including provisions pertaining to clerical or other staff who are employed or supervised by an applicant for the APO. Two of the comments suggested that such clerical or other staff no longer be required to file an APO application with the Commission, and the Commission proposes that the rule be amended accordingly. Such clerical or other staff would still need to sign a form approved by the Secretary whereby they would agree to be bound by the terms of the APO, but that form would not be filed with the Commission unless specifically requested by the Secretary. The authorized applicant would be responsible for retention and accuracy of such forms and would be deemed responsible for such clerical persons' compliance with the APO.

A similar change is proposed for APOs issued under the comparable provisions of section 206.17 of the Commission's rules, which pertains to investigations relating to global and bilateral safeguard actions, market disruption, trade diversion, and review of relief actions, and to APOs issued in NAFTA panel and committee proceedings governed by section 207.93 of the Commission's rules.

Section 207.10(a) provides that a petition shall be deemed to be properly filed on the date on which the requisite number of copies is received by the Secretary. Frequently, petitions are filed late in the day, very close to the close of business for the Commission. By the time the petition is processed by the Secretary and distributed to the Commission and all pertinent staff, it is usually the next business day, often after an intervening weekend. This hinders the Commission's ability to proceed expeditiously with its investigation, a matter of concern in light of the fact that the statute normally gives the Commission only 45 days to conduct its preliminary phase investigation and issue its preliminary determination. Accordingly, the Commission proposes to amend the rule to provide that if the proper number of copies of the petition is not filed until after 12 noon, the filing date will be deemed to be the next business day. The Commission has already recently clarified rule 201.3 to provide that documents filed after close of business are deemed filed the next business day. 68 FR 32971 (June 3, 2003).

While the statute requires that a copy of the petition must be filed with the Commission ''on the same day as it is filed with the administering authority,'' [1] and while Commerce does not have an ''after noon'' filing rule, we do not believe the proposed rule will adversely affect the filing of petitions or the conduct of investigations. The existing rules of the Commission clearly point out that a document that is not filed until after 5:15 p.m., when the Commission closes for business, will be deemed to have been filed the next business day.[2] Further, the two agencies have slightly different hours of business (Commerce is open for filing ''between 8:30 a.m. and 5 p.m. on business days,'' [3] while the Commission is open for filing between 8:45 a.m. and 5:15 p.m.). There has already been at least one occasion when the date of filing of the petition at Commerce was on the business day before proper filing at the Commission. In that instance, the

[1] 19 U.S.C. 1671a(b)(2); 1673a(b)(2).

[2] 19 CFR 201.3 (c), as amended, 68 FR 32971, 32973 (June 3, 2003).

[3] 19 CFR 351.103.

petition was filed at Commerce before its docket closed, in that case on Friday, March 29, 1996, but was not filed at the Commission until after close of business at the Commission on that date. In that case, Commerce, noting the requirement that petitions must be filed on the same day with both Commerce and the Commission, deemed the petition to be filed on the day the Commission deemed it filed, the next business day, Monday, April 1, 1996.[4] We would anticipate that under the proposed rule, which would deem an after noon filing at the Commission to occur on the next business day, the result would be similar. We note that a similar problem could arise even under the existing rule if a petitioner did not file the correct number of copies of a petition, or otherwise did not comply with the filing rules of the Commission, the same day it properly filed the petition at Commerce. As a final point, we note that it is the petitioner who controls the time in which the petition is filed, and thus a petitioner can plan accordingly for the proposed filing deadline.

In theory, deeming a ''late'' petition to be filed on the next business day could have implications for the period of investigation for Commerce under its rules, if, as in *Tomatoes,* there is an attempt to file a petition on the last business day of a calendar quarter. Commerce's rules for antidumping investigations, for example, provide that it will normally consider the ''four most recently completed fiscal quarters * * * as of the month preceding the month in which the petition was filed * * *.''[5] However, Commerce's rules also specifies ''the Secretary may examine merchandise sold during any additional or alternate period that the Secretary concludes is appropriate.''[6] Therefore, as in *Tomatoes,* we would not anticipate that the proposed rule would effectively force Commerce to change its period of investigation.

We invite comment on the effects of the proposed rule, particularly if there is any concern that it would, notwithstanding the discussion above, create problems in light of the ''simultaneous filing'' requirement of the statute.

For similar reasons, an amendment is also proposed for rule 206.45, which would provide that the date on which a petition is filed would be deemed to be the next business day when a petition is filed after 12:00 noon.

Section 207.23 currently requires interested parties that are parties to the investigation to submit a prehearing brief no later than four (4) business days prior to the hearing. As noted above, it is proposed to make this deadline one business day earlier, so that prehearing briefs will be due five business days prior to the hearing, giving the Commission and staff some additional time to consider arguments and information presented in those prehearing briefs.

Rule 207.24(d) provides that a party to the investigation may request that a portion of the public hearing be held in camera, but requires that the request be made no later than seven (7) calendar days prior to the hearing. However, parties frequently wait until that last day before making such requests. It normally takes several business days to process and consider such requests. Frequently other parties to the investigation respond to the request a day or two after the request is made, either to object or to note their concurrence with the request. Thus, generally it is not possible to reach a decision as to whether to grant or deny the request until shortly before the hearing, both making hearing preparation more difficult for parties (because they do not know whether or not the hearing will be public in its entirety) and taking time to prepare for the hearing away from the Commission and staff. Accordingly, it is proposed to amend rule 207.24 to require that requests to close a portion of the hearing be made no later than seven (7) business (instead of calendar) days prior to the hearing and that any comments on that request be made within two (2) business days after the filing of the request. As always, the Commission would seek to act on such requests as expeditiously as possible, but a somewhat earlier deadline for submitting the request may result in an earlier decision than is currently possible.

The rules currently provide that the Commission Secretary is responsible for the APO in a NAFTA appeal, pursuant to Commission rule 207.93(a), 19 U.S.C. 1677f(f)(1), and NAFTA Rules 47(3) and 48. Parties to a NAFTA appeal that were covered by a Commission APO during the underlying investigation are bound to the terms of the NAFTA APO (Form C) 15 days after the first request for a panel, if they have not notified the Commission of return or destruction of documents. These parties to the NAFTA appeal are not required to file a new APO application in the NAFTA appeal, but are required, pursuant to Commission rule 207.93(c)(5), to file 4 copies with the NAFTA Secretariat and 3 copies with the Commission Secretary of the APO applications and other various updates in the underlying proceeding. The parties also must inform the Commission Secretary of any changes to both the Commission and NAFTA APOs. Individuals not covered in the original Commission APOs must file a NAFTA APO form C. Parties frequently have filed both copies of the original Commission APOs and the NAFTA APO form C when not required by the Commission or NAFTA rules.

To streamline and clarify this process, the Commission proposes to change its rule so that all parties would file NAFTA APO applications. Parties covered under the Commission APO would still be bound on day 15, but would be required to file new NAFTA APO applications rather than file the numerous copies of original Commission applications and updates. This would streamline the process for the Commission Secretary and parties as well as reduce the papers filed. The proposed change to Commission rule 207.93(e) would also set forth a requirement that the Commission Secretary compile a NAFTA APO list.

A minor amendment is also proposed to change the references to the Mexican Secretary of Commerce and Industrial Development to the Mexican Secretary of Economia which we are informed by the NAFTA Secretariat is the more accurate term.

List of Subjects in CFR Parts 206 and 207

Administrative practice and procedure, Investigations.

For the reasons stated in the preamble, the Commission proposes to amend 19 CFR parts 206 and 207 as set forth below:

PART 206—INVESTIGATIONS RELATING TO GLOBAL AND BILATERAL SAFEGUARD ACTIONS, MARKET DISRUPTION, TRADE DIVERSION, AND REVIEW OF RELIEF ACTIONS

1. The authority citation for part 206 continues to read as follows:

Authority: 19 U.S.C. 1335, 2251–2254, 2451–2451a, 3351–3382, sections 103, 301–302, Pub. L. 103–465, 108 Stat. 4809.

2. Amend § 206.17 by revising paragraphs (b) introductory text, (b)(1) introductory text, and (b)(1)(iv) to read as follows:

[4] *See* Initiation of Antidumping Duty Investigation; Fresh Tomatoes from Mexico, 61 FR 18377 (April 25, 1996) (''In this instance, the ITC does not consider the petition covering fresh tomatoes from Mexico to have been filed until April 1, 1996. As such, the Department considers the petition as having been filed in proper form on April 1, 1996, not March 29, 1996.'').

[5] 19 CFR 351.204(b).

[6] 19 CFR 351.204(b).

§ 206.17 Limited disclosure of certain confidential business information under administrative protective order.

* * * * *

(b) *Administrative protective order.* The administrative protective order under which information is made available to the authorized applicant shall require the applicant to submit to the Secretary a personal sworn statement that, in addition to such other conditions as the Secretary may require, the applicant shall:

(1) Not divulge any of the business proprietary information obtained under the administrative protective order and not otherwise available to the applicant, to any person other than:

* * * * *

(iv) Other persons, such as paralegals and clerical staff, who are employed or supervised by an authorized applicant; who have a need thereof in connection with the investigation; who are not involved in competitive decisionmaking on behalf of an interested party which is a party to the investigation; and who have signed a statement in a form approved by the Secretary that they agree to be bound by the administrative protective order (the authorized applicant shall be responsible for retention and accuracy of such forms and shall be deemed responsible for such persons' compliance with the administrative protective order);

* * * * *

3. Amend § 206.45 by adding paragraph (e) as follows:

§ 206.45 Time for reporting.

* * * * *

(e) *Date of filing.* Any petition described in this rule that is filed after 12:00 noon shall be deemed to be filed on the next business day.

PART 207—INVESTIGATIONS OF WHETHER INJURY TO DOMESTIC INDUSTRIES RESULTS FROM IMPORTS SOLD AT LESS THAN FAIR VALUE OR FROM SUBSIDIZED EXPORTS TO THE UNITED STATES

4. The authority citation for part 207 continues to read as follows:

Authority: 19 U.S.C. 1336, 1671–1677n, 2482, 3513.

5. Amend § 207.3 by revising paragraph (b) as follows:

§ 207.3 Service, filing, and certification of documents.

* * * * *

(b) *Service.* Any party submitting a document for inclusion in the record of the investigation shall, in addition to complying with § 201.8 of this chapter, serve a copy of each such document on all other parties to the investigation in the manner prescribed in § 201.16 of this chapter. If a document is filed before the Secretary's issuance of the service list provided for in § 201.11 of this chapter or the administrative protective order list provided for in § 207.7, the document need not be accompanied by a certificate of service, but the document shall be served on all appropriate parties within two (2) days of the issuance of the service list or the administrative protective order list and a certificate of service shall then be filed. Notwithstanding § 201.16 of this chapter, petitions, briefs, requests to close a portion of the hearing, comments on requests to close a portion of the hearing, and testimony filed by parties pursuant to §§ 207.10, 207.15, 207.23, 207.24, 207.25, 207.65, 207.66, and 207.67, shall be served by hand or, if served by mail, by overnight mail or its equivalent. Failure to comply with the requirements of this rule may result in removal from status as a party to the investigation. The Commission shall make available to all parties to the investigation a copy of each document, except transcripts of conferences and hearings, business proprietary information, privileged information, and information required to be served under this section, placed in the record of the investigation by the Commission.

* * * * *

6. Amend § 207.7(b) by revising paragraphs (b) introductory text, (b)(1) introductory text, and (b)(1)(iv) to read as follows:

§ 207.7 Limited disclosure of certain business proprietary information under administrative protective order.

* * * * *

(b) *Administrative protective order.* The administrative protective order under which information is made available to the authorized applicant shall require the applicant to submit to the Secretary a personal sworn statement that, in addition to such other conditions as the Secretary may require, the applicant shall:

(1) Not divulge any of the business proprietary information obtained under the administrative protective order and not otherwise available to the applicant, to any person other than:

* * * * *

(iv) Other persons, such as paralegals and clerical staff, who are employed or supervised by the authorized applicant; who have a need thereof in connection with the investigation; who are not involved in competitive decision making for an interested party which is a party to the investigation; and who have signed a statement in a form approved by the Secretary that they agree to be bound by the administrative protective order (the authorized applicant shall be responsible for retention and accuracy of such forms and shall be deemed responsible for such persons' compliance with the administrative protective order);

* * * * *

7. Amend § 207.10 by revising paragraph (a) as follows:

§ 207.10 Filing of petition with the Commission.

(a) *Filing of the petition.* Any interested party who files a petition with the administering authority pursuant to section 702(b) or section 732(b) of the Act in a case in which a Commission determination under title VII of the Act is required, shall file copies of the petition, including all exhibits, appendices, and attachments thereto, pursuant to § 201.8 of this chapter, with the Secretary on the same day the petition is filed with the administering authority. If the petition complies with the provisions of § 207.11, it shall be deemed to be properly filed on the date on which the requisite number of copies of the petition is received by the Secretary, provided that, if the petition is filed with the Secretary after 12:00 noon, the petition shall be deemed filed on the next business day. The Secretary shall notify the administering authority of that date. Notwithstanding § 201.11 of this chapter, a petitioner need not file an entry of appearance in the investigation instituted upon the filing of its petition, which shall be deemed an entry of appearance.

* * * * *

8. Revise § 207.23 as follows:

§ 207.23 Prehearing brief.

Each party who is an interested party shall submit to the Commission, no later than five (5) business days prior to the date of the hearing specified in the notice of scheduling, a prehearing brief. Prehearing briefs shall be signed and shall include a table of contents. The prehearing brief should present a party's case concisely and shall, to the extent possible, refer to the record and include information and arguments which the party believes relevant to the subject matter of the Commission's determination under section 705(b) or section 735(b) of the Act. Any person not an interested party may submit a brief written statement of information pertinent to the investigation within the time specified for filing of prehearing briefs.

9. Amend § 207.24 by revising paragraph (d) as follows:

§ 207.24 Hearing.

* * * * *

(d) *Closed sessions.* Upon a request filed by a party to the investigation no later than seven (7) business days prior to the date of the hearing that identifies the subjects to be discussed, specifies the amount of time requested, and justifies the need for a closed session with respect to each subject to be discussed, the Commission may close a portion of a hearing to persons not authorized under § 207.7 to have access to business proprietary information in order to allow such party to address business proprietary information during the course of its presentation. If any party wishes to comment on the request to close a portion of the hearing, such comments must be filed within two (2) business days after the filing of the request. In addition, during each hearing held in an investigation conducted under section 705(b) or section 735(b) of the Act, following the public presentation of the petitioner(s) and that of each panel of respondents, the Commission will, if it deems it appropriate, close the hearing to persons not authorized under § 207.7 to have access to business proprietary information in order to allow Commissioners to question parties and/or their representatives concerning matters involving business proprietary information.

10. Amend § 207.93 by revising paragraphs (b)(6), (c)(1), (c)(2)(ii), (c)(3), (c)(4)(ii)(A), (c)(5)(i), (c)(5)(ii), (c)(5)(iii), and (e); and by adding paragraph (b)(7) as follows:

§ 207.93 Protection of proprietary information during panel and committee proceedings.

* * * * *

(b) * * *

(6) Any officer or employee of the Government of Canada or the Government of Mexico who the Canadian Minister of Trade or the Mexican Secretary of Economia, as the case may be, informs the Commission Secretary needs access to proprietary information to make recommendations regarding the convening of extraordinary challenge committees; and

(7) Counsel representing, and other staff providing support to, the investigating authority, the Commission.

(c) *Procedures for obtaining access to proprietary information under protective order*—(1) *Persons who must file an application for release under protective order.* To be permitted access to proprietary information in the administrative record of a determination under panel review, all persons described in paragraphs (b) (1), (2), (4), (5), (6), or (c)(5)(i) of this section shall file an application for a protective order.

(2) * * *

(ii) Such forms shall require the applicant to submit a personal sworn statement that, in addition to such other conditions as the Commission Secretary may require, the applicant will:

(A) Not disclose any proprietary information obtained under protective order and not otherwise available to any person other than:

(*1*) Personnel of the Commission involved in the particular panel review in which the proprietary information is part of the administrative record,

(*2*) The person from whom the information was obtained,

(*3*) A person who is authorized to have access to the same proprietary information pursuant to a Commission protective order, and

(*4*) A clerical person retained or employed by and under the direction and control of a person described in paragraph (b)(1), (2), (5), or (6) of this section who has been issued a protective order, if such clerical person has signed and dated an agreement, provided to the Commission Secretary upon request, to be bound by the terms set forth in the application for a protective order of the person who retains or employs him or her (the authorized applicant shall be responsible for retention and accuracy of such forms and shall be deemed responsible for such persons' compliance with the administrative protective order);

(B) Not use any of the proprietary information released under protective order and not otherwise available for purposes other than the particular proceedings under Article 1904 of the Agreement;

(C) Upon completion of panel review, or at such other date as may be determined by the Commission Secretary, return to the Commission, or certify to the Commission Secretary the destruction of, all documents released under the protective order and all other material (such as briefs, notes, or charts), containing the proprietary information released under the protective order, except that those described in paragraph (b)(1) of this section may return such documents and other materials to the United States Secretary. The United States Secretary may retain a single file copy of each document for the official file.

(D) Update information in the application for protective order as required by the protective order; and

(E) Acknowledge that the person becomes subject to the provisions of 19 U.S.C. 1677f(f) and to this subpart, as well as corresponding provisions of Canadian and Mexican law on disclosure undertakings concerning proprietary information.

(3) *Timing of applications.* An application for any person described in paragraph (b)(1) or (b)(2) of this section may be filed after a notice of request for panel review has been filed with the Secretariat. A person described in paragraph (b)(4) of this section shall file an application immediately upon assuming official responsibilities in the United States, Canadian or Mexican Secretariat. An application for any person described in paragraph (b)(5) or (b)(6) of this section may be filed at any time after the United States Trade Representative, the Canadian Minister of Trade, or the Mexican Secretary of Economia, as the case may be, has notified the Commission Secretary that such person requires access.

(4) * * *

(ii) *Applications of persons described in paragraph (b)(2) of this section*—-

(A) *Filing.* A person described in paragraph (b)(2) of this section, concurrent with the filing of a complaint or notice of appearance in the panel review on behalf of the participant represented by such person, shall file the completed original of the form (NAFTA APO Form C) and three (3) copies with the Commission Secretary, and four (4) copies with the United States Secretary.

* * * * *

(5) *Persons who retain access to proprietary information under a protective order issued during the administrative proceedings.*

(i) If counsel or a professional has been granted access in an administrative proceeding to proprietary information under a protective order that contains a provision governing continued access to that information during panel review, and that counsel or professional retains the proprietary information more than fifteen (15) days after a First Request for Panel Review is filed with the Secretariat, that counsel or professional, and such clerical persons with access on or after that date, become immediately subject to the terms and conditions of NAFTA APO Form C maintained by the Commission Secretary on that date including provisions regarding sanctions for violations thereof.

(ii) Any person described in paragraph (c)(5)(i) of this section, concurrent with the filing of a complaint or notice of appearance in the panel review on behalf of the participant represented by such person, shall:

(A) File the completed original of the form (NAFTA APO Form C) and three (3) copies with the Commission Secretary; and

(B) File four (4) copies of the completed NAFTA APO Form C with the United States Secretary.

(iii) Any person described in paragraph (c)(5)(i) of this section must submit a new application for a protective order at the commencement of a panel review.

* * * * *

(e) *Retention of protective orders; service list.* The Commission Secretary shall retain, in a public file, copies of applications granted, including any updates thereto, and protective orders issued under this section, including protective orders filed in accordance with paragraph (b)(6)(ii) of this section. The Secretary shall establish a list of persons authorized to receive proprietary information in a review, including parties whose applications have been granted.

* * * * *

By Order of the Commission.

Issued: November 1, 2004.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–24704 Filed 11–4–04; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–124405–03]

RIN 1545–BC13

Optional 10-Year Writeoff of Certain Tax Preferences; Hearing

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of public hearing on proposed rulemaking.

SUMMARY: This document contains a notice of public hearing on proposed regulations relating to the optional 10-year writeoff of certain tax preference items under section 59(e).

DATES: The public hearing is being held on December 7, 2004, at 10 a.m. The IRS must receive outlines of the topics to be discussed at the hearing by November 30, 2004.

ADDRESSES: The public hearing is being held in the Room 4415, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

Mail outlines to: CC:PA:LPD:PR (REG–124405–03), room 5203, Internal Revenue Service POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–124405–03), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC or sent electronically, via the IRS Internet site at *http://www.irs.gov/regs* or via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS–REG–124405–03).

FOR FURTHER INFORMATION CONTACT: Concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing LaNita Van Dyke, (202) 622–7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

The subject of the public hearing is the notice of proposed regulations (REG–124405–03) that was published in the **Federal Register** on Tuesday, July 20, 2004 (69 FR 43367).

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who have submitted written comments and wish to present oral comments at the hearing must submit an outline of the topics to be discussed and the amount of time to be devoted to each topic (signed original and eight copies) by November 30, 2004.

A period of 10 minutes is allotted to each person for presenting oral comments. After the deadline for receiving outlines has passed, the IRS will prepare an agenda containing the schedule of speakers. Copies of agenda will be made available, free of charge, at the hearing. Because of access restrictions, the IRS will not admit visitors beyond the immediate entrance area more than 30 minutes before the hearing. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this document.

Cynthia E. Grigsby,

Acting Chief, Publications and Regulations Branch, Associate Chief Counsel, Legal Processing Division (Procedures and Administration).

[FR Doc. 04–24755 Filed 11–2–04; 1:53 pm]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 110

[CGD11–04–005]

RIN 1625–AA01

Special Anchorage Regulations; Long Beach, CA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes the establishment of three special anchorage areas in Long Beach, California where vessels less than 20 meters (approximately 65 feet) in length, and barges, canal boats, scows, or other nondescript craft, would not be required to sound signals required by Rule 35 of the Inland Navigation Rules. The intended effect of these special anchorages is to reduce the risk of vessel collisions within the harbors of Los Angeles and Long Beach by grouping unmanned barges, which typically do not sound signals in reduced visibility, within specified areas and indicating these designated areas on charts. Vessels moored in these areas would not have to sound signals in restricted visibility.

DATES: Comments and related material must reach the Coast Guard on or before January 4, 2005.

ADDRESSES: You may mail comments and related material to Commanding Officer, Coast Guard Marine Safety Office/Group Los Angeles-Long Beach, 1001 South Seaside Avenue, Building 20, San Pedro, California, 90731. The Port Operations Department maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at Marine Safety Office/Group Los Angeles-Long Beach, 1001 South Seaside Avenue, Building 20, San Pedro, California, 90731, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Ryan Manning, USCG, Chief of Waterways Management Division, at (310) 732–2020.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for

this rulemaking (CGD11–04–005), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Marine Safety Office/Group Los Angeles-Long Beach at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The Coast Guard proposes to establish three new special anchorage areas in Long Beach outer harbor. A ''special anchorage'' is an area on the water where vessels less than 20 meters (approximately 65 feet) in length, and barges, canal boats, scows, or other nondescript craft, are not required to sound signals required by rule 35 of the Inland Navigation Rules, codified at 33 U.S.C. 2035. The proposed regulations would reconfigure existing anchorages to reflect current use of the anchorage grounds. Currently, the primary users of these anchorages are unmanned barges, with the majority of them being long-term users. By establishing these areas as special anchorages, these barges would not be required to sound signals in restricted visibility as prescribed in Rule 35 of the Inland Navigation Rules. The anchorages are depicted on the local charts, are well removed from fairways and are located where general navigation will not endanger or be endangered by unmanned barges not sounding signals in restricted visibility. The proposed new special anchorages would also require modifications to two existing anchorage grounds found in 33 CFR 110.214.

Discussion of Proposed Rule

The Coast Guard proposes to establish three new special anchorage areas as follows: (B–1) Long Beach outer harbor along east side of Pier 400, (C–1) Long Beach outer harbor between Island Freeman and Island Chaffee, and (E–1) Long Beach outer harbor northwest of Island Freeman. The vessels traditionally moored in these locations are unmanned barges that have been moored for long periods of time. The proposed rule would exempt these vessels from having to sound signals during periods of reduced visibility. The proposed regulation would also modify two existing anchorage grounds found in 33 CFR 110.214.

Regulatory Evaluation

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

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. This proposal will impose no cost on vessel operators, and have minimal impact to vessel traffic.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This rule will possibly affect the following entities, some of which may be small entities: The owners and operators of private and commercial vessels intending to transit or anchor in the affected area. The impact to these entities would not, however, be significant since this zone will encompass only a small portion of the waterway and vessels can safely navigate around the anchored vessels.

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

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Lieutenant Ryan Manning, Chief of Waterways Management Division, at (310) 732–2020.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(f), of the Instruction, from further environmental documentation because we are proposing to create a special anchorage area.

A draft ''Environmental Analysis Check List'' and a draft ''Categorical Exclusion Determination'' are available in the docket where indicated under **ADDRESSES**. Comments on this section will be considered before we make the final decision on whether the rule should be categorically excluded from further environmental review.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 110 as follows:

PART 110—ANCHORAGE REGULATIONS

1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 1221 through 1236, 2030, 2035, and 2071; 33 CFR 1.05–1(g). Department of Homeland Security Delegation No. 0170.1.

2. Amend § 110.100 by adding paragraphs (c) through (f) to read as follows:

§ 110.100 Los Angeles and Long Beach Harbors, CA

* * * * *

(c) *Area B–1.* Long Beach outer harbor along east side of Pier 400 beginning at latitude 33°44′22.8″ N., longitude 118°13′51.0″ W.; thence south to latitude 33°43′54.5″ N., longitude 118°13′50.0″ W.; thence southwesterly to latitude 33°43′46.0″ N., longitude 118°14′13.6″ W.; thence northwesterly to latitude 33°44′15.3″ N., longitude 118°14′26.6″ W.; thence northeasterly to latitude 33°44′25.1″ N., longitude 118°14′15.6″ W.; thence easterly to the beginning point.

(d) *Area C–1.* Long Beach outer harbor between Island Freeman and Island Chaffee beginning at latitude 33°44′20.0″ N., longitude 118°08′26.2″ W.; thence west to latitude 33°44′23.5″ N., longitude 118°09′32.6″ W.; thence north to latitude 33°44′52.8″ N., longitude 118°09′33.2″ W.; thence southeast to latitude 33°44′25.5″ N., longitude 118°08′26.2″ W.; thence south to the beginning point.

(e) *Area E–1.* Long Beach outer harbor northwest of Island Freeman beginning at latitude 33°44′55.0″ N., longitude 118°09′40.0″ W.; thence southwesterly to latitude 33°44′37.0″ N., longitude 118°09′48.5″ W.; thence northwesterly to latitude 33°44′52.0″ N., longitude 118°10′32.0″ W.; thence north to latitude 33°45′11.0″ N., longitude 118°10′32.0″ W.

(f) *Restrictions.* Special anchorage areas B–1, C–1, and E–1 are reserved for barges on mooring balls, unless otherwise authorized by the Captain of the Port Los Angeles-Long Beach.

3. Revise § _110.214 (b)(2) and (b)(5) to read as follows:

§ 110.214 Los Angeles and Long Beach Harbors, CA

* * * * *

(b) * * *

(b)(2) Commercial Anchorage B (Long Beach Harbor). An area enclosed by a line joining the following coordinates:

	Latitude	Longitude
Beginning point	33°44′37.0″ N.	118°13′00.0″ W.
Thence south/southeast to	33°44′12.0″ N.	118°12′36.2″ W.
Thence southeast to	33°43′38.2″ N.	118°11′36.9″ W.
Thence southwest to	33°43′26.1″ N.	118°11′47.2″ W.
Thence west to	33°43′26.1″ N.	118°12′22.7″ W.
Thence west/southwest to	33°42′58.9″ N.	118°13′53.0″ W.
Thence north/northwest to	33°43′46.0″ N.	118°14′13.6″ W.
Thence east/northeast to	33°43′54.5″ N.	118°13′50.0″ W.
Thence north to	33°44′22.8″ N.	118°13′51.0″ W.
Thence east/northeast to the beginning point.		

* * * * *

(b)(5) Commercial Anchorage E (Long Beach Harbor). An area enclosed by a line joining the following coordinates:

	Latitude	Longitude
Beginning point	33°44′37.0″ N.	118°09′48.5″ W.
Thence southwest to	33°44′18.5″ N.	118°09′56.8″ W.
Thence west to	33°44′18.5″ N.	118°10′27.2″ W.
Thence northwest to	33°44′27.6″ N.	118°10′41.0″ W.
Thence west/northwest to	33°44′29.0″ N.	118°10′57.4″ W.
Thence north/northwest to	33°45′06.4″ N.	118°11′09.5″ W.
Thence northeast to	33°45′15.2″ N.	118°10′46.1″ W.
Thence southeast to	33°45′11.0″ N.	118°10′32.0″ W.
Thence south to	33°44′52.0″ N.	118°10′32.0″ W.
Thence southeast to the beginning point.		

* * * * *

Dated: October 25, 2004.

Kevin J. Eldridge,

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

[FR Doc. 04–24687 Filed 11–4–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 110

[CGD11–04–007]

RIN 1625–AA01

Anchorage Regulations; San Pedro Bay, CA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to enlarge the current anchorage area outside the federal breakwater of the Port of Los Angeles and Long Beach, CA. This rule is necessary to accommodate vessels of increasing size than what can currently be anchored in the existing anchorages. The anchorage area would be able to accommodate the largest of the vessels calling on the Ports of Los Angeles and Long Beach.

DATES: Comments and related material must reach the Coast Guard on or before January 4, 2005.

ADDRESSES: You may mail comments and related material to Commanding Officer, Coast Guard Marine Safety Office/Group Los Angeles-Long Beach, 1001 South Seaside Avenue, Building 20, San Pedro, California 90731. The Port Operations Department maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at Marine Safety Office and Group Los Angeles-Long Beach, 1001 South Seaside Avenue, Building 20, San Pedro, California, 90731, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Ryan Manning, USCG, Chief of Waterways Management Division, at (310) 732–2020.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD11–04–007), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Marine Safety Office/Group Los Angeles-Long Beach at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

Ships of increasing size are calling on the Port of Los Angeles and Long Beach. While in an anchorage area, these larger ships require watch circles of 1500 yards in diameter. Currently, the anchorage area outside the federal breakwater is made up of watch circles 1000 yards in diameter. An increase in the anchorage boundary would allow us to add three additional anchorages for vessels with watch circles of 1500 yards in diameter.

Discussion of Proposed Rule

The proposed regulations would increase the size of the current commercial anchorage area outside the federal breakwater off of the Port of Los Angeles and Long Beach by relocating the southwest corner approximately one nautical mile southeast. The traffic separation scheme will not be affected by this increased anchorage area.

Regulatory Evaluation

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

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. This proposal will impose no cost on vessel operators, and have minimal impact to vessel traffic.

Small Entities

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

owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This rule will possibly affect the following entities, some of which may be small entities: The owners and operators of private and commercial vessels intending to transit or anchor in the affected area. The impact to these entities would not, however, be significant since this zone will encompass only a small portion of the waterway and vessels can safely navigate around the anchored vessels. Additionally, large passenger vessels already routinely anchor within the proposed anchorage areas.

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

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Lieutenant Ryan Manning, Chief of Waterways Management Division, at (310) 732–2020.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(f), of the Instruction, from further environmental documentation. This rule changes the size of an existing anchorage.

A draft ''Environmental Analysis Check List'' and a draft ?Categorical Exclusion Determination'' are available in the docket where indicated under **ADDRESSES**. Comments on this section will be considered before we make the final decision on whether the rule should be categorically excluded from further environmental review.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 110 as follows:

PART 110—ANCHORAGE REGULATIONS

1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 1221 through 1236, 2030, 2035, and 2071; 33 CFR 1.05–

1(g). Department of Homeland Security Delegation No. 0170.1.

2. Revise § 110.214(b)(6) to read as follows:

§ 110.214 Los Angeles and Long Beach Harbors, Calif.

* * * * *

(b) * * *

(b)(6) *Commercial Anchorage F (outside of Long Beach Breakwater).* The waters southeast of the Long Beach Breakwater bounded by a line connecting the following coordinates:

	Latitude	Longitude
Beginning point	33°43′05.1″ N.	118°07′59.0″ W.
Thence west to	33°43′05.1″ N.	118°10′36.5″ W.
Thence south/southeast to	33°38′17.5″ N.	118°07′00.0″ W.
Thence north/northeast to	33°40′23.0″ N.	118°06′03.0″ W.
And thence north/northwest to the beginning point.		

* * * * *

Dated: October 25, 2004.

Kevin J. Eldridge,

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

[FR Doc. 04–24686 Filed 11–4–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 110

[CGD11–04–006]

RIN 1625–AA01

Anchorage Ground; Pacific Ocean at Santa Catalina Island, CA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish three anchorage areas outside Avalon Bay, Santa Catalina Island, California, for large passenger vessels. This proposed rule is necessary to provide designated anchorage grounds outside the harbor thereby allowing safe and secure anchorage for an increasing number of large passenger vessels. This rule is intended to increase safety for vessels by enhancing voyage planning and by alerting other recreational and commercial vessels to potential anchorage locations for these large vessels.

DATES: Comments and related material must reach the Coast Guard on or before January 4, 2005.

ADDRESSES: You may mail comments and related material to Commanding Officer, Coast Guard Marine Safety Office/Group Los Angeles-Long Beach, 1001 South Seaside Avenue, Building 20, San Pedro, California 90731. The Port Operations Department maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at Marine Safety Office/Group Los Angeles-Long Beach, 1001 South Seaside Avenue, Building 20, San Pedro, California, 90731, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Ryan Manning, USCG, Chief of Waterways Management Division, at (310) 732–2020.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD11–04–006), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the Marine Safety Office/Group Los Angeles-Long Beach at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

Large passenger vessels calling on Avalon, Santa Catalina Island, are forced to anchor offshore due to limited docking capabilities in Avalon Harbor. While these vessels have been anchoring in this location for over 15 years, there has never been a designated anchorage area or annotation on the NOAA chart to indicate these activities. However, with the increase in large passenger vessel operations in Southern California and multiple ships visiting Avalon Harbor on the same day, it is becoming apparent that designated anchorage areas are needed to ensure the safety and security of these vessels. In developing the proposed rule, the Coast Guard consulted various owners and masters of the large passenger vessels currently calling on Avalon Harbor.

Designated anchorages and the subsequent chart annotations will help ensure recreational and commercial boaters are aware that large passenger vessels may be anchored in these locations. This will be most helpful in conditions of low visibility.

Discussion of Proposed Rule

The proposed rule will establish three anchorage areas in which large passenger vessels calling on Avalon, Santa Catalina Island will be able to anchor safely. The locations of the anchorage grounds discussed in this proposed rule are within the same area that the large passenger vessels currently anchor. The proposed anchorage positions were chosen due to the rapid increase in water depth within close proximity to Santa Catalina Island. This increased depth of water does not allow for safe anchoring of the passenger vessels at distances further offshore than the proposed positions.

We propose to establish these anchorages due to the increase in large passenger vessel operations in this area, the need to maintain positive control in the event of increased security posture, and for the safety of other vessels operating in Avalon Bay. The proposed anchorage areas are of sufficient size to allow up to three large passenger vessels to anchor and still maintain safe navigation fairways available for other vessels to proceed to and from Avalon Harbor. The proposed regulation does not intend to exclude fishing activity or

the transit of vessels in the anchorage areas. However, the Coast Guard does intend to advise boaters to proceed with caution in order to minimize the disruption that large wakes can cause during the transfer of passengers between the passenger vessels and ferries.

Regulatory Evaluation

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

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. This conclusion is based upon the fact that there would be no fees, permits, or specialized requirements for the maritime industry to utilize these anchorage areas. The regulation is solely for the purpose of advancing the safety of maritime commerce and navigation.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This rule would possibly affect the following entities, some of which may be small entities: The owners and operators of private and commercial vessels intending to transit or anchor in the affected area. The impact to these entities would not, however, be significant since this zone would encompass only a small portion of the waterway and vessels could safely navigate around the anchored vessels. Additionally, large passenger vessels already routinely anchor within the proposed anchorage areas.

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

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Lieutenant Ryan Manning, Chief of Waterways Management Division, at (310) 732–2020.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

adopted by voluntary consensus standards bodies.

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

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(f), of the Instruction, from further environmental documentation because we are proposing to create an anchorage area.

A draft ''Environmental Analysis Check List'' and a draft ''Categorical Exclusion Determination'' are available in the docket where indicated under **ADDRESSES.** Comments on this section will be considered before we make the final decision on whether the rule should be categorically excluded from further environmental review.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 110 as follows:

PART 110—ANCHORAGE REGULATIONS

1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 1221 through 1236, 2030, 2035, and 2071; 33 CFR 1.05–1(g); Department of Homeland Security Delegation No. 0170.1.

2. In § 110.216 add new paragraphs (a)(3) and (b)(6) to read as follows:

§ 110.216 Pacific Ocean at Santa Catalina Island, Calif.

(a) * * *

(3) *Avalon Bay.* (i) *Anchorage A.* The waters within an area described as follows: A circle of 1350 feet radius centered at latitude 33°20′59.0″ N., longitude 118°18′56.2″ W.

(ii) *Anchorage B.* The waters within an area described as follows: A circle of 1350 feet radius centered at latitude 33°20′38.3″ N., longitude 118°18′35.8″ W.

(iii) *Anchorage C.* The waters within an area described as follows: A circle of 1350 feet radius centered at latitude 33°21′21.0″ N., longitude 118°19′16.7″ W.

(b) * * *

(6) The Avalon Bay anchorage is reserved for large passenger vessels of over 1600 gross tons, unless otherwise authorized by the Captain of the Port Los Angeles-Long Beach.

Dated: October 25, 2004.

Kevin J. Eldridge,

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

[FR Doc. 04–24685 Filed 11–4–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD08–04–036]

RIN 1625–AA09

Drawbridge Operation Regulation; St. Croix River, MN

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the regulation governing the Stillwater Highway Drawbridge, across the St. Croix River at Mile 23.4, at Stillwater, Minnesota. The drawbridge need not open for river traffic and may remain in the closed-to-navigation position from midnight, October 14, 2005 until midnight, March 15, 2006. This proposed rule would allow time to perform maintenance/repairs to the bridge.

DATES: Comments and related material must reach the Coast Guard on or before December 6, 2004.

ADDRESSES: You may mail comments and related material to Commander, Eighth Coast Guard District, Bridge Branch, 1222 Spruce Street, St. Louis, MO 63103–2832. Commander (obr) maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at room 2.107f in the Robert A. Young Federal Building, Eighth Coast Guard District, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Roger K. Wiebusch, Bridge Administrator, (314) 539–3900, extension 2378.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD08–04–036), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

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

Background and Purpose

On September 13, 2004, the Minnesota Department of Transportation requested a temporary change to the operation of the Stillwater Highway Drawbridge across the St. Croix River, Mile 23.4 at Stillwater, Minnesota to allow the drawbridge to remain in the closed-to-navigation position for 152 consecutive days for critical repairs and maintenance. Navigation on the waterway consists primarily of commercial and recreational watercraft and will not be significantly impacted due to the reduced navigation in winter months. Presently, the draw opens from October 16 until May 14 with 24 hours advance notice for passage of river traffic. The Minnesota Department of Transportation requested the drawbridge be permitted to remain closed-to-navigation from midnight, October 14, 2005 until midnight, March 15, 2006.

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).

The Coast Guard expects that this temporary change to operation of the Stillwater Highway Drawbridge will have minimal economic impact on traffic operating on the St. Croix River. This temporary change has been written in such a manner as to allow for minimal interruption of the drawbridge's regular operation.

Small Entities

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

This proposed rule will not have a negligible impact on vessel traffic. The primary users of the St. Croix River in Stillwater, Minnesota, are commercial and recreational vessel operators. With the onset of winter conditions most activity on the St. Croix River is curtailed and there are few, if any, significant navigation demands for opening the drawspan.

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

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

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they could better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Mr. Roger K. Wiebusch, Bridge Administrator, Eighth Coast Guard District, Bridge Branch, at (314) 539–3900, extension 2378.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (32)(e), of the Instruction, from further environmental documentation. Paragraph 32(e) excludes the promulgation of operating regulations or procedures for drawbridges from the environmental documentation requirements of the National Environmental Policy Act (NEPA). Since this proposed regulation

would alter the normal operating conditions of the drawbridge, it falls within this exclusion. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

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

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

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

2. From midnight, October 14, 2005, until midnight March 15, 2006, in § 117.667 suspend paragraph (b) and add a new paragraph (d) to read as follows:

§ 117.667 St. Croix River.

* * * * *

(d) The Stillwater Highway Drawbridge, Mile 23.4, St. Croix River, at Stillwater, need not open for river traffic and may be maintained in the closed-to-navigation position.

Dated: October 8, 2004.

J.W. Stark,

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

[FR Doc. 04–24688 Filed 11–4–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP San Francisco Bay 04–023]

RIN 1625–AA00

Safety Zone; Mission Creek Waterway, China Basin, San Francisco Bay, CA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to establish a temporary safety zone in the navigable waters of the Mission Creek Waterway in China Basin surrounding the construction site of the Fourth Street Bridge, San Francisco, California. This temporary safety zone is necessary to protect persons and vessels from hazards associated with bridge construction activities scheduled to last from February 15, 2005 to December 31, 2005. The safety zone will temporarily prohibit use of the Mission Creek Waterway surrounding the Fourth Street Bridge; specifically, no persons or vessels will be permitted to come within 100 yards of either side of the bridge or pass beneath the bridge during construction, unless authorized by the Captain of the Port, or his designated representative.

DATES: Comments and related material must reach the Coast Guard on or before January 4, 2005.

ADDRESSES: You may mail comments and related material to the Waterways Management Branch, U.S. Coast Guard Marine Safety Office San Francisco Bay, Coast Guard Island, Alameda, California 94501. The Waterways Management Branch maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the Waterways Management Branch between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Doug Ebbers, U.S. Coast Guard Marine Safety Office San Francisco Bay, at (510) 437–3073.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (COTP San Francisco 04–023), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know that your submission reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the Waterways Management Branch at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a separate notice in the **Federal Register**.

Background and Purpose

The San Francisco Department of Public Works is requesting a waterway closure on Mission Creek for the purpose of performing significant work to the Fourth Street Bridge. The Fourth Street Bridge was erected across the Mission Creek Waterway at the China Basin in 1917, and was determined eligible for listing in the National Register of Historic Places in 1985 as part of the California Department of Transportation (Caltrans) Historic Bridge Inventory. Caltrans, Division of Structures, evaluated the Fourth Street Bridge and recommended that the bridge be brought up to current seismic safety standards. The three objectives of the rehabilitation project are to: (1) Seismically retrofit the structure while not significantly altering the historical appearance of the bridge; (2) repair the damage to the concrete approaches and several steel and concrete members of the movable span, and (3) reinitiate light rail service across the bridge. The Federal Highway Administration, the State of California and the City of San Francisco are funding the Fourth Street Bridge Retrofit Project.

The first phase of this project included the removal of the lift span, which took place between May 1 and July 28, 2003. During that period, the channel was closed at the Fourth Street Bridge to boating traffic by a temporary final rule that was published in the **Federal Register** on May 13, 2003 (68 FR 25500) and a subsequent change in effective period temporary final rule that was published on July 9, 2003 (68 FR 40772). Those two rules established a safety zone that extended 100 yards on either side of the Fourth Street Bridge. The second phase of the construction project includes rebuilding the north and south approaches and the new counterweight and its enclosing pit; but does not require that the waterway be closed to boating traffic. The safety zone being proposed in this rule is for the last phase of construction, which includes replacing the lift span and aligning the bridge to accept the light rail track system. This final phase is scheduled to begin on February 15, 2005, and end on December 31, 2005. The proposed safety zone of 100 yards on either side of the Fourth Street Bridge is needed during this period to protect boating traffic public from the dangers posed by the construction operations and to allow the construction operations to be completed.

There are two major environmental issues that affect the scheduling of construction in the channel, namely the annual pacific herring spawning season that runs from December 1st to March 31st, and noise constraints for steelhead from December 1st to June 1st. Any demolition, pile driving and excavation in the water during those time periods will be monitored and restricted for possible impacts on these species.

The Fourth Street Bridge Project is related to the larger Third Street Light Rail Project, and many public presentations on the project?s components, channel closure schedules, impacts to surrounding uses and project duration have been made by the City and Port of San Francisco. The Third Street Light Rail Advisory Group was created as a forum to keep the public informed on the progress being made on the Third Street Light Rail Project. Also, this project has been presented at many Mission Bay Citizen Advisory Committee meetings. At these meetings, the public was notified of the project components, impacts and the need to temporarily close the waterway. Specific to the Fourth Street Bridge project, an Environmental Assessment, required by the Federal Highway Administration and Caltrans, (under the National Environmental Protection Act) was conducted by the City of San Francisco. A public hearing regarding the Environmental Assessment was held on January 17, 2002 at San Francisco Arts College, Timken Lecture Hall, 1111 8th Street in San Francisco California, and was well attended.

In addition, the City of San Francisco advised the Coast Guard Captain of the Port in January of 2003 that two channel closures would be necessary in order to accomplish the Fourth Street Bridge project. The Coast Guard met with various City and Port officials to ensure that there would be minimal impacts on area boaters and other involved entities.

This proposed temporary safety zone in the navigable waters of Mission Creek surrounding the construction site of the Fourth Street Bridge would be in effect 24 hours a day from February 15, 2005 to December 31, 2005.

Discussion of Proposed Rule

The Coast Guard proposes to establish a safety zone in a portion of the navigable waters located near the Fourth Street Bridge in the Mission Creek Waterway in China Basin, San Francisco, California. The proposed safety zone would encompass the navigable waters, from the surface to the sea floor, bounded by two lines; one line drawn from a point on the north shore of Mission Creek extending southeast to a point on the opposite shore, 100 yards west of the bridge, and the other line drawn from a point on the north shore of Mission Creek extending southeast to a point on the opposite shore, 100 yards east of the bridge.

The intent of the proposed safety zone is to affect a waterway closure during reconstruction of the Fourth Street Bridge and would be effective 24 hours a day between February 15, 2005 and December 31, 2005. The proposed safety zone is necessary to protect persons and vessels from hazards, injury and damage associated with bridge construction activities. No vessel or person may come within 100 yards of either side of the bridge, or pass beneath the bridge during construction.

Vessels and people may be allowed to enter an established safety zone on a case-by-case basis with authorization from the Captain of the Port or his designated representative. Section 165.23 of Title 33, Code of Federal Regulations, prohibits any unauthorized person or vessel from entering or remaining in an established safety zone.

U.S. Coast Guard personnel will enforce this safety zone and may be assisted by other Federal, State, or local agencies, including the Coast Guard Auxiliary. Section 165.23 of Title 33, Code of Federal Regulations, prohibits any unauthorized person or vessel from entering or remaining in a safety zone. Vessels or persons violating this section will be subject to the penalties set forth in 33 U.S.C. 1232. Pursuant to 33 U.S.C. 1232, any violation of the safety zone described herein, will be punishable by civil penalties (not to exceed $32,500 per violation, where each day of a continuing violation is a separate violation), criminal penalties (imprisonment up to 6 years and a maximum fine of $250,000), and in rem liability against the offending vessel. Any person who violates this section, using a dangerous weapon, or who engages in conduct that causes bodily injury or fear of imminent bodily injury to any officer authorized to enforce this regulation, also faces imprisonment up to 12 years.

Regulatory Evaluation

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

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. Although this proposed rule restricts access to the waters encompassed by the safety zone, the effect of this proposed rule would not be significant because the zone is temporary in nature, and owners of boats located within Mission Creek have been advised of the planned waterway closures at several Mission Bay Citizen Advisory Committee meetings.

The size of the proposed zone is the minimum necessary to provide adequate protection for the boating public and an adequate distance to ensure vessel wakes to not interfere with construction operations. The entities most likely to be affected are pleasure craft engaged in recreational activities and sightseeing.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule may affect the following entities, some of which may be small entities: owners and operators of private vessels intending to transit the area of the 4th Street Bridge. The proposed safety zone would not have a significant economic impact on a substantial number of small entities for the same reasons set forth in the above Regulatory Evaluation. In addition, the Mission Creek Harbor Association has a lease agreement with the Port of San Francisco for both houseboats and pleasure boats to moor at the head of the channel, and the channel closure will not impact land access to the houseboats during the proposed waterway closures. However, a small number of sailboats that moor in the harbor may be impacted. The Department of Public Works and the Port of San Francisco are in consultation with the Mission Creek Harbor Association to assess the temporary impacts to the boaters on closing the channel for this needed work. Small entities and the maritime public would

be advised of this safety zone via public notice to mariners.

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

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Lieutenant Doug Ebbers, Waterways Management Branch, U.S. Coast Guard Marine Safety Office San Francisco Bay, at (510) 437–3073. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

This proposed rule 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 proposed rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this proposed rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation because it would establish a safety zone.

A draft ''Environmental Analysis Check List'' and a draft ''Categorical Exclusion Determination'' (CED) will be available in the docket where indicated under **ADDRESSES.** Comments on this section will be considered before we make the final decision on whether the rule should be categorically excluded from further environmental review.

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 proposes to amend 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. Temporarily add § 165.T11–048 to read as follows:

§ 165.T11–048 Safety Zone; Mission Creek Waterway, China Basin, San Francisco Bay, California.

(a) *Location.* One hundred yards to either water-side of the Fourth Street Bridge, encompassing the navigable waters, from the surface to the sea floor, bounded by two lines; one line drawn from a point on the north shore of Mission Creek [37°46′29″ N, 122°23′36″

W] extending southeast to a point on the opposite shore [37°46′28″ N, 122°23′34″ W], and the other line drawn from a point on the north shore of Mission Creek [37°46′34″ N, 122°23′30″ W] extending southeast to a point on the opposite shore [37°46′33″ N, 122°23′28″ [Datum: NAD 83]

(b) *Effective Period.* The safety zone will be in effect from February 15, 2005 through December 31, 2005. If the need for this safety zone ends before the scheduled termination time, the Captain of the Port will cease enforcement of the safety zone and will announce that fact via Broadcast Notice to Mariners.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into, transit through, or anchoring within this zone by all vessels is prohibited, unless specifically authorized by the Captain of the Port San Francisco Bay, or his designated representative.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene patrol personnel. Patrol personnel comprise commissioned, warrant, and petty officers of the Coast Guard onboard Coast Guard, Coast Guard Auxiliary, local, state, and federal law enforcement vessels. Upon being hailed by U.S. Coast Guard patrol personnel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: October 27, 2004.

Gordon A. Loebl,

Commander, U.S. Coast Guard, Acting Captain of the Port, San Francisco Bay, California.

[FR Doc. 04–24684 Filed 11–4–04; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 194

[FRL–7835–6]

Central Characterization Project Waste Characterization Program Documents Applicable to Transuranic Radioactive Waste From the Savannah River Site Proposed for Disposal at the Waste Isolation Pilot Plant

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability; opening of public comment period.

SUMMARY: The Environmental Protection Agency (EPA, or ''we'') is announcing the availability of, and soliciting public comments for 30 days on, Department of Energy (DOE) documents on waste characterization programs applicable to certain transuranic (TRU) radioactive waste at the Savannah River Site (SRS) proposed for disposal at the Waste Isolation Pilot Plant (WIPP). The documents are procedures and other materials related to the Central Characterization Project (CCP), established by DOE to augment the ability of TRU waste sites to characterize and certify the waste in accordance with EPA's WIPP Compliance Criteria. The documents are available for review in the public dockets listed in **ADDRESSES.** We will use these documents to evaluate the CCP activities at SRS to characterize SRS-generated contact-handled (CH) retrievably-stored TRU debris waste during an inspection conducted the week of October 25, 2004. The purpose of the inspection is to verify that the CCP can properly characterize SRS-generated contact-handled (CH) TRU debris waste, consistent with the WIPP Compliance Criteria and Condition 3 of EPA's final certification decision for the WIPP. The EPA will not make a determination of compliance prior to the inspection or before the 30-day comment period has closed.

DATES: The EPA is requesting public comment on these documents. Comments must be received by EPA's official Air Docket on or before December 6, 2004.

ADDRESSES: Comments may be submitted by mail to: EPA Docket Center (EPA/DC), Air and Radiation Docket, Environmental Protection Agency, EPA West, Mail Code 6102T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Attention Docket ID No. OAR–2004–0430. Comments may also be submitted electronically, by facsimile, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I.B of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Ed Feltcorn, Office of Radiation and Indoor Air, (202) 343–9422. You can also call EPA's toll-free WIPP Information Line, 1–800–331–WIPP or visit our Web site at *http://www.epa/gov/radiation/wipp.*

SUPPLEMENTARY INFORMATION:

I. General Information

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

1. *Docket.* EPA has established an official public docket for this action under Docket ID No. OAR–2004–0430. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Air and Radiation Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket is (202) 566–1742. These documents are also available for review in paper form at the official EPA Air Docket in Washington, DC, Docket No. A–98–49, Category II–A2, and at the following three EPA WIPP informational docket locations in New Mexico: in Carlsbad at the Municipal Library, hours: Monday–Thursday, 10 a.m.–9 p.m., Friday–Saturday, 10 a.m.–6 p.m., and Sunday, 1 p.m.–5 p.m.; in Albuquerque at the Government Publications Department, Zimmerman Library, University of New Mexico, hours: vary by semester; and in Santa Fe at the New Mexico State Library, hours: Monday–Friday, 9 a.m.–5 p.m. As provided in EPA's regulations at 40 CFR part 2, and in accordance with normal EPA docket procedures, if copies of any docket materials are requested, a reasonable fee may be charged for photocopying.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket,

will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

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

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

For additional information about EPA's electronic public docket visit EPA Dockets online or *see* 67 FR 38102, May 31, 2002.

B. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, by facsimile, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. However, late comments may be considered if time permits.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket,* and follow the online instructions for submitting comments. To access EPA's electronic public docket from the EPA Internet Home Page, select ''Information Sources,'' ''Dockets,'' and ''EPA Dockets.'' Once in the system, select ''search,'' and then key in Docket ID No. OAR–2004–0430. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by electronic mail (e-mail) to *a-and-r-docket@epa.gov,* Attention Docket ID No. OAR–2004–0430. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

2. *By Mail.* Send your comments to: EPA Docket Center (EPA/DC), Air and Radiation Docket, Environmental Protection Agency, EPA West, Mail Code 6102T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Attention Docket ID No. OAR–2004–0430.

3. *By Hand Delivery or Courier.* Deliver your comments to: Air and Radiation Docket, EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC, Attention Docket ID No. OAR–2004–0430. Such deliveries are only accepted during the Docket's normal hours of operation as identified in Unit I.A.1.

4. *By Facsimile.* Fax your comments to: (202) 566–1741, Attention Docket ID. No. OAR–2004–0430.

C. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at your estimate.

5. Provide specific examples to illustrate your concerns.

6. Offer alternatives.

7. Make sure to submit your comments by the comment period deadline identified.

8. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

II. Background

DOE is operating the WIPP near Carlsbad in southeastern New Mexico as a deep geologic repository for disposal of TRU radioactive waste. As defined by the WIPP Land Withdrawal Act (LWA) of 1992 (Pub. L. 102–579), as amended (Pub. L. 104–201), transuranic (TRU) waste consists of materials containing elements having atomic numbers greater than 92 (with half-lives greater than twenty years), in concentrations greater than 100 nanocuries of alpha-emitting TRU isotopes per gram of waste. Much of the existing TRU waste consists of items contaminated during the

production of nuclear weapons, such as rags, equipment, tools, and sludges.

On May 13, 1998, EPA announced its final compliance certification decision to the Secretary of Energy (published May 18, 1998, 63 FR 27354). This decision stated that the WIPP will comply with EPA's radioactive waste disposal regulations at 40 CFR part 191, subparts B and C.

The final WIPP certification decision includes conditions that (1) prohibit shipment of TRU waste for disposal at WIPP from any site other than the Los Alamos National Laboratory (LANL) until the EPA determines that the site has established and executed a quality assurance program, in accordance with §§ 194.22(a)(2)(i), 194.24(c)(3), and 194.24(c)(5) for waste characterization activities and assumptions (Condition 2 of Appendix A to 40 CFR part 194); and (2) prohibit shipment of TRU waste for disposal at WIPP from any site other than LANL until the EPA has approved the procedures developed to comply with the waste characterization requirements of § 194.22(c)(4) (Condition 3 of Appendix A to 40 CFR part 194). The EPA's approval process for waste generator sites is described in § 194.8. As part of EPA's decision-making process, the DOE is required to submit to EPA appropriate documentation of quality assurance and waste characterization programs at each DOE waste generator site seeking approval for shipment of TRU radioactive waste to WIPP. In accordance with § 194.8, EPA will place such documentation in the official Air Docket in Washington, DC, and informational dockets in the State of New Mexico for public review and comment.

EPA will perform an inspection of the TRU waste characterization activities performed by the DOE's Central Characterization Project (CCP) staff at the Savannah River Site (SRS) in accordance with Condition 3 of the WIPP certification. We will evaluate the adequacy, implementation, and effectiveness of the CCP technical activities contracted by SRS for characterization of the disposal of retrievably-stored TRU debris waste at the WIPP. The overall program adequacy and effectiveness of CCP documents will be based on the following DOE documents: (1) CCP–PO–001—Revision 8, 3/15/04—CCP Transuranic Waste Characterization Quality Assurance Project Plan and (2) CCP–PO–002—Revision 9, 3/15/04—CCP Transuranic Waste Certification Plan. EPA has placed these documents pertinent to the SRS inspection in the public docket described in **ADDRESSES**. In accordance with 40 CFR 194.8, EPA is providing the public 30 days to comment on these documents. The inspection is scheduled to take place the week of October 25, 2004.

The EPA inspectors at SRS will evaluate the quality of the waste characterization program via testing, interviews of waste characterization (WC) personnel, review of WC procedures, and inspection of WC equipment used to characterize retrievably-stored debris waste. The inspection will focus on real-time radiography (RTR) equipment as well as visual examination (VE) techniques as implemented by the CCP at SRS.

This is EPA's first **Federal Register** notice announcing an inspection following the Agency's revisions to the WIPP Compliance Criteria (40 CFR part 194). The final rule for these provisions was published on July 16, 2004 (69 FR 42571), and had an effective date of October 14, 2004. The CCP at SRS has already been previously approved under our previous inspections regime. Therefore, the SRS–CCP inspection outlined in this notice will be held in accordance with the requirements for previously approved waste generator sites, as described in Section § 194.8(c) of our final revisions.

If EPA determines as a result of the inspection that the proposed CCP waste characterization processes and programs used at SRS adequately control the characterization of transuranic waste, we will notify DOE by letter and place the letter in the official Air Docket in Washington, DC, as well as in the informational docket locations in New Mexico. A letter of approval will allow DOE to dispose of transuranic waste from SRS/CCP to the WIPP. The EPA will not make a determination of compliance prior to the inspection or before the 30-day comment period has closed.

Information on the certification decision is filed in the official EPA Air Docket, Docket No. A–93–02 and is available for review in Washington, DC, and at three EPA WIPP informational docket locations in New Mexico. The dockets in New Mexico contain only major items from the official Air Docket in Washington, DC, plus those documents added to the official Air Docket since the October 1992 enactment of the WIPP LWA.

Dated: November 1, 2004.

Robert Brenner,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 04–24820 Filed 11–5–04; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 69, No. 214
Friday, November 5, 2004

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Siskiyou County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Siskiyou County Resource Advisory Committee (RAC) will meet in Yreka, California, November 15, 2004. The meeting will include routine business, presentations on two large scale projects as well as final reports on completed RAC projects, and the review and recommendation for implementation of submitted project proposals. Members of the public interested in the RAC and its authorizing law are welcome to attend.

DATES: The meeting will be held November 15, 2004, from 4:30 p.m. until 8 p.m.

ADDRESSES: The meeting will be held at the Yreka High School Library, Preece Way, Yreka, California.

FOR FURTHER INFORMATION CONTACT: Don Hall, RAC Coordinator, Klamath National Forest, (530) 841–4468 or electronically at *donaldhall@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Public comment opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: October 29, 2004.

Margaret J. Boland,

Designated Federal Official.

[FR Doc. 04–24713 Filed 11–4–04; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Plumas County Resource Advisory Committee (RAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Plumas County Resource Advisory Committee (RAC) will hold a meeting on November 12, 2004 in Quincy, California. The purpose of the November 12 meeting is to review the last funding cycle (five) authorized by the Payments to States legislation. Outreach for the funding cycle will start in early 2005 with projects funded in 2006. Three new members will also be welcomed to the committee, which is starting its second term.

DATES & ADDRESSES: The November 12 meeting will take place from 9–12 a.m., in the Mineral Building at the Plumas-Sierra County Fairgrounds, 204 Fairgrounds Road, Quincy, California.

FOR FURTHER INFORMATION CONTACT: Lee Ann Schramel Taylor, Forest Coordinator, USDA, Plumas National Forest, P.O. Box 11500/159 Lawrence Street, Quincy, CA 95971; (530) 283–7850; or by e-mail *eataylor@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Agenda items for the March 19 meeting include: (1) Updates on second committee term; (2) Recognition for outgoing members; (3) Transition discussion for incoming members; (4) Cycle 5 funding planning; (5) Updates on the Plumas County Fire Assessment & Strategy; (6) Chair & Vice Chair nomination/elections; and (7) Future meeting schedule/logistics/agenda.

The meetings are open to the public and individuals may address the Committee after being recognized by the Chair. Other RAC information including previous meeting agendas and minutes may be obtained at *http://www.fs.fed.us/payments.*

Dated: October 29, 2004.

Robert G. MacWhorter,

Deputy Forest Supervisor.

[FR Doc. 04–24714 Filed 11–4–04; 8:45 am]

BILLING CODE 3410–11–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Addition and Deletions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Proposed addition to and deletions from Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List a product to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete products previously furnished by such agencies.

Comments Must Be Received on or Before: December 5, 2004.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Addition

If the Committee approves the proposed addition, the entity of the Federal Government identified in this notice for each product will be required to procure the product listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the product to the Government.

2. If approved, the action will result in authorizing small entities to furnish the product to the Government.

3. There are no known regulatory alternatives which would accomplish

the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products proposed for addition to the Procurement List. Comments on this certification are invited.

Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following product is proposed for addition to Procurement List for production by the nonprofit agencies listed:

Product

Product/NSN: Body Fluids Barrier Kit; 6515–01–376–7247.
NPA: The Oklahoma League for the Blind, Oklahoma City, Oklahoma.
Contract Activity: GSA, Southwest Supply Center, Fort Worth, Texas.

Deletions

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action may result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. If approved, the action may result in authorizing small entities to furnish the products to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products proposed for deletion from the Procurement List.

End of Certification

The following products are proposed for deletion from the Procurement List:

Products

Product/NSN: Cloth, Abrasive;
5350–00–187–6286;
5350–00–187–7986;
5350–00–192–9325.
NPA: Louisiana Association for the Blind, Shreveport, Louisiana.
Contract Activity: GSA, Southwest Supply Center, Fort Worth, Texas.

Product/NSN: Cover Assembly, Pitot; 1560–01–208–7831.
NPA: Huntsville Rehabilitation Foundation, Huntsville, Alabama.
Contract Activity: U.S. Army Missile Command, Redstone Arsenal, Alabama.

Product/NSN: Cutlery, Plastic, Medium Weight;
7340–00–NIB–0009;
7340–00–NIB–0010;
7340–00–NIB–0011;
7340–00–NIB–0012;
7340–00–NIB–0015;
7340–00–NIB–0016;
7340–00–NIB–0017.
NPA: L.C. Industries For The Blind, Inc., Durham, North Carolina.
Contract Activity: Navy Exchange Service Command (NEXCOM), Virginia Beach, Virginia.

Product/NSN: Refill, Ballpoint Pen; 7510–00–754–2691.
NPA: Industries for the Blind, Inc., Milwaukee, Wisconsin.
Contract Activity: Office Supplies & Paper Products Acquisition Center, New York, New York.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 04–24741 Filed 11–4–04; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Additions to Procurement List.

SUMMARY: This action adds to the Procurement List products and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: December 5, 2004.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION: On September 10, 2004, the Committee for Purchase From People Who Are Blind or SeverelyDisabled published notice (69 FR 54766) of proposed additions to the Procurement List. After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and services and impact of the additions on the current or most recent contractors, the Committee has determined that the products and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services to the Government.

2. The action will result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and services proposed for addition to the Procurement List.

End of Certification

Accordingly, the following products and services are added to the Procurement List:

Products

Product/NSN: Cord, Nylon, Fibrous,
4020–00–240–2154 (Type 1—Color Natural),
4020–00–292–9920 (Type 1A—Color Natural),
4020–00–531–2813 (Type 1A—Color Red),
4020–00–935–5761 (Type 1—Color Camouflage Green).
NPA: East Texas Lighthouse for the Blind, Tyler, Texas.
Contract Activity: Defense Supply Center Philadelphia, Philadelphia, Pennsylvania.

Services

Service Type/Location: Laundry Service, Fort Myer, Virginia.
NPA: Rappahannock Goodwill Industries, Inc., Fredericksburg, Virginia.
Contract Activity: U.S. Army Contracting Agency, Fort Myer, Virginia.
Service Type/Location: Mailroom Operation, Social Security Administration, 1301 Young Street, Dallas, Texas.
NPA: Dallas Lighthouse for the Blind, Inc., Dallas, Texas.
Contract Activity: Social Security Administration, Dallas, Texas.

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 04–24742 Filed 11–4–04; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Redesignation of Services

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Redesignation of procurement list services.

SUMMARY: This notice redesignates services on the Procurement List which will be procured on a Basewide basis rather than for individual buildings. These services are being performed for the Department of the Air Force, Edwards Air Force Base, California.

EFFECTIVE DATE: November 5, 2004.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION: The following services are on the Procurement List to be performed by the designated nonprofit agency for the Department of the Air Force, Edwards Air Force Base, California as identified below:

Service Type/Location: Grounds Maintenance. *Chapel Building Number:* 2700, *Hospital Areas:* 5500, 5510 and 5550, *Recreation Fields:* 2201, 5210, 5202 and 5213, *Building Numbers:* 1200, 1220, 1400, 2650, 2656 2800, 3940 and P–1, *Building Numbers:* 1020, 1610, 2650A, and 6004, *Building Number:* 5513 Dental Clinic, Onizuka Park; Base Command—Building Number 2750; Burger King—Building Number 6006; *Base Hospital Buildings Numbers:* 5520, 5521, 5522; *Family and Child Care Office Building Number:* 7174; *Credit Union Building Number:* 2680.

Service Type/Location: Grounds Maintenance and Sprinkler System Maintenance, *Areas:* 1440 and 3920, *Hospital Building Number:* 2430, Four New Athletic Fields: Softball, Little League, Soccer (Practice), and Little League (Practice), *Building Numbers:* 1609, 2860, 8350, 8351, 8352, 8353, 8354 and 8356, *Building Numbers:* 1250, 1260, 1633, 2410, 2419, 2453, 2600, 2850,3535 Offsite, 3950, 5601, 6441, 6443, 8251, 8252, 8255, T–28, and 1200,Parking Islands, *Building Numbers:* 2500, 2665, 3535, 5600, 5602, 5603, 5604, 5605, 6445, 6447, 420, 6000, 7220, 2421, 5211, and Desert Villa Complex, *Building Number:* 6459.

Service Type/Location: Litter Pickup.

NPA: Desert Haven Enterprises, Inc., Lancaster, California.

Contract Activity: 95th CONS/PKB, Edwards Air Force Base, California.

The above services will be procured by the 95th CONS/PKB, Edwards Air Force Base, California on a Basewide basis and are thus being redesignated collectively on the Procurement List as set forth below, and the nonprofit agency identified below has been designated as the qualified nonprofit agency authorized to provide the services.

Service Type/Location: Grounds Maintenance, Basewide (Excluding Military Family Housing area, Military Mobile Home Park area, Base Golf Course area, National Aeronautics and Space Administration (NASA) area, and the Civil Engineering Directorate in-house A–76 MEO agreement areas)Edwards Air Force Base, California.

NPA: Desert Haven Enterprises, Inc., Lancaster, California.

Contract Activity: 95th CONS/PKB, Edwards Air Force Base, California.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 04–24743 Filed 11–4–04; 8:45 am]

BILLING CODE 6353–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the State Advisory Committee Chairpersons in the Western Region

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a conference call of the State Advisory Committee Chairpersons in the Western Region (Alaska, Arizona, California, Hawaii, Idaho, Nevada, Oregon, Texas and Washington) will convene at 1 p.m. (p.s.t.) and adjourn at 2 p.m., Friday, November 19, 2004. The purpose of the conference call is to discuss regional civil rights issues and update information. This conference call is available to the public through the following call-in number: 1–800–473–7795, access code number 28699764. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls not initiated using the provided call-in number or over wireless lines and the Commission will not refund any incurred charges. Callers will incur no charge for calls using the call-in number over land-line connections. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and access code.

To ensure that the Commission secures an appropriate number of lines for the public, persons are asked to register by contacting Thomas Pilla of the Western Regional Office, (213) 894–3437, by 3 p.m. on Thursday, November 18, 2004.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, October 29, 2004.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 04–24777 Filed 11–4–04; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Sunshine Act Notice

AGENCY: U.S. Commission on Civil Rights.

DATE AND TIME: Friday, November 12, 2004, 9:30 a.m.

PLACE: U.S. Commission on Civil Rights, 624 9th Street, NW., Room 540, Washington, DC 20425.

STATUS:

Agenda

I. Approval of Agenda
II. Approval of Minutes of October 8, 2004 Meeting
III. Announcements
IV. Staff Director's Report
V. State Advisory Committee Appointments for Hawaii, Maine, Ohio, New Mexico, Rhode Island, Vermont, and Washington
VI. ''Redefining Rights in America: The Civil Rights Record of the George W. Bush Administration, 2001–2004'' Report
VII. ''Closing the Achievement Gap: The Impact of Standards-Based Education Reform on Student Performance'' Report
VIII. Future Agenda Items
10:30 a.m.—Briefing on Voting and Election Reform: Was America Ready To Vote?

CONTACT PERSON FOR FURTHER INFORMATION: Les Jin, Press and Communications (202) 376–7700.

Debra A. Carr,

Deputy General Counsel.

[FR Doc. 04–24790 Filed 11–2–04; 4:30 pm]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

A–427–820

Stainless Steel Bar From France: Notice of Extension of Time Limit for Preliminary Results in Antidumping Duty Administrative Review

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

ACTION: Notice of Extension of Time Limit for Preliminary Results in

Antidumping Duty Administrative Review.

SUMMARY: The Department of Commerce (the Department) is extending the time limit for the preliminary results of the administrative review of the antidumping duty order on stainless steel bar from France, which covers the period March 1, 2003, through February 29, 2004.

EFFECTIVE DATE: November 5, 2004.

FOR FURTHER INFORMATION CONTACT: David J. Goldberger at (202) 482–4136, or Terre Keaton at (202) 482–1280, Import Administration, AD/CVD Operations, Office 2, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC, 20230.

SUPPLEMENTARY INFORMATION: Pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), the Department shall make a preliminary determination in an administrative review of an antidumping duty order within 245 days after the last day of the anniversary month of the date of publication of the order. The Act further provides, however, that the Department may extend that 245-day period to 365 days if it determines it is not practicable to complete the review within the foregoing time period. The preliminary results are currently scheduled to be completed on December 1, 2004. However, the Department finds that it is not practicable to complete the preliminary results in this administrative review of stainless steel bar from France within this time limit because additional time is needed to fully analyze the questionnaire responses and supplemental questionnaire responses submitted by the respondent and conduct a verification of the respondent in this administrative review.

Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time limit for completion of the preliminary results of this review until March 30, 2005.

Dated: November 1, 2004.

Jeffrey A. May,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E4–3032 Filed 11–4–04; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

National Construction Safety Team Advisory Committee Meeting

AGENCY: National Institute of Standards and Technology, United States Department of Commerce.

ACTION: Notice of partially closed meeting.

SUMMARY: The National Construction Safety Team (NCST) Advisory Committee (Committee), National Institute of Standards and Technology (NIST), will meet on Monday, November 22, 2004, from 8 a.m. to 6 p.m. The primary purpose of the open portion of the meeting, from 8 a.m. to 10 a.m., will be to discuss preparation of the NCST Advisory Committee Annual Report to Congress. The final agenda will be posted on the NIST Web site at *http://www.nist.gov/ncst.*

DATES: The meeting will convene on November 22, 2004, at 8 a.m. and will adjourn at 6 p.m. on November 22, 2004. The first portion of the meeting from 8 a.m. to 10 a.m. will be open to the public. The closed portion of the meeting is scheduled to begin at 10 a.m. and to end at 6 p.m.

ADDRESSES: The meeting will be held in the Administration Building, Lecture Room B, at NIST, Gaithersburg, Maryland. Please note admittance instructions under the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: Stephen Cauffman, National Construction Safety Team Advisory Committee, National Institute of Standards and Technology, 100 Bureau Drive, MS 8611, Gaithersburg, Maryland 20899–8611. Mr. Cauffman's e-mail address is *stephen.cauffman@nist.gov* and his phone number is (301) 975–6051.

SUPPLEMENTARY INFORMATION: The Committee was established pursuant to Section 11 of the National Construction Safety Team Act (15 U.S.C. 7310 *et seq.*). The Committee is composed of nine members appointed by the Director of NIST who were selected for their technical expertise and experience, established records of distinguished professional service, and their knowledge of issues affecting teams established under the NCST Act. The Committee will advise the Director of NIST on carrying out investigations of building failures conducted under the authorities of the NCST Act that became law in October 2002 and will review the procedures developed to implement the NCST Act and reports issued under section 8 of the NCST Act. Background information on the NCST Act and information on the NCST Advisory Committee is available at *http://www.nist.gov/ncst.*

Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the National Construction Safety Team (NCST) Advisory Committee (Committee), National Institute of Standards and Technology (NIST), will meet Monday, November 22, 2004, from 8 a.m. to 6 p.m. at NIST headquarters in Gaithersburg, Maryland. The primary purpose of the open portion of the meeting, from 8 a.m. to 10 a.m., will be to discuss preparation of the NCST Advisory Committee Annual Report to Congress. The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on November 1, 2004, that portions of the meeting of the National Construction Safety Team Advisory Committee that involve discussions regarding the proprietary information and trade secrets of third parties, data and documents that may also be used in criminal cases or lawsuits, matters the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action, and data collection status and the issuance of subpoenas may be closed in accordance with 5 U.S.C. 552b(c)(4), (5), (9)(B), and (10) respectively. The closed portion of the meeting is scheduled to begin at 10 a.m. and end at 6 p.m. on November 22. All other portions of the meeting will be open to the public.

Individuals and representatives of organizations who would like to offer comments and suggestions related to the Committee's affairs or the WTC Investigation are invited to request a place on the agenda. On November 22, 2004, approximately fifteen minutes will be reserved for public comments at the beginning of the open session. Speaking times will be assigned on a first-come, first-served basis. The amount of time per speaker will be determined by the number of requests received, but is likely to be no more than 3 to 5 minutes each. Questions from the public will not be considered during this period. Speakers who wish to expand upon their oral statements, those who had wished to speak but could not be accommodated on the agenda, and those who were unable to attend in person are invited to submit written statements to the National Construction Safety Team Advisory Committee, National Institute of

Standards and Technology, 100 Bureau Drive, MS 8611, Gaithersburg, Maryland 20899–8611, via fax at (301) 975–6122, or electronically by e-mail to *ncstac@nist.gov.*

All visitors to the NIST site are required to pre-register to be admitted. Anyone wishing to attend this meeting must register by close of business Wednesday, November 17, 2004, in order to attend. Please submit your name, time of arrival, e-mail address and phone number to Stephen Cauffman and he will provide you with instructions for admittance. Non-U.S. citizens must also submit their country of citizenship, title, employer/sponsor, and address. Mr. Cauffman's e-mail address is *stephen.cauffman@nist.gov* and his phone number is (301) 975–6051.

Dated: November 2, 2004.

Hratch G. Semerjian,

Acting Director.

[FR Doc. 04–24754 Filed 11–4–04; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 041014282–4282–01]

Hydrologic Research

AGENCY: National Weather Service (NWS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice and request for proposals.

SUMMARY: This program represents a NOAA/NWS effort to create a cost-effective continuum of basic and applied research through collaborative research between the Hydrology Laboratory of the NWS Office of Hydrologic Development and academic communities or other private or public agencies which have expertise in the hydrometeorologic, hydrologic, and hydraulic routing sciences. These activities will engage researchers and students in basic and applied research to improve the scientific understanding of river forecasting. Ultimately these efforts will improve the accuracy of forecasts and warnings of rivers and flash floods by applying scientific knowledge and information to NWS research methods and techniques, resulting in a benefit to the public. NOAA's program is designed to complement other agency contributions to that national effort. The Office of Hydrologic Development requests that interested organizations prepare a pre-proposal, to be followed by a full-proposal. Pre-proposal submission is required in order to submit a full proposal.

DATES: Pre-proposals must be received by the NWS no later than 3 p.m., Eastern Standard Time, December 17, 2004. A notice of the review results will be sent, encouraging or discouraging full proposal submissions. The due date for the full proposal submission will be contained in the notice.

ADDRESSES: Pre-proposals may be submitted through electronic e-mail to *Pedro.Restrepo@noaa.gov*. Pre-proposals submitted in hard copy must be submitted by postal mail, commercial delivery service, or hand-delivery to Pedro Restrepo, NOAA/NWS; 1325 East-West Highway, Room 8346, phone number 301–713–0640, ext. 210; Silver Spring, Maryland 20910–3283. Full proposals should be submitted through Grants.gov APPLY, however, full proposals may be submitted in hard copy and sent to Pedro Restrepo, NOAA/NWS; 1325 East-West Highway, Room 8346, phone number 301–713–0640, ext. 210; Silver Spring, Maryland 20910–3283. The full text of the funding opportunity announcement for this NWS program can be accessed via the Grants.gov FIND Web site: *http://www.grants.gov*. This announcement will also be available at the NOAA Web site: *http://www.ofa.noaa.gov/%7Eamd/SOLINDEX.HTML* or by contacting the program official identified in **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Dr. Pedro Restrepo by phone at 301–713–0640 ext. 210, or fax to 301–713–0963, or via Internet at *Pedro.Restrepo@noaa.gov*.

SUPPLEMENTARY INFORMATION: This program represents a NOAA/NWS effort to create a cost-effective partnership through collaborative basic and applied research between the Hydrology Laboratory of the NWS Office of Hydrologic Development and academic communities or other private or public agencies which have expertise in the hydrometerologic, hydrologic, and hydraulic routing sciences. These activities will engage researchers and students in basic and applied research to improve the scientific understanding of river forecasting. Ultimately these efforts will improve the accuracy of forecasts and warnings of rivers and flash floods by applying scientific knowledge and information to NWS research methods and techniques, resulting in a benefit to the public. NOAA's program is designed to complement other agency contributions to that national effort. A detailed description for each program priority is in the funding opportunity announcement which can be accessed via the Grants.gov Web site, the NOAA Web site at *http://www.ofa.noaa.gov/%7Eamd/SOLINDEX.HTML*, or by contacting the program official identified in **FOR FURTHER INFORMATION CONTACT**.

Electronic Access

The full text of the funding opportunity announcement for this NWS program can be accessed via the Grants.gov FIND Web site. This announcement will also be available at the NOAA Web site: *http://www.ofa.noaa.gov/%7Eamd/SOLINDEX.HTML* or by contacting the program official identified under **FOR FURTHER INFORMATION CONTACT**. This **Federal Register** notice is available through the NOAA home page at: *http://www.noaa.gov/*.

Statutory Authority: 15 U.S.C. 313.

CFDA

11.462, Hydrologic Research.

Funding Availability

Proposals shall be prepared assuming an annual budget of no more than $125,000. It is expected that approximately four awards will be made, depending on availability of funds. This program announcement is for projects to be conducted by research investigators for a 1-year, 2-year, or 3-year period. When a proposal for a multi-year award is approved, funding will initially be provided for only the first year of the program.

Eligibility

Eligible applicants are Federal agencies, institutions of higher education, other nonprofits, commercial organizations, foreign governments, organizations under the jurisdiction of foreign governments, and international organizations, state, local and Indian tribal governments. Applications from non-Federal and Federal applicants will be competed against each other. Proposals selected for funding from non-Federal applicants will be funded through a project grant or cooperative agreement under the terms of this notice. Proposals selected for funding from NOAA scientists shall be effected by an intra-agency fund transfer. Proposals selected for funding from a non-NOAA Federal agency will be funded through an inter-agency transfer. PLEASE NOTE: Before non-NOAA Federal applicants may be funded, they must demonstrate that they have legal

authority to receive funds from another Federal agency in excess of their appropriation. Because this announcement is not proposing to procure goods or services from applicants, the Economy Act (31 U.S.C. 1535) is not an appropriate legal basis.

Cost Sharing Requirements

None.

Evaluation and Selection Procedures

NOAA published its agency-wide solicitation entitled ''Omnibus Notice Announcing the Availability of Grant Funds for Fiscal Year 2005'' for projects and fellowships/scholarship/internships for Fiscal Year 2005 in the **Federal Register** on June 30, 2004 (69 FR 39417). The evaluation criteria and selection procedures for projects contained in that omnibus notice are applicable to this solicitation. Copies of the notice are available on the Internet at: *http://www.ofa.noaa.gov%7Eamd/SOLINDEX.HTML*. A pre-proposal submission is required in order to submit a full proposal. The notice discouraging the submission of a full proposal does not preclude a full proposal submission.

Intergovernmental Review

Applications under this program are not subject to Executive Order 12372, ''Intergovernmental Review of federal programs.''

Limitation of Liability

In no event will NOAA or the Department of Commerce be responsible for proposal preparation costs if this program is cancelled because of other agency priorities. Publication of this announcement does not oblige NOAA to award any specific project or to obligate any available funds. Applicants are hereby given notice that funding for the Fiscal Year 2005 program is contingent upon the availability of Fiscal Year 2005 appropriations.

Universal Identifier

Applicants should be aware they are required to provide a Dun and Bradstreet Data Universal Numbering System (DUNS) number during the application process. See the October 30, 2002, **Federal Register**, (67 FR 66177) for additional information. Organizations can receive a DUNS number at no cost by calling the dedicated toll-free DUNS Number request line at 1–866–705–5711 or via the Internet at *http://www.dunandbradstreet.com*.

National Environmental Policy Act (NEPA)

NOAA must analyze the potential environmental impacts, as required by NEPA, for applicant projects or proposals which are seeking NOAA Federal assistance. Detailed information on NOAA compliance with NEPA can be found at the following Web site: *http://www.nepa.noaa.gov* including NOAA Administrative Order 216–6 for NEPA at *http://www.nepa.noaa.gov/NAO216l6lTOC.pdf*, and the Council on Environmental Quality implementation regulations at *http://ceq.eh.doe.gov/nepa/regs/ceq/toclceq.htm*. Consequently, as part of an applicant's package under the description of their program activities, applicants are required to provide detailed information on the activities to be conducted, locations, sites, species, and habitat to be affected, possible construction activities, and any environmental concerns that may exist (*e.g.*, the use and disposal of hazardous or toxic chemicals, introduction of nonindigenous species, impacts to endangered and threatened species, aquaculture projects, and impacts to coral reef systems). In addition to providing specific information that will serve as the basis for any required impact analysis, applicants may also be requested to assist NOAA in drafting an environmental assessment, if NOAA determines an assessment is required. Applicants will also be required to cooperate with NOAA in identifying and implementing feasible measures to reduce or avoid any identified adverse environmental impacts of their proposal. The failure to do so shall be grounds for the denial of an application.

The Department of Commerce Preaward Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of October 1, 2001 (66 FR 49917), as amended by the **Federal Register** notice published on October 30, 2002 (67 FR 66109), are applicable to this solicitation.

Paperwork Reduction Act

This document contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). The use of Standard Forms 424, 424A, 424B, and SF–LLL, and CD–346 has been approved by the Office of Management and Budget (OMB) under the respective control numbers 0348–0043, 0348–0044, 0348–0040, 0348–0046, and 0605–0001. Notwithstanding any other provision of law, no person is required to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number.

Executive Order 12866

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

Executive Order 13132 (Federalism)

It has been determined that this notice does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

Administrative Procedure Act/ Regulatory Flexibility Act

Prior notice and an opportunity for public comment are not required by the Administrative Procedure Act or any other law for rules concerning public property, loans, grants, benefits, and contracts (5 U.S.C. 553(a)(2)). Because notice and opportunity for comment are not required pursuant to 5 U.S.C. 553 or any other law, the analytical requirements for the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis has not been prepared.

Dated: October 29, 2004.

David L. Johnson,

Assistant Administrator for Weather Services.

[FR Doc. 04–24750 Filed 11–4–04; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 091604C]

Marine Mammals; File No. 878–1715–00

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

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that Daniel F. Cowan, M.D., The University of Texas Medical Branch, Galveston, Texas 77555–0555, has been issued a permit to acquire, import and export specimen samples for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376; and

Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432; phone (727)570–5301; fax (727)570–5320.

FOR FURTHER INFORMATION CONTACT: Jennifer Skidmore or Ruth Johnson, (301)713–2289.

SUPPLEMENTARY INFORMATION: On April 16, 2004, notice was published in the **Federal Register** (69 FR 20602) that a request for a scientific research permit to acquire, import and export samples taken from marine mammals of the Orders Pinnipedia (except walrus) and Cetacea had been submitted by the above-named applicant. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), the regulations governing endangered and threatened fish and wildlife (50 CFR parts 222–226), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), a final determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Dated: November 2, 2004.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 04–24756 Filed 11–4–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Government-Owned Invention; Available for Licensing

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The invention listed below is assigned to the United States Government as represented by the Secretary of the Navy and are available for licensing by the Department of the Navy. Patent application 10/945,573: ELECTROMAGNETIC WEAPON.

ADDRESSES: Requests for copies of the invention cited should be directed to the Naval Surface Warfare Center, Crane Div, Code 054, Bldg 1, 300 Highway 361, Crane, IN 47522–5001.

FOR FURTHER INFORMATION CONTACT: Mr. Brian Bailey, Naval Surface Warfare Center, Crane Div, Code 054, Bldg 1, 300 Highway 361, Crane, IN 47522–5001, telephone (812) 854–2378. To download an application for license, see: *http://www.crane.navy.mil/newscommunity/techtrans_CranePatents.asp.*

(Authority: 35 U.S.C. 207, 37 CFR Part 404)

Dated: October 25, 2004.

S.K. Melancon,

Paralegal Specialist, Office of the Judge Advocate General, Alternate Federal Register Liaison Officer.

[FR Doc. 04–24682 Filed 11–4–04; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Federal Interagency Coordinating Council Meeting (FICC)

AGENCY: Federal Interagency Coordinating Council, Education.

ACTION: Notice of a public meeting.

SUMMARY: This notice describes the schedule and agenda of a forthcoming meeting of the Federal Interagency Coordinating Council (FICC). Notice of this meeting is intended to inform members of the general public of their opportunity to attend the meeting. The FICC will engage in policy discussions related to educational research for young children with communication difficulties and their families. The meeting will be open and accessible to the general public.

DATE AND TIME: FICC Meeting: Thursday, December 2, 2004 from 9 a.m. to 4:30 p.m.

ADDRESSES: American Institutes for Research, 1000 Thomas Jefferson Street, NW., Conference Rooms B & C, 2nd Floor Washington, DC 20007.

FOR FURTHER INFORMATION CONTACT: Obral Vance, U.S. Department of Education, 550 12th Street SW., Room 4127, Washington, DC, 20202. Telephone: (202) 245–7584 (press 3). Individuals who use a telecommunications device for the deaf (TDD) may call (1–800) 877–8339.

SUPPLEMENTARY INFORMATION: The FICC is established under section 644 of the Individuals with Disabilities Education Act (20 U.S.C. 1444). The FICC is established to: (1) Minimize duplication across Federal, State and local agencies of programs and activities relating to early intervention services for infants and toddlers with disabilities and their families and preschool services for children with disabilities; (2) ensure effective coordination of Federal early intervention and preschool programs, including Federal technical assistance and support activities; and (3) identify gaps in Federal agency programs and services and barriers to Federal interagency cooperation. To meet these purposes, the FICC seeks to: (1) Identify areas of conflict, overlap, and omissions in interagency policies related to the provision of services to infants, toddlers, and preschoolers with disabilities; (2) develop and implement joint policy interpretations on issues related to infants, toddlers, and preschoolers that cut across Federal agencies, including modifications of regulations to eliminate barriers to interagency programs and activities; and (3) coordinate the provision of technical assistance and dissemination of best practice information.

Individuals who need accommodations for a disability in order to attend the meeting (*i.e.,* interpreting services, assistive listening devices, material in alternative format) should notify Obral Vance at (202) 245–7584 (press 3) or (1–800) 877–8339 (TDD) ten days in advance of the meeting. The meeting location is accessible to individuals with disabilities.

Summary minutes of the FICC meetings will be maintained and available for public inspection at the U.S. Department of Education, 550 12th Street SW., Room 4127, Washington, DC 20202, from the hours of 9 a.m. to 5 p.m., weekdays, except Federal Holidays.

Troy R. Justesen,

Acting Deputy Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 04–24681 Filed 11–4–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

President's Board of Advisors on Historically Black Colleges and Universities

AGENCY: President's Board of Advisors on Historically Black Colleges and Universities, Department of Education.

ACTION: Notice of an open meeting.

SUMMARY: This notice sets forth the schedule and agenda of the meeting of the President's Board of Advisors on Historically Black Colleges and Universities. This notice also describes the functions of the Board. Notice of this meeting is required by section 10(a)(2) of the Federal Advisory Committee Act and is intended to notify the public of its opportunity to attend.

Date: Wednesday, December 8, 2004.

Time: 9 a.m.–3 p.m.

Address: The Board will meet at the Marriott Atlanta Marquis Hotel and Resort, 265 Peachtree Center Avenue, Atlanta, GA 30303; phone: 404–521–000, fax: 404–586–6299.

FOR FURTHER INFORMATION CONTACT: Dr. Leonard Dawson, Deputy Counselor, White House Initiative on Historically Black Colleges and Universities, 1990 K Street, NW., Washington, DC 20006; telephone: (202) 502–7889, fax: 202–502–7879.

SUPPLEMENTARY INFORMATION: The President's Board of Advisors on Historically Black Colleges and Universities is established under Executive Order 13256, dated February 12, 2002, and Executive Order 13316 dated September 17, 2003. The Board is established (a) to report to the President annually on the results of the participation of historically black colleges and universities (HBCUs) in Federal programs, including recommendations on how to increase the private sector role, including the role of private foundations, in strengthening these institutions, with particular emphasis on enhancing institutional planning and development, strengthening fiscal stability and financial management, and improving institutional infrastructure, including the use of technology, to ensure the long-term viability and enhancement of these institutions; (b) to advise the President and the Secretary of Education (Secretary) on the needs of HBCUs in the areas of infrastructure, academic programs, and faculty and institutional development; (c) to advise the Secretary in the preparation of an annual Federal plan for assistance to HBCUs in increasing their capacity to participate in Federal programs; (d) to provide the President with an annual progress report on enhancing the capacity to HBCUs to serve their students; and (e) to develop, in consultation with the Department of Education and other Federal agencies, a private sector strategy to assist HBCUs.

Agenda

The purpose of the meeting is to review and approve the Board's 2002–2003 Annual Report to the President and to discuss other items pertinent to the Board and the nation's HBCUs.

Additional Information

Individuals who will need accommodations for a disability in order to attend the meeting (*e.g.,* interpreting services, assistive listening devices, or material in alternative format) should notify ReShone Moore at (202) 502–7893, no later than Wednesday, December 1, 2004. We will attempt to meet requests for accommodations after this date, but, cannot guarantee their availability. The meeting site is accessible to individuals with disabilities.

An opportunity for public comment is available on Wednesday, December 8, 2004, between 2 p.m.–3 p.m. Those members of the public interested in submitting comments may do so at the address indicated above by Wednesday, December 1, 2004.

Records are kept of all Board proceedings and are available for public inspection at the Office of the White House Initiative on Historically Black Colleges and Universities, U.S. Department of Education, 1990 K Street, NW., Washington, DC 20006, during the hours of 8 a.m. to 5 p.m.

Rod Paige,

Secretary of Education, U.S. Department of Education.

[FR Doc. 04–24696 Filed 11–4–04; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Nevada

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Nevada Test Site. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, December 2, 2004, 7 p.m.–9 p.m.

ADDRESSES: Beatty Community Center, 100 ''A'' Avenue, Beatty, NV.

FOR FURTHER INFORMATION CONTACT: Kay Planamento, Navarro Research and Engineering, Inc., 2721 Losee Road, North Las Vegas, Nevada 89130, phone: 702–657–9088, fax: 702–295–5300, e-mail: *NTSCAB@aol.com.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Advisory Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

- Members of the Board's Underground Test Area Committee will provide a briefing to update stakeholders on their work related to groundwater issues at the Nevada Test Site.
- Board members will discuss technical committee work plans developed for FY 2005 and will provide and update related to national Environmental Management Site Specific Advisory Board activities.

Copies of the final agenda will be available at the meeting.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Kelly Kozeliski, at the telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available by writing to Kay Planamento at the address listed above.

Issued in Washington, DC, on November 1, 2004.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 04–24739 Filed 11–4–04; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Berwanger, Inc.

AGENCY: Office of the General Counsel, Department of Energy.

ACTION: Notice of intent to grant exclusive license.

SUMMARY: Notice is hereby given to an intent to grant to Berwanger, Inc., of Houston, TX, an exclusive or partially exclusive license to software entitled ''Thermal Safety Software'' (TSS), developed under ISTC project # 1498. The United States Government, as the exclusive licensee to distribute the software for commercial purposes in the United States, has the right to sublicense the software. A Notice to the effect that the computer software was available for license appeared in the **Federal Register**, October 5, 2004 (69 FR 59585).

DATES: Written comments or nonexclusive license applications are to be received at the address listed below no later than December 6, 2004.

ADDRESSES: Office of the Assistant General Counsel for Technology Transfer and Intellectual Property, U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: John T. Lucas, Office of the Assistant General Counsel for Technology Transfer and Intellectual Property, U.S. Department of Energy, Forrestal Building, Room 6F–067, 1000 Independence Ave., SW., Washington, DC 20585; Telephone (202) 586–2939.

SUPPLEMENTARY INFORMATION: 35 U.S.C. 209 provides federal agencies with authority to grant exclusive licenses in federally-owned inventions which are or may be patentable, if, among other things, the agency finds that the public will be served by the granting of the license. The statute requires that no exclusive license may be granted unless public notice of the intent to grant the license has been provided, and the agency has considered all comments received in response to that public notice, before the end of the comment period.

Berwanger, Inc., of Houston, TX has applied for an exclusive license to TSS and has plans for its commercialization. The exclusive license will be subject to a license and other rights retained by the U.S. Government, and other terms and conditions to be negotiated. DOE intends to negotiate to grant the license, unless, within 30 days of this notice, the Assistant General Counsel for Technology Transfer and Intellectual Property, Department of Energy, Washington, DC 20585, receives in writing any of the following, together with supporting documents:

(i) A statement from any person setting forth reasons why it would not be in the best interests of the United States to grant the proposed license; or

(ii) An application for a nonexclusive license to the software in which applicant states that if already has brought the invention to practical application or is likely to bring the software to practical application expeditiously.

The Department will review all timely written responses to this notice, and will proceed with negotiating the license if, after consideration of written responses to this notice, a finding is made that the license is in the public interest.

Issued in Washington, DC, on November 1, 2004.

Paul A. Gottlieb,

Assistant General Counsel for Technology Transfer and Intellectual Property.

[FR Doc. 04–24740 Filed 11–4–04; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6657–4]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act, as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 02, 2003 (69 FR 17403).

Draft EISs

ERP No. D–AFS–G65093–NM Rating LO, San Diego Range Allotment Project, Proposes to Revise Grazing Program, Santa Fe National Forest, Jemez Ranger District, Township 17–19 North, Range 1–3 East, Sandoval County, NM.

Summary: EPA has no objection to the selection of the preferred alternative.

ERP No. D–AFS–J65422–MT Rating EC2, West Side Reservoir Post-Fire Project, Proposed Implementation of Timber Salvage and Access Management Treatments, Flathead National Forest, Hungry Horse and Spotted Bear Ranger Districts, Flathead County, MT.

Summary: EPA supports actions that promote watershed restoration. However, EPA expressed environmental concerns because all actions alternatives, including the preferred, have the potential to cause adverse impacts to riparian area, soils, water quality, and the threatened grizzly bear. The final EIS should maximize decommissioning of road, restrict ORV use from wetlands and other sensitive habitats, provide large snags and downed material to improve habitat quality and continue to minimize new road construction.

ERP No. D–BLM–K65275–00 Rating LO, California Coastal National Monument Resource Management Plan, To Protect Important Biological and Geological Values: Islands, Rocks, Exposed Reefs, and Pinnacles above Mean High Tide, CA, OR and Mexico.

Summary: EPA has no objection to the proposed BalancedManagement Alternative.

ERP No. DS–GSA–G80000–TX Rating LO, Del Rio Port of Entry (POE), Increased Security Measures Associated with Phase II Expansion, Supplement to the 1992 Del Rio Border Patrol Station, Del Rio, Val Verde County, TX.

Summary: EPA has no objections to the proposed alternative.

Final EISs

ERP No. F–AFS–J70020–CO Upper Blue Stewardship Project, Vegetation Management, Travel Management, and Dispersed Camping Sites Designation, Implementation, U.S. Army COE 404 Permit, White River National Forest, Dillon Ranger District, Summit County, CO.

Summary: EPA's concerns were adequately addressed in the Final EIS; therefore, EPA has no objection to the proposed action.

ERP No. F–FHW–H40176–MO US 40/61 Bridge Location Study Over the Missouri River, Improvement of the Transportation System, section 9 of the Rivers and Harbor Act Permit, and U.S. Army COE section 10 and 404 Permits, Missouri River, St. Charles and St. Louis Counties, MO.

Summary: The Final EIS adequately addresses issues raised by EPA in the review of the Draft EIS for this action; therefore, EPA has no additional comments related to the bridge construction as described in the Final EIS.

ERP No. F–FHW–J40161–UT I–15, 31st Street in Ogden to 2700 North in Farr West, Reconstruction, Widening and Interchange Improvements, Funding and U.S. Army COE section 404 Permit, Weber County, UT.

Summary: EPA expressed concern about FHWA's responses to EPA's comments on the air quality analysis performed for the DEIS.

Amended Notice: ERP No. F–AFS–L65443–OR Biscuit Fire Recovery Project, Various Management Activities Alternatives, Implementation, The Rogue River and Siskiyou National Forests, Josephine and Curry Counties, OR.

Summary: The modified preferred alternative was well crafted to balance the need to salvage valuable wood, provide economic opportunities to the local community, and protect and restore the burn area. In addition to reducing the overall salvage acreage by a third, the modified preferred alternative includes additional riparian protection and has reduced salvage from

small openings within the LateSuccessional Reserves. The riparian buffers, culvert work, replanting, and benefits of decommissioning, closing, and stabilizing over 70 miles of roads should result in an overall, long term benefit to water quality. These changes address the significant concerns EPA raised in comments on the draft EIS. Revision of FR Notice Published on 9/3/2004: Correction to ERP Summary Paragraph.

Dated: November 2, 2004.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 04–24752 Filed 11–4–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6657–3]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *http://www.epa.gov/compliance/nepa/.*

Weekly receipt of Environmental Impact Statements

Filed October 25, 2004, through October 29, 2004,

Pursuant to 40 CFR 1506.9.

EIS No. 040504, Draft EIS, SFW, CA, Coachella Valley Multiple Species Habitat Conservation Plan (MSHCP), Santa Rosa and San Jacinto Mountains Trails Plan, Issuance of Incidental Take Permits, Riverside County, CA, Comment Period Ends: December 20, 2004, Contact: Julie Concannon (503) 231–6747.

EIS No. 040505, Draft EIS, USA, Battle Area Complex (BAX) and a Combined Arms Collective Training Facility (CACTF) Construction and Operation, U.S. Army Training Lands in Alaska, Comment Period Ends: December 20, 2004, Contact: Kevin Gardner (907) 384–3331.

EIS No. 040507, Final EIS, FAA, WV, Adoption-Aircraft Conversion for the 167th Air Wing (167 AW) of the West Virginia Air National Guard, converting C–130H Transport Aircraft to the Larges C–5 Transport Aircraft, Acquisition of Land via Lease, and Construction of Facilities on existing and acquired Parcel, Berkely County, WV, Contact: Andrew Brooks (718) 553–3356. Federal Aviation Administration has adopted the United States Air Force's #040347 filed 07–30–2004. FAA was a Cooperating Agency for the above final EIS. Recirculation of the document is not necessary under Section 1506.3(c) of the Council on Environmental Quality Regulations.

EIS No. 040508, Final EIS, FHW, UT, 11400 South Project, Proposed Improvement to the Transportation Network in the Southern Salt Lake Valley from 12300/12600 South to 10400/10600 South, and from Bangerter Highway to 700 East, Salt Lake City, Salt Lake County, UT, Wait Period Ends: December 20, 2004, Contact: Mike Morrow (801) 963–0078. Ext. 237.

EIS No. 040509, Final EIS, COE, LA, Programmatic EIS—Louisiana Coastal Area (LCA) Ecosystem Restoration Study, Implementation, Tentatively Selected Plan, Mississippi River, LA, Wait Period Ends: December 06, 2004, Contact: Dr. William Klein (504) 862–2540.

EIS No. 040510, Draft EIS, SFW, AK, Kodiak National Wildlife Refuges, Draft Revised Comprehensive Conservation Plan, Implementation, AK, Comment Period Ends: January 21, 2005, Contact: Mikel Haase (907) 786–3402.

EIS No. 040511, Draft EIS, CGD, CA, Cabrillo Port Liquefied Natural Gas (LNG) Deepwater Port, Construction and Operation an Offshore Floating Storage and Regasification Unit (FSRU), Application for License, Ventura and Los Angeles Counties, CA, Comment Period Ends: December 20, 2004, Contact: Ken Kusano (202) 267–1184.

Amended Notices

EIS No. 040412, Draft EIS, AFS, FL, Ocala National Forest Access Designation Process, Roads and Trail Systems Development, Implementation, Lake, Marion, and Putnam Counties, FL, Comment Period Ends: December 1, 2004, Contact: Will Ebaugh (850) 523–8557. Revision of **Federal Register** notice published on 09/03/04: CEQ Comment Period Ending 11/01/2004 has been Extended to 12/01/2004. Also, this document is available on the Internet at: *http://www.fs.fed.us/r8/florida/news/OcalaDEiS.shtml.*

EIS No. 040445, Final EIS, AFS, WY, ID, High Mountains Heli-Skiing (HMH) Project, Issuance of a New 5-Year Special Use Permit (SUP) To Continue Operating Guided Helicopter Skiing in Portions of the Bridger-Teton National Forest and Caribou-Targhee National Forest (CTNF), Teton and Lincoln Counties, WY and Teton and Bonneville Counties, ID, Wait Period Ends: October 25, 2004, Contact: Ray Spencer (307) 739–5400. Published FR–09–24–04—Retracted due to Noncompliance of Section 1506.9 of the Council on Environmental Quality Regulations.

EIS No. 040488, Final EIS, EPA, RI, MA, Rhode Island Region Long-Term Dredged Material Disposal Site Evaluation Project, Designation of One or More Long-Term Ocean Disposal Sites, RI and MA, Wait Period Ends: November 30, 2004, Contact: Olga Guza (617) 918–1542. Revision of **Federal Register** notice published on 10/22/2004: CEQ Comment Period Ending on 11/22/2004 has been Extended to 11/30/2004.

EIS No. 040491, Draft EIS, NIH, MA, National Emerging Infectious Diseases Laboratories, Construction of a National Biocontainment Laboratory, BioSquare Research Park, Boston University Medical Center Campus, Boston, MA, Comment Period Ends: January 3, 2005, Contact: Valerie Nottingham (301) 496–7775. Revision of **Federal Register** notice published on 10/22/2004: Correction to Contact Person Telephone Number.

Dated: November 2, 2004.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 04–24753 Filed 11–4–04; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

October 27, 2004.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the

information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction (PRA) comments should be submitted on or before January 4, 2005. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *Judith-B.Herman@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0056.

Title: Part 68, Connection of Terminal Equipment to the Telephone Network.

Form No.: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 58,520.

Estimated Time per Response: .05—24 hours.

Frequency of Response: On occasion reporting requirement, recordkeeping requirement, and third party disclosure requirement.

Total Annual Burden: 32,027 hours.

Total Annual Cost: 2,705,000.

Privacy Act Impact Assessment: Not applicable.

Needs and Uses: The purpose of 47 CFR part 68 is to protect the network from certain types of harm and interference to other subscribers. To ensure that consumers, providers of telecommunications, the Administrative Council, Telecommunications Certification Bodies (TCBs), and the Commission are able to trace products to the party responsible for placing terminal equipment on the market, it is essential to require manufacturers and suppliers to provide the information required by part 68.

OMB Control Number: 3060–1046.

Title: Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96–128, Order on Reconsideration.

Form No.: Not applicable.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 1,023 respondents; 4,854 annual responses.

Estimated Time Per Response: 100 hours.

Frequency of Response: Annual and quarterly reporting requirements, recordkeeping requirement and third party disclosure requirement.

Total Annual Burden: 485,400 hours.

Total Annual Cost: Not applicable.

Privacy Act Impact Assessment: Not applicable.

Needs and Uses: Last year, on October 3, 2003, the Commission issued a Report and Order (CC Docket 96–128/FCC 03–235) that required ''Completing Carriers'' to compensate Payphone Service Providers (PSPs) for each and every completed call using a coinless access number. The Report and Order defined Completing Carriers as the last facilities-based long distance carrier in a call path either an interexchange carrier or a switched-based reseller. On October 22, 2004, the Commission released this Order on Reconsideration (FCC 04–251), which does not change this compensation framework, but rather refines and builds upon its approach. The Commission provides guidance on the types of contracts that the Commission would deem to be reasonable methods of compensating PSPs, extends the time period that carriers much retain certain payphone records, and clarifies the rules' reporting, certification, and audit requirements.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–24746 Filed 11–4–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

October 27, 2004.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before December 6, 2004. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments regarding this Paperwork Reduction Act submission to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *Judith-B.Herman@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0508.

Title: Rewrite of Part 22.

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Individuals or households and business or other for-profit.

Number of Respondents: 44,127.

Estimated Time Per Response: .084—40 hours.

Frequency of Response: On occasion, semi-annual, annual and quarterly reporting requirements and recordkeeping requirement.

Total Annual Burden: 62,835 hours.

Total Annual Cost: $6,643,050.

Privacy Act Impact Assessment: Yes.

Needs and Uses: On February 12, 2004, the Commission released an Order on Reconsideration, in WT Docket No. 01–108, FCC 04–22, in which it affirmed

much of the conclusions made in the Report and Order. The Commission, however, reconsidered and adopted a proposal to permit existing cellular radiotelephone licensees to extend to adjacent unserved areas of less than fifty (50) square miles on a secondary basis without modifying their existing cellular geographic service area. Section 1.929 of the rules provides that an application or amendment is classified as minor or major. A carrier seeking to extend into adjacent unserved areas must generally seek approval from the Commission by filing a major modification. Pursuant to the Order on Reconsideration, a carrier that seeks to extend in adjacent unserved areas on a secondary basis need only file a minor amendment. The cellular licensee must indicate on FCC Form 601, Main Form, Item 7 that it is filing a minor amendment; and submit Schedules D and F of the FCC Form 601. Additionally, the Commission eliminated information collection requirements in Sections 22.130 and 22.323. Sections 1.949, 1.955, 1.957 and 22.946(a) are now included in this information collection.

OMB Control No.: 3060–0626.

Title: Regulatory Treatment of Mobile Services—Sections 90.168, 90.425 and 90.483.

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 2,985.

Estimated Time Per Response: 1–10 hours.

Frequency of Response: On occasion, annual and one-time reporting requirements, third party disclosure requirement, and recordkeeping requirement.

Total Annual Burden: 13,515 hours.

Total Annual Cost: $1,328,000.

Privacy Act Impact Assessment: N/A.

Needs and Uses: The Commission revised this information collection because changes that have occurred are due to the elimination of rule section requirements in Section 20.6(e)(3), which, as of January 1, 2003, were no longer effective. Further, Section 22.313 has been eliminated from this information collection and incorporated into the part 22 collection (above, OMB Control Number 3060–0508). Section 90.449 has been eliminated as duplicative of the requirements in 47 CFR Section 1.89 of the Commission's rules involving ''Notices of Violation''. Such notices are handled by the FCC's Enforcement Bureau and are processed on a case-by-case basis. Therefore, it does not meet the criteria for PRA requirements.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–24747 Filed 11–4–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

October 19, 2004.

SUMMARY: The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before December 6, 2004. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *Leslie.Smith@fcc.gov* or Kristy L. LaLonde, Office of Management and Budget (OMB), Room 10236 NEOB, Washington, DC 20503, (202) 395–3087 or via the Internet at *Kristy_L._LaLonde@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copy of the information collection(s) contact Les Smith at (202) 418–0217 or via the Internet at *Leslie.Smith@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0211.

Title: Section 73.1943, Political File.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 17,958 respondents.

Estimated Time per Response: 0.25 hours (multiple broadcasts annually).

Frequency of Response: Recordkeeping requirement.

Total Annual Burden: 112,238 hours.

Total Annual Cost: None.

Privacy Impact Assessment: No impact(s).

Needs and Uses: 47 CFR Section 73.1943 requires licensees of broadcast stations to keep and permit public inspection of a complete record (political file) of all requests for broadcast time made by or on behalf of candidates for public office, together with an appropriate notation showing the disposition made by the licensee of such requests and the charges made, if any, if the request is granted. The disposition includes the schedule of time purchased, when the spots actually aired, the rates charged, and the classes of time purchased. Also, when free time is provided for use by or on behalf of candidates, a record of the free time is provided is to be placed in the political file. The public uses the data to assess the money expended and time allotted to a political candidate and to ensure that equal access is afforded to other qualified candidates.

OMB Control Number: 3060–0500.

Title: Section 76.1713, Resolution of Complaints.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 10,750 respondents.

Estimated Time Per Response: 18 hours.

Frequency of Response: Recordkeeping requirement; Once yearly reporting requirement; Third party disclosure requirement.

Total Annual Burden: 182,750 hours.

Total Annual Cost: None.

Privacy Impact Assessment: No impact(s).

Needs and Uses: 47 CFR 76.1713 requires cable system operators to

advise subscribers at least once each calendar year of the procedures for resolution of complaints about the quality of television signals delivered. Cable system operators much maintain records on all such subscriber complaints and resolution of complaints for at least a one-year period.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–24748 Filed 11–4–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

October 26, 2004.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law No. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before December 6, 2004. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *Leslie.Smith@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Les Smith at (202) 418–0217 or via the Internet at *Leslie.Smith@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–XXXX.

Title: Rules and Regulations Implementing the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003, CG Docket No. 04–53, FCC 04–194.

Form Number: N/A.

Type of Review: New collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions.

Number of Respondents: 11,027,600.

Estimated Time per Response: 1–11 hours.

Frequency of Response: Recordkeeping; On occasion reporting requirements; Third party disclosure.

Total Annual Burden: 115,645,100 hours.

Total Annual Cost: $37,105,283.

Privacy Impact Assessment: No impact(s).

Needs and Uses: On August 12, 2004, the Commission released an *Order,* Rules and Regulations Implementing the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003, CG Docket No. 04–53, FCC 04–194, adopting rules to prohibit the sending of commercial messages to any address referencing and Internet domain name associated with wireless subscriber messaging services, unless the individual addressee has given the sender express prior authorization. The information collection requirements consist of 47 CFR Sections 63.3100 (a)(4), (d), (e) and (f).

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–24749 Filed 11–4–04; 8:45 am]

BILLING CODE 6712–10–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 98–67; DA 04–3352]

Telco Group, Inc. Files Petition for Declaratory Ruling or Waiver To Exclude International Revenues From the Revenue Base Used To Calculate Payment to the Interstate TRS Fund

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document seeks public comment on Telco Group, Inc. petition for declaratory Ruling or, in the alternative, a petition for waiver to exclude international revenues from the revenue base used to calculate payments to the Interstate TRS Fund.

DATES: Interested parties may file comments in this proceeding on or before November 26, 2004. Reply comments may be filed on or before December 10, 2004.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Dana Jackson, Consumer and Governmental Affairs Bureau, Disability Rights Office at (202) 418–2247 (voice), (202) 418–7898 (TTY), or e-mail at *Dana.Jackson@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's public notice DA 04–3352, released October 25, 2004. When filing comments, please reference CC Docket No. 98–67. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See* Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121, May 1, 1998. Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html.* Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comment to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit electronic comments by Internet e-mail. To get filing instructions, commenters should send an e-mail to *ecfs@fcc.gov,* and should include the following words in the body of the message, ''get form your e-mail address.'' A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by electronic media, by commercial overnight courier, or by first-class or overnight U.S. Postal Services mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive

hand-delivered or messenger-delivered paper filings or electronic media for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial and electronic media sent by overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Room TW–B204 Washington, DC 20554. Parties who choose to file by paper should also submit their comments on diskette. These diskettes should be submitted, along with three paper copies, to: Dana Jackson, Consumer and Governmental Affairs Bureau, Disability Rights Office, 445 12th Street, SW., Room CY–A626, Washington, DC 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using Word 97 or compatible software. The diskette should be accompanied by a cover letter and should be submitted in ''read only'' mode. The diskette should be clearly labeled with the commenter's name, proceeding (including the lead docket number in this case, CC Docket No. 98–67, type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase ''Disk Copy—Not an Original.'' Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, Best Copy and Printing (BCPI), Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. Pursuant to § 1.1206 of the Commission's rules, 47 CFR 1.1206, this proceeding will be conducted as a permit-but-disclose proceeding in which *ex parte* communications are subject to disclosure. The full text of this document and copies of any subsequently filed documents in this matter will be available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. This document and copies of subsequently filed documents in this matters may also be purchased from the Commission's duplicating contract, BCPI, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. Customers may contact BCPI, Inc. at their Web site *www.bcpiweb.com* or call 1–800–378–3160. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). This public notice can also be downloaded in Word or Portable Document Format (PDF) at: *http://www.fcc.gov/cgb/dro.*

Synopsis

On July 26, 2004, Telco Group, Inc. filed a petition for declaratory ruling or, in the alternative, a petition for waiver to exclude international revenues from the revenue base used to calculate payments to the Interstate TRS Fund. Telco Group, Inc. requests that the Commission exclude international revenues from the TRS Fund payment calculations at least for those carriers whose international revenues comprise a significant proportion of total interstate and international revenues. Telco Group, Inc. also requests a stay of its payment obligation pending the Commission's decision.

Federal Communications Commission.

Jay Keithley,

Deputy Chief, Consumer & Governmental Affairs Bureau.

[FR Doc. 04–24744 Filed 11–4–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 29, 2004.

A. Federal Reserve Bank of Chicago (Patrick Wilder, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Bank of Montreal, Toronto, Ontario, Canada; Harris Financial Corp., Chicago, Illinois; and Harris Bankcorp, Inc., Chicago, Illinois; to acquire 100 percent of the voting shares of Lake Commercial Corporation, Hammond, Indiana, and thereby indirectly acquire Mercantile Bancorp, Inc., Hammond, Indiana, and 8.6 percent of the voting shares of First State Bank of Porter, Porter, Indiana, and Mercantile National Bank of Indiana, Hammond, Indiana.

In connection with these applications, Lake Commercial Corporation, Hammond, Indiana, has applied to become a bank holding company through the acquisition of 100 percent of the voting shares of Mercantile Bancorp, Inc., Hammond, Indiana, and indirectly acquire Mercantile National Bank of Indiana, Hammond, Indiana, and 8.6 percent of the voting shares of First State Bank of Porter, Porter, Indiana.

Board of Governors of the Federal Reserve System, November 1, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–24702 Filed 11–4–04; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–10120]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare and Medicaid Services. In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* New Collection; *Title of Information Collection:* 1932 State Plan Amendment Template, State Plan Requirements and Supporting Regulations in 42 CFR 438.50; *Form No.:* CMS–10120 (OMB#0938–NEW); *Use:* The State Medicaid Agencies will complete the template. CMS will review the information to determine if the State has met all the requirements under 1932(1)(1)(A) and 42 CFR 438.50. Once all requirements are met, the State will be allowed to enroll Medicaid beneficiaries on a mandatory basis into managed care entities without section 1115 or 1915(b) waiver authority.; *Frequency:* On occasion; *Affected Public:* State, local, or tribal government; *Number of Respondents:* 56; *Total Annual Responses:* 10; *Total Annual Hours:* 100.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web site address at *http://www.cms.hhs.gov/regulations/pra/,* or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov,* or call the Reports Clearance Office at (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Christopher Martin, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: October 28, 2004.

John P. Burke, III,

Paperwork Reduction Act Team Leader, CMS Reports Clearance Officer, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development and Issuances.

[FR Doc. 04–24780 Filed 11–4–04; 8:45 am]

BILLING CODE 4120–03–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicine and Medicaid Services

[Document Identifier: CMS–R–306 and CMS–R–148]

Agency Information Collection Activities: Proposed Collection; Comment Request

Agency: Centers for Medicare and Medicaid Services.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Restraint and Seclusion Standards for Psychiatric Residential Treatment Facilities; *Use:* Psychiatric residential treatment facilities are required to report deaths, serious injuries and attempted suicides to State Medicaid Agency and Protection and Advocacy Organization. They are also required to provide residents restraint and seclusion policy in writing, and to document resident record of all activities involving use of restraint and seclusion. *Form Number:* CMS–R–306 (OMB#: 0938–0833); *Frequency:* On occasion; *Affected Public:* Business or other for-profit and Not-for-profit institutions; *Number of Respondents:* 500; *Total Annual Responses:* 2,600,000; *Total Annual Hours:* 877,750.

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Limitations on Provider Related Donations and Health Care Related Taxes; Limitation on payments to Disproportionate Share Hospitals; Medicaid and Supporting Regulations in 42 CFR 433.68, 433.74, and 447.272.; *Use:* This information collection is necessary to ensure compliance with Sections 1903 and 1923 of the Social Security Act for the purpose of preventing payment of federal financial participation on amounts prohibited by the statute. *Form Number:* CMS–R–148 (OMB#: 0938–0618); *Frequency:* Quarterly; *Affected Public:* State, Local or Tribal Gov't; *Number of Respondents:* 50; *Total Annual Responses:* 40; *Total Annual Hours:* 3,200.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web Site address at *http://www.cms.hhs.gov/regulations/pra/,* or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov*, or call the Reports Clearance Office on (410) 786–1326.

Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the CMS Paperwork Clearance Officer designated at the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development and Issuances, Attention: Melissa Musotto, Room C5–14–03, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: October 28, 2004.

John P. Burke, III,

Paperwork Reduction Act Team Leader, Office of Strategic Operations and Strategic Affairs, Division of Regulations Development and Issuances.

[FR Doc. 04–24781 Filed 11–4–04; 8:45 am]

BILLING CODE 4120–03–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Notice of Grant Award to Waimanalo Health Center for a Project Entitled, ''The Hauula Community Diabetes Screening Program''

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice of grant award.

SUMMARY: The Centers for Medicare & Medicaid Services has awarded a grant entitled ''The Hauula Community Diabetes Screening Program'' to the Waimanalo Health Center, 41–1347 Kalanianaole Highway, Waimanalo, Hawaii 96795, in response to an unsolicited application.

Purpose: The Waimanalo Health Center proposes to provide diabetes and related risk factor health screening as well as relevant health educational and behavioral intervention services to the geographically isolated, mostly-Samoan community of Hauula (pop. 3,651) on Oahu. Services will be targeted to its Samoan citizens but open to all residents of Hauula regardless of their ethnicity.

Total Amount of Award: $987,317.

Project Period: September 30, 2004, through March 30, 2006.

Sole Source Justification: This unsolicited proposal is responsive to the Senate Appropriations Committee's commitment to the concept of a demonstration project for American Samoans in Hawaii that will integrate social services, to include traditional health, preventive health, prevention and disease management, and address the health disparities among Native Hawaiians and other minority populations by utilizing the expertise of the Waimanalo Health Center. The grant will provide diabetes and related risk factor health screening, as well as relevant health educational and behavioral intervention services, to the geographically isolated, mostly-Samoan community of Hauula on Oahu, but project services will be made available to all Hauula residents regardless of their ethnicity. These services will help improve the administration and effectiveness of programs carried on or assisted under the Social Security Act and programs related thereto. The appropriation to the CMS research budget was increased to include funding to carry out this project.

FOR FURTHER INFORMATION CONTACT: Mary Kapp, Project Officer, Division of Beneficiary Research; Research and Evaluation Group; Office of Research Development, and Information, C3–19–07, 7500 Security Boulevard, Baltimore, MD 21244, (410) 786–0360, or Judith Norris, Grants Officer, OICS/AGG/CMS, C2–21–15, 7500 Security Boulevard, Baltimore, MD 21244, (410) 786–5130.

Authority: (Catalog of Federal Domestic Assistance Program No. 93.779 (CMS) Research, Demonstrations and Evaluations) Section 1110 of the Social Security Act.

Dated: October 29, 2004.

Mark B. McClellan,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 04–24765 Filed 11–4–04; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) notifies Federal agencies of the laboratories currently certified to meet the standards of Subpart C of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines). The Mandatory Guidelines were first published in the **Federal Register** on April 11, 1988 (53 FR 11970), and subsequently revised in the **Federal Register** on June 9, 1994 (59 FR 29908), on September 30, 1997 (62 FR 51118), and on April 13, 2004 (69 FR 19644).

A notice listing all currently certified laboratories is published in the **Federal Register** during the first week of each month. If any laboratory's certification is suspended or revoked, the laboratory will be omitted from subsequent lists until such time as it is restored to full certification under the Mandatory Guidelines.

If any laboratory has withdrawn from the HHS National Laboratory Certification Program (NLCP) during the past month, it will be listed at the end, and will be omitted from the monthly listing thereafter.

This notice is also available on the Internet at *http://workplace.samhsa.gov* and *http://www.drugfreeworkplace.gov.*

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh or Dr. Walter Vogl, Division of Workplace Programs, SAMHSA/CSAP, Room 2–1035, 1 Choke Cherry Road, Rockville, Maryland 20857; (240) 276–2600 (voice), (240) 276–2610 (fax).

SUPPLEMENTARY INFORMATION: The Mandatory Guidelines were developed in accordance with Executive Order 12564 and section 503 of Pub. L. 100–71. Subpart C of the Mandatory Guidelines, ''Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies,'' sets strict standards that laboratories must meet in order to conduct drug and specimen validity tests on urine specimens for Federal agencies. To become certified, an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification, a laboratory must participate in a quarterly performance testing program plus undergo periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are not to be considered as meeting the minimum requirements described in the HHS Mandatory Guidelines. A laboratory must have its letter of certification from HHS/SAMHSA (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Mandatory Guidelines dated April 13, 2004 (69 FR 19644), the following laboratories meet the minimum standards to conduct drug and specimen validity tests on urine specimens:

ACL Laboratories, 8901 W. Lincoln Ave., West Allis, WI 53227, (414) 328–7840/(800) 877–7016, (Formerly: Bayshore Clinical Laboratory).

ACM Medical Laboratory, Inc., 160 Elmgrove Park, Rochester, NY 14624, (585) 429–2264.

Advanced Toxicology Network, 3560 Air Center Cove, Suite 101, Memphis, TN 38118, (901) 794–5770/(888) 290–1150.

Aegis Analytical Laboratories, Inc., 345 Hill Ave., Nashville, TN 37210, (615) 255–2400.

Baptist Medical Center—Toxicology Laboratory, 9601 I–630, Exit 7, Little Rock, AR 72205–7299, (501) 202–2783, (Formerly: Forensic Toxicology Laboratory Baptist Medical Center).

Clinical Reference Lab, 8433 Quivira Rd., Lenexa, KS 66215–2802, (800) 445–6917.

Diagnostic Services Inc., dba DSI, 12700 Westlinks Dr., Fort Myers, FL 33913, (239) 561–8200/(800) 735–5416.

Doctors Laboratory, Inc., 2906 Julia Drive, Valdosta, GA 31602, (229) 671–2281.

DrugProof, Division of Dynacare/Laboratory of Pathology, LLC, 1229 Madison St., Suite 500, Nordstrom Medical Tower, Seattle, WA 98104, (206) 386–2661/(800) 898–0180, (Formerly: Laboratory of Pathology of Seattle, Inc., DrugProof, Division of Laboratory of Pathology of Seattle, Inc.).

DrugScan, Inc., P.O. Box 2969, 1119 Mearns Rd., Warminster, PA 18974, (215) 674–9310.

Dynacare Kasper Medical Laboratories*, 10150–102 St., Suite 200, Edmonton, Alberta, Canada T5J 5E2, (780) 451–3702/(800) 661–9876.
ElSohly Laboratories, Inc., 5 Industrial Park Dr., Oxford, MS 38655, (662) 236–2609.
Express Analytical Labs, 3405 7th Ave., Suite 106, Marion, IA 52302, (319) 377–0500.
General Medical Laboratories, 36 South Brooks St., Madison, WI 53715, (608) 267–6225.
Kroll Laboratory Specialists, Inc., 1111 Newton St., Gretna, LA 70053, (504) 361–8989/(800) 433–3823 (Formerly: Laboratory Specialists, Inc.).
LabOne, Inc., 10101 Renner Blvd., Lenexa, KS 66219, (913) 888–3927/(800) 873–8845 (Formerly: Center for Laboratory Services, a Division of LabOne, Inc.).
LabOne, Inc., d/b/a Northwest Toxicology, 1141 E. 3900 S., Salt Lake City, UT 84124, (801) 293–2300/(800) 322–3361 (Formerly: NWT Drug Testing, NorthWest Toxicology, Inc.; Northwest Drug Testing, a division of NWT Inc.).
Laboratory Corporation of America Holdings, 7207 N. Gessner Rd., Houston, TX 77040, (713) 856–8288/(800) 800–2387.
Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, (908) 526–2400/(800) 437–4986, (Formerly: Roche Biomedical Laboratories, Inc.).
Laboratory Corporation of America Holdings, 1904 Alexander Dr., Research Triangle Park, NC 27709, (919) 572–6900/(800) 833–3984 (Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group).
Laboratory Corporation of America Holdings, 10788 Roselle St., San Diego, CA 92121, (800) 882–7272 (Formerly: Poisonlab, Inc.).
Laboratory Corporation of America Holdings, 1120 Stateline Rd. West, Southaven, MS 38671, (866) 827–8042/(800) 233–6339 (Formerly: LabCorp Occupational Testing Services, Inc.; MedExpress/National Laboratory Center).
Marshfield Laboratories, Forensic Toxicology Laboratory, 1000 North Oak Ave., Marshfield, WI 54449, (715) 389–3734/(800) 331–3734.
MAXXAM Analytics Inc.*, 6740 Campobello Road, Mississauga, ON, Canada L5N 2L8, (905) 817–5700 (Formerly: NOVAMANN (Ontario) Inc.).
MedTox Laboratories, Inc., 402 W. County Rd. D, St. Paul, MN 55112, (651) 636–7466/(800) 832–3244.
MetroLab-Legacy Laboratory Services, 1225 NE 2nd Ave., Portland, OR 97232, (503) 413–5295/(800) 950–5295.
Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Dr., Minneapolis, MN 55417, (612) 725–2088.
National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, (661) 322–4250/(800) 350–3515.
One Source Toxicology Laboratory, Inc., 1213 Genoa-Red Bluff, Pasadena, TX 77504, (888) 747–3774 (Formerly: University of Texas Medical Branch, Clinical Chemistry Division; UTMB Pathology-Toxicology Laboratory).
Oregon Medical Laboratories, P.O. Box 972, 722 East 11th Ave., Eugene, OR 97440–0972, (541) 687–2134.
Pacific Toxicology Laboratories, 9348 DeSoto Ave., Chatsworth, CA 91311, (800) 328–6942 (Formerly: Centinela Hospital Airport Toxicology Laboratory).
Pathology Associates Medical Laboratories, 110 West Cliff Dr., Spokane, WA 99204, (509) 755–8991/(800) 541–7897, x7.
Physicians Reference Laboratory, 7800 West 110th St., Overland Park, KS 66210, (913) 339–0372/(800) 821–3627.
Quest Diagnostics Incorporated, 3175 Presidential Dr., Atlanta, GA 30340, (770) 452–1590/(800) 729–6432 (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories).
Quest Diagnostics Incorporated, 4770 Regent Blvd., Irving, TX 75063, (800) 824–6152 (Moved from the Dallas location on 03/31/01; Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories).
Quest Diagnostics Incorporated, 4230 South Burnham Ave., Suite 250, Las Vegas, NV 89119–5412, (702) 733–7866/(800) 433–2750 (Formerly: Associated Pathologists Laboratories, Inc.).
Quest Diagnostics Incorporated, 400 Egypt Rd., Norristown, PA 19403, (610) 631–4600/(877) 642–2216 (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories).
Quest Diagnostics Incorporated, 506 E. State Pkwy., Schaumburg, IL 60173, (800) 669–6995/(847) 885–2010 (Formerly: SmithKline Beecham Clinical Laboratories; International Toxicology Laboratories).
Quest Diagnostics Incorporated, 7600 Tyrone Ave., Van Nuys, CA 91405, (818) 989–2520/(800) 877–2520 (Formerly: SmithKline Beecham Clinical Laboratories).
Scientific Testing Laboratories, Inc., 450 Southlake Blvd., Richmond, VA 23236, (804) 378–9130.
Sciteck Clinical Laboratories, Inc., 317 Rutledge Rd., Fletcher, NC 28732, (828) 650–0409.
S.E.D. Medical Laboratories, 5601 Office Blvd., Albuquerque, NM 87109, (505) 727–6300/(800) 999–5227.
South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601, (574) 234–4176, x276.
Southwest Laboratories, 4645 E. Cotton Center Boulevard, Suite 177, Phoenix, AZ 85040, (602) 438–8507/(800) 279–0027.
Sparrow Health System, Toxicology Testing Center, St. Lawrence Campus, 1210 W. Saginaw, Lansing, MI 48915, (517) 364–7400 (Formerly: St. Lawrence Hospital & Healthcare System).
St. Anthony Hospital Toxicology Laboratory, 1000 N. Lee St., Oklahoma City, OK 73101, (405) 272–7052.
Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 301 Business Loop 70 West, Suite 208, Columbia, MO 65203, (573) 882–1273.
Toxicology Testing Service, Inc., 5426 NW. 79th Ave., Miami, FL 33166, (305) 593–2260.
U.S. Army Forensic Toxicology Drug Testing Laboratory, 2490 Wilson St., Fort George G. Meade, MD 20755–5235, (301) 677–7085.

* The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. HHS, with the HHS' NLCP contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, HHS will recommend that DOT certify the laboratory (**Federal Register**, July 16, 1996) as meeting the minimum standards of the Mandatory Guidelines published in the **Federal Register** on April 13, 2004 (69 FR 19644). After receiving DOT certification, the laboratory will be included in the monthly list of HHS certified laboratories and participate in the NLCP certification maintenance program.

Anna Marsh,

Executive Officer, SAMHSA.

[FR Doc. 04–24517 Filed 11–4–04; 8:45 am]

BILLING CODE 4160–20–P

DEPARTMENT OF HOMELAND SECURITY

Citizenship and Immigration Services

[CIS No. 2336–04]

SES Performance Review Board

AGENCY: Citizenship and Immigration Services, DHS.

ACTION: Notice.

SUMMARY: This notice announces the appointment of the members of the U.S. Citizenship and Immigration Services (USCIS) Performance Review Board (PRB). The purpose of the PRB is to review and make recommendations concerning proposed performance appraisals, ratings, bonuses, pay adjustments, and other appropriate personnel actions for incumbents of Senior Executive Service (SES) positions for which the Director, USCIS, is the appointing authority. The Board will perform PRB functions for other Department of Homeland Security (DHS) SES positions if requested.

DATES: This notice is effective November 5, 2004.

FOR FURTHER INFORMATION CONTACT: Ms. Kathleen T. Hochman, Human Capital Officer, USCIS, Office of Administration, 20 Massachusetts Avenue, NW., Room 1016, Washington, DC 20529. Telephone (202) 272–1330.

SUPPLEMENTARY INFORMATION: Title 5 U.S.C. 4314(c) requires each federal

agency to establish one or more performance review boards to make recommendations, as necessary, in regard to the performance of senior executives within the agency. This notice announces the appointment of the members of the PRB for USCIS.

This notice does not constitute a significant regulatory action as are defined under section 3(f) of Executive Order 12866. Therefore, DHS has not submitted this notice to the Office of Management and Budget.

Further, because this notice is a matter of agency organization, procedure and practice, DHS is not required to follow the rulemaking requirements under the Administrative Procedure Act (5 U.S.C. 553).

Composition of USCIS PRB: The USCIS Performance Board shall consist of at least three members. In the case of an appraisal of a career appointee, more than half of the members shall consist of career appointees. The names and titles of the PRB members from USCIS are as follows: Joseph D. Cuddihy, Director, International Operations; David R. Howell, Deputy Chief, Policy and Strategy; Janis A. Sposato, Deputy Associate Director of Operations; and William R. Yates, Associate Director of Operations.

Dated: October 28, 2004.

Eduardo Aguirre,

Director, U.S. Citizenship and Immigration Services.

[FR Doc. 04–24716 Filed 11–4–04; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[USCG–2004–16877]

Cabrillo Port Liquefied Natural Gas Deepwater Port License Application; Draft Environmental Impact Statement

AGENCY: United States Coast Guard, DHS; and Maritime Administration, DOT.

ACTION: Notice of availability; notice of public meetings; and request for public comments.

SUMMARY: The Coast Guard and the Maritime Administration (MARAD) announce the availability of the joint draft environmental impact statement/environmental impact report (DEIS/DEIR) for Cabrillo Port Deepwater Port (DWP) License Application. The proposed Cabrillo Port liquefied natural gas (LNG) DWP would be located offshore of Ventura County, California. Since the applicant has also filed a California State Lands Commission (CSLC) land lease application for subsea pipelines through California State waters to deliver natural gas to shore, the DEIS/DEIR was prepared in accordance with a Memorandum of Agreement with the CSLC. The DEIS/DEIR will meet requirements consistent with the Deepwater Port Act (DWPA) of 1974, as amended (33 U.S.C. 1501 *et seq.*); the National Environmental Policy Act (NEPA Section 102[2][c]), as implemented by Council on Environmental Quality regulations (40 Code of Federal Regulations 1500 to 1508); Coast Guard policy (Commandant's Instruction M1675.1D); and the California Environmental Quality Act (CEQA) (California Public Resources Code Section 21000 *et seq.*) as implemented by the State CEQA Guidelines (14 California Code of Regulations Section 15000 *et seq.*). The Coast Guard and the MARAD solicit public input on this DEIS/DEIR.

DATES: The DEIS/DEIR will be available on October 29, 2004. Comments or related materials on the DEIS/DEIR must reach the Coast Guard on or before December 20, 2004 at 5 p.m. Eastern Standard Time. Public meeting dates are November 29, 2004 (Santa Clarita, CA), November 30, 2004 (Oxnard, CA) and December 1, 2004 (Malibu, CA).

ADDRESSES: The Coast Guard, MARAD and CSLC will conduct an open house, followed by a public meeting, to receive oral or written testimony at the following times and places:

Monday, November 29, 2004; The Century Room (Open House) and City Council Chambers (Public Meeting), 23920 Valencia Blvd., Santa Clarita, CA 91355.

Open House: 4:30 p.m. to 6:30 p.m.
Public Meeting: 7 p.m. to 9 p.m.

Tuesday, November 30, 2004; Oxnard Performing Arts Center, 800 Hobson Way, Oxnard, CA 93030.

Open House: 10:30 a.m. to 12 noon and 4 p.m. to 6 p.m.

Public Meetings: 1 p.m. to 2:30 p.m. (this meeting may be extended until 4 p.m. if necessary to take all public comments) and 6:30 p.m. to 9:30 p.m.

Wednesday, December 1, 2004; Webster Elementary School Cafetorium, Santa Monica-Malibu Unified School District, 3602 Winter Canyon, Malibu, CA 90265.

Open House: 4:30 p.m. to 6 p.m.
Public Meeting: 7 p.m. to 9:30 p.m.

All public meeting spaces will be wheelchair-accessible. Individuals may request special accommodations for the public meetings, such as real time Spanish translation and/or for the hearing impaired. Contact Cy Oggins, CSLC, at (916) 574–1884 or (*ogginsc@slc.ca.gov*) if special accommodations are required. Requests should be made as soon as possible but at least three (3) business days before the scheduled meeting. Include the name and telephone number of the contact person, the timelines for requesting accommodations, and a TDD number that can be used by individuals with hearing impairments.

It is not necessary to present comments at more than one meeting. One need not attend a meeting in order to comment. Comments may also be sent using only one of the following methods (identify the subject of the comment by using the docket number, USCG–2004–16877):

(1) Electronically through the Web site for the Docket Management System, at *http://dms.dot.gov.*

(2) By mail to the Docket Management Facility, U.S. Department of Transportation, Room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(3) By fax to the Docket Management Facility at (202) 493–2251.

(4) By delivery to Room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, from 9 a.m. to 5 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 366–9329.

(5) In addition to the Federal Docket Management system, comments may be made to the California State Clearinghouse by either mail or e-mail to Cy Oggins, California State Lands Commission, 100 Howe Avenue, Suite 100-South, Sacramento, CA 95825; (*ogginsc@slc.ca.gov*) or electronically through the project Web site at *http://www.cabrilloport.ene.com.* Include the State Clearinghouse number: 2004021107 and docket number: USCG–2004–16877. However, if one of these CSLC comment submittal methods is used, the comment will also be entered in the Federal Docket Management Facility.

Viewing Comments and Documents

To view comments, the DEIS/DEIR or other materials related to this license application, go to *http://dms.dot.gov* at any time and conduct a simple search using the following docket number: USCG–2004–16877. The Docket Management Facility maintains the Federal public docket for this project. Comments and material received from the public will become part of this

docket and will be available for inspection or copying in Room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, from 9 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review the Department of Transportation's Privacy Act Statement in the **Federal Register** (FR) published on April 11, 2000 (65 FR 19477), or you may visit *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Information pertaining to the proposed Cabrillo Port Project is available online at *http://dms.dot.gov, http://www.slc.ca.gov,* or *http://www.cabrilloport.ene.com.* Questions regarding the proposed Project, the license application process, or the DEIS/DEIR process may be directed to Mark Prescott, Coast Guard, (202) 267–0225 (*mprescott@comdt.uscg.mil*), Keith Lesnick, MARAD, (202) 366–1624 (*Keith.Lesnick@marad.dot.gov*) or Cy Oggins, CSLC, (916) 574–1884 (*ogginsc@slc.ca.gov*). Questions regarding viewing or submitting materials to the docket may be directed to Andrea M. Jenkins, Program Manager, Docket Operations, (202) 366–0271.

This public notice may be requested in an alternative format, such as Spanish translation, audiotape, large print, or Braille. Contact Cy Oggins, CSLC, (916) 574–1884 (*ogginsc@slc.ca.gov*), or visit *http://www.cabrilloport.ene.com.*

SUPPLEMENTARY INFORMATION:

Public Meetings and Request for Comments

As discussed under **ADDRESSES,** the Coast Guard, MARAD and CSLC plan to conduct public meetings related to comments on the DEIS/DEIR for the proposed project. The open houses will be informal opportunities to ask questions and receive information regarding the project. The public meetings will be structured to provide interested members of the public with an opportunity to present comments regarding the DEIS/DEIR. Speakers at the public meetings will be recognized in the following order: elected officials, public agencies, individuals or groups in the sign-up order, and anyone else who wishes to speak. Speakers may be asked to limit their oral comments to three (3) minutes in order to afford everyone an opportunity to speak. Written comments will also be accepted. The Coast Guard, MARAD and CSLC also encourage submittal of comments and related material regarding this notice using one of the methods described under **ADDRESSES**. During the public meeting, speakers or the audience will not be authorized to set up any multimedia equipment (audio/video and/or projectors) or displays that would disrupt testimony of others.

Background Information

A notice of application for the proposed Cabrillo Port DWP was published in the **Federal Register** on January 27, 2004 (69 FR 3934). Consult that notice for additional information regarding the proposed DWP, pipelines and the moorings that would be installed on the floor of the Pacific Ocean offshore of Ventura County, California.

A notice of intent to prepare the joint DEIS/DEIR was published in the **Federal Register** on February 27, 2004 (69 FR 9344). Consult that notice for additional information regarding the criteria that was utilized for the environmental analysis in the joint DEIS/DEIR.

Proposed Action

The Applicant proposes to construct and operate an offshore floating storage and regasification unit (FSRU) that would be moored in Federal waters approximately 12.2 nautical miles (14 statute miles or 22.4 kilometers) offshore of Ventura County in 2,900 feet (884 meters) of water. As proposed, LNG from the Pacific basin would be delivered by an LNG carrier to and offloaded onto, the FSRU; re-gasified; and delivered onshore via two new 21.1 mile (33.8-kilometer), 24 inch (0.6 meters) diameter natural gas pipelines laid on the ocean floor. These pipelines would come onshore at Ormond Beach near Oxnard, California to connect with the existing Southern California Gas Company intrastate pipeline system to distribute natural gas throughout the Southern California region. The facilities would be designed to deliver a peak of up to 0.8 billion cubic feet per day (bcfd) (22.7 million cubic meters).

The FSRU would store LNG in three Moss spherical tanks. Each tank would have a 24 million gallon (91,000 cubic meter) LNG storage capacity, and the total FSRU LNG storage capacity would be 72.1 million gallons (273,000 cubic meters). The FSRU would be permanently moored, and would use a turret system (a tower-like revolving structure) to allow the FSRU to weathervane (rotate) around a fixed point. The FSRU, which would be designed for loading LNG from a side-by-side, moored LNG tanker, would be shaped like another vessel, double-sided, double-bottomed, 938 feet (286 meters) long and 213 feet (65 meters) wide, with a displacement of approximately 190,000 deadweight tons.

Alternatives

The DEIS/DEIR examines and assesses the environmental impact of the project location and pipeline routes of the preferred, alternative and the no action alternative. In addition to the environmental impacts, the DEIS/DEIR considers approving, approving with conditions or not approving (no action alternative) the license application and operation.

As required by the National Environmental Policy Act, the Coast Guard will also analyze the no action alternative as a baseline for comparing the impacts of the proposed project. For the purposes of this project, the no action alternative is defined as not approving the Cabrillo Port DWP License Application.

Dated: October 28, 2004.

Howard L. Hime,

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

Richard Lolich,

Acting Director, Office of Ports and Domestic Shipping, U.S. Maritime Administration.

[FR Doc. 04–24641 Filed 11–4–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1569–DR]

Minnesota; Amendment No. 2 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 Minnesota (FEMA–1569–DR), dated October 7, 2004, and related determinations.

EFFECTIVE DATE: October 28, 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 Minnesota is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of October 7, 2004: Martin County 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. 04–24708 Filed 11–4–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1566–DR]

South Carolina; Amendment No. 2 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 South Carolina (FEMA–1566–DR), dated October 7, 2004, and related determinations.

EFFECTIVE DATE: October 26, 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 South Carolina 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 October 7, 2004:

Berkeley, Charleston, and Georgetown 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. 04–24707 Filed 11–4–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1570–DR]

Virginia; 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 Virginia (FEMA–1570–DR), dated October 18, 2004, and related determinations.

EFFECTIVE DATE: October 26, 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 Virginia is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of October 18, 2004: Botetourt County 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. 04–24709 Filed 11–4–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1570–DR]

Virginia; Amendment No. 2 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 Commonwealth of Virginia (FEMA–1570–DR), dated October 18, 2004, and related determinations.

DATES: *Effective Date:* September 30, 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 30, 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. 04–24710 Filed 11–4–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1558–DR]

West Virginia; 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 State of West Virginia (FEMA–1558–DR), dated September 20, 2004, and related determinations.

DATES: *Effective Date:* October 28, 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 West Virginia is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 20, 2004: Logan County for Individual Assistance (already designated 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. 04–24706 Filed 11–4–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4901–N–45]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: November 5, 2004.

FOR FURTHER INFORMATION CONTACT: Kathy Burruss, Department of Housing and Urban Development, Room 7262, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration.* No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: October 28, 2004.

Mark R. Johnston,

Director, Office of Special Needs Assistance Programs.

[FR Doc. 04–24440 Filed 11–4–04; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of a Draft Environmental Impact Report/ Environmental Impact Statement and Receipt of an Application for an Incidental Take Permit for the Coachella Valley Multiple Species Habitat Conservation Plan, Riverside County, CA

AGENCY: Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of availability and receipt of application.

SUMMARY: The Coachella Valley Association of Governments (CVAG), Coachella Valley Conservation Commission (to be formed prior to a permit decision), County of Riverside, Riverside County Flood Control and Water Conservation District, Riverside County Parks and Open Space District, Riverside County Waste Management District, Coachella Valley Water District, Imperial Irrigation District, California Department of Transportation, California Department of Parks and Recreation, Coachella Valley Mountains Conservancy, and the cities of Cathedral City, Coachella, Desert Hot Springs, Indian Wells, Indio, La Quinta, Palm Desert, Palm Springs, and Rancho Mirage (Applicants) have applied to the U.S. Fish and Wildlife Service (Service) for an incidental take permit pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). The Service is requesting public comment on the Draft Coachella Valley Multiple Species Habitat Conservation Plan (MSHCP), Draft Implementing Agreement, and Draft Environmental Impact Report/Environmental Impact Statement (EIR/EIS). The Applicants seek a permit to incidentally take 22 animal species and assurances for 5 plant species, including 17 unlisted species should any of them become listed, under the Act during the term of the proposed 75-year permit. The permit is needed to authorize take of listed animal species (including harm, injury, and harassment) during development in the approximately 1.1 million-acre (1,719 square-mile) Plan Area in the Coachella Valley of Riverside County, California.

A Draft Environmental Impact Statement, which is the Federal portion of the Draft EIR/EIS, has been prepared jointly by the Service and CVAG to analyze the impacts of the MSHCP and is also available for public review. The analyses provided in the Draft EIR/EIS are intended to inform the public of the proposed action, alternatives, and associated impacts; address public comments received during the scoping period for the Draft EIR/EIS; disclose the direct, indirect, and cumulative environmental effects of the proposed action and each of the alternatives; and indicate any irreversible commitment of resources that would result from implementation of the proposed action.

The Draft MSHCP also incorporates a Draft Public Use and Trails Plan which includes proposals that address non-motorized recreation activities on Federal and non-Federal lands in the Santa Rosa and San Jacinto Mountains. The Bureau of Land Management (BLM) is a Cooperating Agency in this

planning process and will be using this EIR/EIS to make decisions on BLM-administered public lands pertaining to trail use in the Santa Rosa and San Jacinto Mountains. These proposals constitute activity (implementation) level actions in furtherance of the *California Desert Conservation Area Plan* (1980), as amended, and the *Santa Rosa and San Jacinto Mountains National Monument Management Plan* (2004). The BLM will issue a separate record of decision regarding non-motorized recreation activities on public lands after public comments have been received and a Final Environmental Impact Statement has been prepared.

DATES: Written comments should be received on or before February 3, 2005.

ADDRESSES: Comments should be sent to Mr. Jim Bartel, Field Supervisor, U.S. Fish and Wildlife Service, Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Road, Carlsbad, California 92009. You may also submit comments by facsimile to (760) 431–9624.

Information, comments, and/or questions related to the EIR and the California Environmental Quality Act should be submitted to Mr. Jim Sullivan at CVAG, 73710 Fred Waring Drive, Suite 200, Palm Desert, California 92260; telephone (760) 346–1127; facsimile (760) 340–5949.

FOR FURTHER INFORMATION CONTACT: Ms. Therese O'Rourke, Assistant Field Supervisor, at the Carlsbad Fish and Wildlife Office [*see* **ADDRESSES**]; telephone (760) 431–9440.

SUPPLEMENTARY INFORMATION:

Availability of Documents

Documents available for public review include the permit applications, the Public Review Draft MSHCP and Appendices I (the Technical Appendix) and II (the Planning Agreement), the accompanying Draft Implementing Agreement, and the Draft EIR/EIS.

Individuals wishing copies of the documents should contact the Assistant Field Supervisor [*see* **FOR FURTHER INFORMATION CONTACT**], or by letter to the Carlsbad Fish and Wildlife Office [*see* **ADDRESSES**]. Copies of the MSHCP, Draft EIR/EIS, and Draft Implementing Agreement also are available for public review, by appointment, during regular business hours, at the Carlsbad Fish and Wildlife Office or at the Coachella Valley Association of Governments (*see* **ADDRESSES**). Copies are also available for viewing in each of the Applicant cities, in the Applicants' public libraries, the Riverside County Planning Departments, and on the World Wide Web at *http://www.cvmshcp.org.*

(1) Riverside County Planning Department: 4080 Lemon Street, 9th Floor, Riverside, California 92502.

(2) Riverside County Planning: 82675 Hwy 111, Room 209, Indio, California 92201.

(3) U.S. Bureau of Land Management: 690 Garnet Avenue, North Palm Springs, California 92258.

(4) City of Palm Springs: 3200 E. Tahquitz Canyon Way, Palm Springs, California 92262.

(5) City of Cathedral City: 68–700 Avenida Lalo Guerrero, Cathedral City, California 92234.

(6) City of La Quinta: 78–495 Calle Tampico, La Quinta, California 92253.

(7) City of Rancho Mirage: 69825 Highway 111, Rancho Mirage, California 92270.

(8) City of Palm Desert: 73–510 Fred Waring Drive, Palm Desert, California 92260.

(9) City of Indio: 100 Civic Center Mall, Indio, California 92201.

(10) City of Indian Wells: 44950 El Dorado Drive, Indian Wells, California 92210.

(11) City of Coachella: 1515 Sixth Street, Coachella, California 92236.

(12) City of Desert Hot Springs: 65950 Pierson Boulevard, Desert Hot Springs, California 92240.

(13) Cathedral City Public Library: 33520 Date Palm Drive, Cathedral City, California 92234.

(14) Coachella Branch Library: 1538 7th Street, Coachella Valley, California 92260.

(15) Desert Hot Springs Public Library: 1691 West Drive, Desert Hot Springs, California 92240.

(16) Indio Public Library: 200 Civic Center Mall, Indio, California 92201.

(17) Lake Tamarisk Branch Library: Lake Tamarisk Drive, Desert Center, California 92239.

(18) La Quinta Public Library: 78080 Calle Estado, La Quinta, California 92253.

(19) Mecca-North Shore Branch Library: 65250 Cahuilla, Mecca, California 92254.

(20) Palm Springs City Library: 300 South Sunrise Way, Palm Springs, California 92262.

(21) Rancho Mirage Public Library: 42–520 Bob Hope Drive, Rancho Mirage, California 92270.

(22) Riverside County Library: Palm Desert Branch, 73–300 Fred Waring Drive, Palm Desert, California 92260.

(23) Thousand Palms Library: 72–715 La Canada Way, Thousand Palms, California 92276.

Background Information

Section 9 of the Act and Federal regulation prohibit the ''take'' of fish and wildlife species federally listed as endangered or threatened. Take of federally listed fish or wildlife is defined under section 1532(19) of the Act as including to ''harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.'' Harm includes significant habitat modification or degradation that actually kills or injures listed wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, and sheltering (50 CFR 17.3(c)). Under limited circumstances, the Service may issue permits to authorize incidental take; *i.e.*, take that is incidental to, and not the purpose of, otherwise lawful activity. Although take of plant species is not prohibited under the Act, and therefore cannot be authorized under an incidental take permit, plant species are proposed to be included on the permit in recognition of the conservation benefits provided to them under the MSHCP. Regulations governing incidental take permits for threatened and endangered species are found in 50 CFR 17.32 and 17.22, respectively.

The Applicants seek an incidental take permit and assurances for 22 animal species and assurances for 5 plant species. Collectively the 27 listed and unlisted species are referred to as ''Covered Species'' by the MSHCP and include 5 plant species (2 endangered, 3 unlisted); 2 insect species (both unlisted); 1 fish species (endangered); 1 amphibian species (endangered); 3 reptile species (2 threatened, 1 unlisted); 11 bird species (3 endangered, 8 unlisted); and 4 mammal species (1 endangered and 3 unlisted). The permit would provide take authorization for animal species identified by the MSHCP as ''Covered Species.'' Take authorized for listed covered animal species would be effective upon permit issuance. For currently unlisted covered animal species, take authorization would become effective concurrent with listing should the species be listed under the Act during the permit term.

The Draft MSHCP is intended to protect and sustain viable populations of native plant and animal species and their habitats in perpetuity through the creation of a reserve system, while accommodating continued economic development and quality of life for residents of the Coachella Valley. The Southern California Association of Governments estimates that in the year 2020 the Coachella Valley will be home to approximately 518,481 people. This represents nearly double the Valley's present population and housing stock. Another study by the California Department of Finance estimates that

Riverside County, currently the fastest growing county in the state, will continue to grow to 3.5 million people by 2030 and 4.5 million people by 2040.

The Draft MSHCP plan area encompasses approximately 1.1 million acres in the Coachella Valley and includes the following 9 incorporated cities: Cathedral City, Coachella, Desert Hot Springs, Indian Wells, Indio, La Quinta, Palm Desert, Palm Springs, and Rancho Mirage. It is one of two large, multiple-jurisdictional habitat planning efforts in Riverside County, each of which constitutes a ''subregional'' plan under the State of California's Natural Community Conservation Planning (NCCP) Act, as amended.

As described in the Draft MSHCP and the Draft EIR/EIS, the proposed MSHCP would provide for the creation of a reserve system that protects and manages approximately 725,780 acres of habitat for the Covered Species, including approximately 538,000 acres of existing conservation lands as of 2003 (482,000 acres as of 1996), 98,100 acres conserved as the local mitigation component as of 2003 (100,600 acres as of 1996), and 10,800 acres of other non-permittee public and quasi-public lands to be conserved. It is anticipated that as of 2003, 31,250 acres will be acquired by State and Federal agencies independent of the MSHCP (39,850 acres as of 1996). The financing plan for the local portion of the reserve assembly as of 2003 addresses 90,600 acres and includes a mitigation fee, tipping fee for use of waste management facilities, transportation mitigation fees, and other funding sources.

The Draft MSHCP identifies the proposed reserve system which will be established from lands within 21 conservation areas that are either adjacent or linked by biological corridors. The acquisition program for the reserve system, involving conservation of 140,150 acres is anticipated to occur over the first 30 years of the permit. When completed, the reserve system will include core habitat for Covered Species, essential ecological processes, and biological corridors and linkages to provide for the conservation of the proposed Covered Species.

The Draft MSHCP includes measures to avoid and minimize incidental take of the Covered Species, emphasizing project design modifications to protect both habitats and species' individuals. A monitoring and reporting plan would gauge the MSHCP's success based on achievement of biological goals and objectives and would ensure that conservation keeps pace with development. The Draft MSHCP also includes a management program, including adaptive management, which allows for changes in the conservation program if the biological species objectives are not met, or new information becomes available to improve the efficacy of the MSHCP's conservation strategy.

Covered Activities would include public and private development within the plan area that requires certain ministerial and discretionary actions by a permittee subject to consistency with MSHCP policies, regional transportation facilities, maintenance of and safety improvements on existing roads, the Circulation Elements of the permittees, maintenance and construction of flood control facilities, and compatible uses in the reserve. The Draft MSHCP makes a provision for the inclusion of special districts and other non-permittee entities in the permit with a certificate of inclusion.

The Public Use and Trails Plan element of the Draft MSHCP provides for coordinated management of trails on public lands involving members of the public, local jurisdictions, and State and other Federal agencies. The *Recovery Plan for Bighorn Sheep in the Peninsular Ranges, California* (USFWS 2000) recommends development and implementation of an interagency trails management plan to reduce or eliminate detrimental human activities within bighorn sheep habitat. The *California Desert Conservation Area Plan Amendment for the Coachella Valley* (December 2002) prescribes a combination of methods to avoid, reduce, or mitigate disturbance to bighorn sheep, including voluntary avoidance programs, closures, seasonal restrictions, and permit stipulations and mitigations.

The Draft EIR/EIS analyzes five other alternatives in addition to the proposed MSHCP Preferred Project Alternative described above including: an alternative that would not include the City of Palm Springs; an alternative that includes all existing local, State, and Federal agency land and private conservation land with additional management prescriptions; an alternative that protects core habitat, ecological processes, and biological corridors with less land than the preferred alternative; an expanded conservation alternative; and a no project alternative.

Pursuant to the June 10, 2004, order in *Spirit of the Sage Council* v. *Norton,* Civil Action No. 98–1873 (D. D.C.), the Service is enjoined from approving new section 10(a)(1)(B) permits or related documents containing ''No Surprises'' assurances until such time as the Service adopts new permit revocation rules specifically applicable to section 10(a)(1)(B) permits in compliance with the public notice and comment requirements of the Administrative Procedure Act. This notice concerns a step in the review and processing of a section 10(a)(1)(B) permit and any subsequent permit issuance will be in accordance with the Court's order. Until such time as the Service's authority to issue permits with ''No Surprises'' assurances has been reinstated, the Service will not approve any incidental take permits or related documents that contain ''No Surprises'' assurances.

Public Comments

The Service and CVAG invite the public to comment on the Draft MSHCP, Draft Implementing Agreement, and Draft EIR/EIS during a 90-day public comment period beginning the date of this notice. The comment period is opened for 90 days to eliminate the need for an extension subsequent to the close of the comment period. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public. This notice is provided pursuant to section 10(a) of the Act and Service regulations for implementing the National Environmental Policy Act of 1969 (40 CFR 1506.6). The Service will evaluate the application, associated documents, and comments submitted thereon to prepare a Final EIS. A permit decision will be made no sooner than 30 days after the publication of the Final EIS and completion of the Record of Decision.

Dated: October 22, 2004.

Russell Joe Bellmer,

Acting Deputy Manager, California/Nevada Operations Office, U.S. Fish and Wildlife Service.

[FR Doc. 04–24274 Filed 11–4–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–070–2824–DS–PJ04]

Fire, Fuels, and Related Vegetation Management Direction Draft Plan Amendment and Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: The Upper Snake River District of the Bureau of Land Management (BLM), located in south-

central and eastern Idaho, has prepared a Fire, Fuels, and Related Vegetation Management Direction Draft Plan Amendment and Environmental Impact Statement (Draft Plan Amendment/EIS) to consider management direction for fire, fuels, and related uses of vegetation. This planning process is in conformance with the National Environmental Policy Act (NEPA), the Federal Land Policy and Management Act (FLPMA), and the Federal Wildland Fire Management Policy (USDI *et al.* 1995, reviewed and updated in 2001). The Draft Plan Amendment/EIS is available for public review and comment.

DATES: Written comments will be accepted for 90 days following the date the Environmental Protection Agency publishes this Notice of Availability in the **Federal Register**. Future meetings and any other opportunities for public involvement will be announced at least 15 days in advance through public notices, media news releases, and/or mailings. In addition, information on public meetings will be posted on the Internet at *http://www.id.blm.gov/planning/fmda/index.htm.* To receive full consideration, comments must be postmarked no later than the last day of the written comment period. (The last day of the written comment period will be also be identified in the internet address above, after publication of the Notice in the **Federal Register**.)

ADDRESSES: Copies of the Draft Plan Amendment/EIS are available upon request from the Pocatello Field Office, Bureau of Land Management, 4350 Cliffs Drive, Pocatello, Idaho 83204, phone 208–478–6340, or at *http://www.id.blm.gov/planning/fmda/index.htm* via the Internet. You may submit written comments on the draft document by any of the following methods:

- *Mail:* FMDA Planning Team, Pocatello Field Office, Bureau of Land Management, 4350 Cliffs Drive, Pocatello, Idaho 83204.
- *E-mail: ID_USRD_FMDA@blm.gov.*
- *Fax:* 208–478–6376.

All public comments, including the names and mailing addresses of respondents, will be available for public review at the BLM Pocatello Field Office, in Pocatello, Idaho during regular business hours from 7:45 a.m. to 4:30 p.m., Monday through Friday, except holidays, and may be published as part of the final plan amendment/EIS. Individual respondents may request confidentiality. If you wish to withhold your name or address from public review or from disclosure under the Freedom of Information Act, please state this prominently at the beginning of your written correspondence. The BLM will honor such requests to the extent allowed by law. All submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Eric Limbach, FMDA Project Manager, 4350 Cliffs Drive, Pocatello, Idaho 83204, phone 208–478–6392, e-mail *Eric_Limbach@blm.gov.*

SUPPLEMENTARY INFORMATION: The Fire, Fuels, and Related Vegetation Management Direction Draft Plan Amendment/EIS was developed with broad public participation through a three year collaborative planning process. It addresses management on approximately 5.4 million acres of public land in the Upper Snake River District of the BLM, comprising the Burley, Idaho Falls, Pocatello, and Shoshone Field Offices in south-central and eastern Idaho.

The Draft Plan Amendment/EIS would incorporate the National Fire Plan's Cohesive Strategy and the Federal Wildland Fire Management Policy into existing BLM land use plans. The draft EIS displays the environmental effects of implementing those amended plans.

The purpose of the proposed fire management plan amendment is to:

- Establish fire management guidance, objectives, policies, and management actions;
- Identify resource goals and methods, including desired future condition of the fire-related vegetation resources, and management actions necessary to achieve objectives;
- Form the basis to update fire management plans and integrate them with allotment management plans, wildlife management plans, recreation management plans, Idaho Standards for Rangeland Health and Guidelines for Livestock Grazing, and other applicable plans, to the greatest extent possible; and
- Provide LUP level direction to enable incremental steps toward a long-term resource goal of conditions that minimize risk to human life and property and maintain or restore vegetation that is resistant to catastrophic wildfire.

Four alternatives are analyzed. Alternative A, the No Action alternative, reflects current Land Use Plan direction, emphasizes wildland fire suppression, and minimizes the use of wildland fire for resource benefit. Alternative B emphasizes the increased use of fire, including prescribed fire and wildland fire use to more closely approximate the historical role of fire and prepare sites for restoration treatments. Alternative C would fully implement the Cohesive Strategy from the National Fire Plan (treats more acres with prescribed fire than the other alternatives). Alternative D, the Preferred Alternative, focuses on maintaining or restoring the sagebrush steppe ecosystem and its associated wildlife species, including sage grouse.

Dated: August 12, 2004.

K Lynn Bennett,

Bureau of Land Management, Idaho State Director.

[FR Doc. 04–23793 Filed 11–4–04; 8:45 am]

BILLING CODE 4310–66–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Gulf of Mexico, Outer Continental Shelf, Central Planning Area, Oil and Gas Lease Sale 194 (2005) Environmental Assessment

AGENCY: Minerals Management Service.

ACTION: Notice of availability of an environmental assessment.

SUMMARY: The Minerals Management Service (MMS) has prepared an environmental assessment (EA) for proposed Gulf of Mexico Outer Continental Shelf (OCS) Central Planning Area (CPA) Lease Sale 194. In this EA, MMS reexamined the potential environmental effects of the proposed action and its alternatives based on any new information regarding potential impacts and issues that were not available at the time the Gulf of Mexico OCS Oil and Gas Lease Sales: 2003–2007; Central Planning Area Sales 185, 190, 194, 198, and 201; Western Planning Area Sales 187, 192, 196, and 200; Final Environmental Impact Statement; Volumes I and II (Multisale EIS) was completed in November 2002.

FOR FURTHER INFORMATION CONTACT: Minerals Management Service, Gulf of Mexico OCS Region, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, Mr. Dennis Chew, telephone (504) 736–2793.

SUPPLEMENTARY INFORMATION: The Multisale EIS analyzed the effects of a typical lease sale by presenting a set of ranges for resource estimates, project exploration and development activities, and impact-producing factors for any of the proposed CPA lease sales. The level of activities projected for proposed Lease Sale 194 falls within these ranges. No new significant impacts were identified for proposed Lease Sale 194

that were not already assessed in the Multisale EIS. Proposed CPA Lease Sale 194 is the third CPA lease sale scheduled in the Outer Continental Shelf Oil and Gas Leasing Program: 2002–2007. As a result, MMS determined that a supplemental EIS is not required and prepared a Finding of No New Significant Impact (FONNSI).

Public Comments: Interested parties may submit written comments on this EA/FONNSI within 30 days of this Notice's publication to the Regional Supervisor, Leasing and Environment (MS 5410), Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394. Comments should be enclosed in an envelope labeled ''Comments on CPA Lease Sale 194 EA/FONNSI.'' You may also send comments to the MMS e-mail address: *environment@mms.gov.* All comments received will be considered in the decisionmaking process for CPA Lease Sale 194.

EA Availability: To obtain a copy of the EA, you may contact the Minerals Management Service, Gulf of Mexico OCS Region, Attention: Public Information Office (MS 5034), 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana 70123–2394 (1–800–200–GULF). You may also view the EA on the MMS Web site at *http://www.gomr.mms.gov.*

Dated: September 13, 2004.

Chris C. Oynes,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 04–24761 Filed 11–4–04; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Gulf of Mexico, Outer Continental Shelf, Eastern Planning Area, Oil and Gas Lease Sale 197 (2005) Environmental Assessment

AGENCY: Minerals Management Service.

ACTION: Notice of availability of an environmental assessment.

SUMMARY: The Minerals Management Service (MMS) has prepared an environmental assessment (EA) for proposed Gulf of Mexico Outer Continental Shelf (OCS) Eastern Planning Area (EPA) Lease Sale 197. In this EA, MMS reexamined the potential environmental effects of the proposed action and its alternative based on any new information regarding potential impacts and issues that were not available at the time the Gulf of Mexico OCS Oil and Gas Lease Sales 189 and 197; Eastern Planning Area; Final Environmental Impact Statement; Volumes I and II (Multisale EIS) was completed in May 2003.

FOR FURTHER INFORMATION CONTACT: Minerals Management Service, Gulf of Mexico OCS Region, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, Mr. Dennis Chew, telephone (504) 736–2793.

SUPPLEMENTARY INFORMATION: The Multisale EIS analyzed the effects of a typical lease sale by presenting a set of ranges for resource estimates, project exploration and development activities, and impact-producing factors for either of the proposed EPA lease sales. The level of activities projected for proposed Lease Sale 197 falls within these ranges. No new significant impacts were identified for proposed Lease Sale 197 that were not already assessed in the Multisale EIS. Proposed EPA Lease Sale 197 is the second EPA lease sale scheduled in the Outer Continental Shelf Oil and Gas Leasing Program: 2002–2007. As a result, MMS determined that a supplemental EIS is not required and prepared a Finding of No New Significant Impact (FONNSI).

Public Comments: Interested parties may submit written comments on this EA/FONNSI within 30 days of this Notice's publication to the Regional Supervisor, Leasing and Environment (MS 5410), Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394. Comments should be enclosed in an envelope labeled ''Comments on EPA Lease Sale 197 EA/FONNSI.'' You may also send comments to the MMS e-mail address: *environment@mms.gov.* All comments received will be considered in the decisionmaking process for EPA Lease Sale 197.

EA Availability: To obtain a copy of the EA, you may contact the Minerals Management Service, Gulf of Mexico OCS Region, Attention: Public Information Office (MS 5034), 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana 70123–2394 (1–800–200–GULF). You may also view the EA on the MMS Web site at *http://www.gomr.mms.gov.*

Dated: September 13, 2004.

Chris C. Oynes,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 04–24762 Filed 11–4–04; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Notice of Availability of the Proposed Notice of Sale for Outer Continental Shelf (OCS) Oil and Gas Lease Sale 194 in the Central Gulf of Mexico (GOM)

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of availability of the proposed notice of sale for proposed sale 194.

SUMMARY: The MMS announces the availability of the proposed Notice of Sale for proposed Sale 194 in the Central GOM OCS. This Notice is published pursuant to 30 CFR 256.29(c) as a matter of information to the public. With regard to oil and gas leasing on the OCS, the Secretary of the Interior, pursuant to section 19 of the OCS Lands Act, provides the affected States the opportunity to review the proposed Notice. The proposed Notice sets forth the proposed terms and conditions of the sale, including minimum bids, royalty rates, and rentals.

DATES: Comments on the size, timing, or location of proposed Sale 194 are due from the affected States within 60 days following their receipt of the proposed Notice. The final Notice of Sale will be published in the **Federal Register** at least 30 days prior to the date of bid opening. Bid opening is currently scheduled for March 16, 2005.

SUPPLEMENTARY INFORMATION: The proposed Notice of Sale for Sale 194 and a ''Proposed Sale Notice Package'' containing information essential to potential bidders may be obtained from the Public Information Unit, Gulf of Mexico Region, Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394. Telephone: (504) 736–2519.

Dated: November 1, 2004.

R.M. ''Johnnie'' Burton,

Director, Minerals Management Service.

[FR Doc. 04–24763 Filed 11–4–04; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Notice of Availability of the Proposed Notice of Sale for Outer Continental Shelf (OCS) Oil and Gas Lease Sale 197 in the Eastern Gulf of Mexico (GOM)

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of availability of the proposed Notice of Sale for proposed Sale 197.

SUMMARY: The MMS announces the availability of the proposed Notice of Sale for proposed Sale 197 in the Eastern GOM OCS. This notice is published pursuant to 30 CFR 256.29(c) as a matter of information to the public. With regard to oil and gas leasing on the OCS, the Secretary of the Interior, pursuant to section 19 of the OCS Lands Act, provides the affected States the opportunity to review the proposed notice. The proposed notice sets forth the proposed terms and conditions of the sale, including minimum bids, royalty rates, and rentals.

DATES: Comments on the size, timing, or location of proposed Sale 197 are due from the affected States within 60 days following their receipt of the proposed notice. The final Notice of Sale will be published in the **Federal Register** at least 30 days prior to the date of bid opening. Bid opening is currently scheduled for March 16, 2005.

SUPPLEMENTARY INFORMATION: The proposed Notice of Sale for Sale 197 and a ''Proposed Sale Notice Package'' containing information essential to potential bidders may be obtained from the Public Information Unit, Gulf of Mexico Region, Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394. Telephone: (504) 736–2519.

Dated: November 1, 2004.

R.M. ''Johnnie'' Burton,

Director, Minerals Management Service.

[FR Doc. 04–24764 Filed 11–4–04; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before October 10, 2004.

Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St. NW., 8th floor, Washington DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by November 22, 2004.

Carol D. Shull,

Keeper of the National Register of Historic Places.

DISTRICT OF COLUMBIA

District of Columbia

Convent de Bon Secours, 4101 Yuma St. NW., Washington, 04001237.

Friendship Baptist Church, 734 First St. SW., Washington, 04001236.

GEORGIA

Brooks County

Bethlehem Primitive Baptist Church and Cemetery, Cty Rd. 125, Quitman, 04001239.

Dodge County

Peabody School, Herman Ave., Eastman, 04001238.

GUAM

Guam County

Talagi Pictograph Cave, Address Restricted, Andersen Air Force Base, 04001240.

MISSISSIPPI

Alcorn County

Corinth Clothing Manufacturing Company Building, Tate St. at Davis St., Corinth, 04001241.

MISSOURI

St. Louis County

Patterson, Elisha and Lucy, Farmstead Historic District, 15505 New Halls Ferry Rd., Florissant, 04001242.

PUERTO RICO

San Juan Municipality

Edificio del Valle, 1118 Ponce de Leon Ave., San Juan, 04001243.

VIRGINIA

Albemarle County

McCormick, Leander, Observatory, 600 McCormick Rd., Charlottesville, 04001245.

Amherst County

Tusculum, 2077 N. Amherst Hwy. (US 29), Amherst, 04001244

A request for *removal* has been made for the following resource:

SOUTH DAKOTA

Yankton County

Steingrube Place, (Northern and Central Townships of Yanktown MRA), 30089 452nd Ave., Wakonda, 03001539.

[FR Doc. 04–24778 Filed 11–4–04; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–25 (Second Review)]

Anhydrous Sodium Metasilicate From France

AGENCY: United States International Trade Commission.

ACTION: Termination of five-year review.

SUMMARY: The subject five-year review was initiated in September 2004 to determine whether revocation of the antidumping duty order on anhydrous sodium metasilicate from France would be likely to lead to continuation or recurrence of dumping and of material injury to a domestic industry. On October 21, 2004, the Department of Commerce published notice that it was revoking the order effective October 21, 2004 because ''no domestic party responded to the sunset review notice of initiation by the applicable deadline'' (69 FR 61789). Accordingly, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)), the subject review is terminated.

EFFECTIVE DATE: October 21, 2004.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202) 205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server *(http://www.usitc.gov).*

Authority: This review is being terminated under authority of Title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.69 of the Commission's rules (19 CFR 207.69).

Issued: November 1, 2004.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–24694 Filed 11–4–04; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–494]

In the Matter of Certain Automotive Measuring Devices, Products Containing Same, and Bezels for Such Devices; Notice of Commission Determination To Review in Part and on Review To Modify Administrative Law Judge Order No. 41; Commission Determination Not To Review Administrative Law Judge Order No. 42; Termination of the Investigation as to Respondent GSN Automotive, Inc., on the Basis of a Settlement Agreement and Consent Order; Issuance of Consent Order; Termination of the Investigation in Its Entirety; Schedule for Written Submissions on Remedy, the Public Interest, and Bonding Regarding the Respondents Found in Default

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review in part ALJ Order No 41. Order No. 41 denied complainant's motion for summary determination with respect to domestic industry, injury, and violation of section 337 and its request for recommendations concerning remedy, public interest, and bonding. On review, the Commission has determined to modify Order No. 41 by declining to adopt the ALJ's comments concerning Commission rules 210.42(a)(1)(i) and (ii), which comments are unnecessary to support the denial of complainant's motion. The Commission has further determined not to review Order No. 42, which terminated the investigation as to respondent GSN Automotive, Inc. (''GSN'') on the basis of a settlement agreement and consent order, as well as terminated the investigation in its entirety. The Commission also determined to call for written submissions on the issues of remedy, the public interest, and bonding regarding the respondents that have been found in default.

FOR FURTHER INFORMATION CONTACT: Michael Liberman, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–3115. Copies of the public version of the IDs and 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. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. General information concerning the Commission may also 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.*

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on June 20, 2003, based on a complaint filed by Auto Meter Products, Inc. (''Auto Meter'') of Sycamore, Illinois. 68 FR 37023. The complaint alleged violations of section 337 of the Tariff Act of 1930 in the importation and sale of certain automotive measuring devices, products containing same, and bezels for such devices, by reason of infringement of U.S. Registered Trademark Nos. 1,732,643 and 1,497,472, and U.S. Supplemental Register No. 1,903,908, and infringement of the complainant's trade dress. The complaint alleged that twelve respondents violated section 337. Subsequently, seven more firms were added as respondents.

On August 18, 2004, Auto Meter filed a paper styled ''Motion For Summary Determination With Respect to Domestic Industry, Injury, and Violation of Section 337 and Request for Recommendations Concerning Remedy, Public Interest, and Bonding.'' The motion requested that the ALJ recommend the issuance of a general exclusion order. At the time that the motion was filed, five of the nineteen respondents in this investigation had defaulted, *viz.:* Tenzo R, dba Autotech Systems and Accessories, of Santa Clarita, California; Auto Gauge (Taiwan) Co., Ltd., of Taipei, Taiwan; Dynamik Exhaust Industry Co., Ltd., of Taipei, Taiwan; Modern Work, Inc., of Taipei, Taiwan, and LPL Trans Trade Co. of Taipei, Taiwan (collectively, ''defaulted respondents''). All but one of the remaining respondents had settled with Auto Meter on the basis of consent orders and/or settlement agreements at the time that Auto Meter filed its motion for summary determination and request for recommendations. On August 25, 2004, complainant and the remaining respondent GSN filed a joint motion to terminate the investigation as to GSN based on a settlement agreement and consent order.

On September 15, 2004, the presiding administrative law judge (ALJ) issued Order Nos. 41 and 42. Order No. 41 denied complainant's motion for summary determination with respect to domestic industry, injury and violation of section 337 and denied complainant's request for recommendations concerning remedy, the public interest and bonding. In denying complainant's motion for summary determination the ALJ relied on his finding that complainant's motion was untimely under Commission rule 210.18(a). Order No. 42 terminated the investigation both as to respondent GSN on the basis of a settlement agreement and consent order, and in its entirety.

On September 27, 2004, Auto Meter filed a petition for review of the subject orders. On October 7, 2004, the Commission investigative attorneys (IAs) filed their response opposing Auto Meter's petition. On October 15, 2004, Auto Meter filed a motion for leave to reply to the IAs' response. On October 25, 2004, the IAs filed a motion for leave to file a surreply.

The Commission has determined to review in part the ALJ's Order No. 41 and to modify the Order by declining to adopt the Order's comments concerning Commission rules 210.42(a)(1)(i) and (ii), comments which the Commission finds unnecessary to support the ALJ's determination to deny complainant's motion for summary determination. The Commission has also determined to deny Auto Meter's motion for leave to file a reply to the IAs' response and the IAs' motion to file a surreply.

In connection with the final disposition of this investigation in regard to the defaulted respondents, the Commission may issue orders that could result in the exclusion of articles from entry into the United States, and/or issue cease and desist orders that could result in the defaulted respondents 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).

When 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. Complainant and the Commission's investigative attorneys 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.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in sections 210.16, 210.42, 210.43, 210.45 of the Commission's Rules of Practice and Procedure (19 CFR 210.16, 210.42, 210.43, 210.45).

Issued: November 1, 2004.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–24695 Filed 11–4–04; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–523]

In the Matter of Certain Optical Disk Controller Chips and Chipsets and Products Containing Same, Including DVD Players and PC Optical Storage Devices II; Notice of Commission Decision Not To Review an Initial Determination Granting a Motion To Amend the Complaint and Notice of Investigation To Add an Additional Respondent and Another Patent

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 the presiding administrative law judge's (''ALJ's'') initial determination (''ID'') (Order No. 5) granting a motion to amend the complaint and notice of investigation to add Sunext Technology Co., Ltd. of Hsin-Chu City, Taiwan (''Sunext'') as a respondent and certain claims of U.S. Patent No. 6,170,043 (''the '043 patent'').

FOR FURTHER INFORMATION CONTACT: Clara Kuehn, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3012. Copies of the public version of the ALJ's ID and all other 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 also 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 this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on August 31, 2004, based on a complaint filed on behalf of MediaTek Corporation (''complainant'') of Hsin-Chu City, Taiwan. 69 FR 53089 (Aug. 31, 2004). The complaint, as supplemented, alleged violations of section 337 in the importation into the United States, sale for importation, and sale within the United States after importation of certain optical disk controller chips and chipsets by reason of infringement of claims 1, 3–6, and 8–10 of U.S. Patent No. 5,970,031 and claims 1–4 of U.S. Patent No. 6,229,773. *Id.* The notice of investigation named two respondents: Zoran Corporation of Sunnyvale, CA and Oak Technology, Inc. of Sunnyvale, CA (collectively ''respondents''). *Id.*

On September 24, 2004, complainant moved pursuant to Commission rule 210.14(b) to amend the complaint and notice of investigation to add Sunext as a respondent and to add another patent, *viz.,* claims 1–2, 5–6, 15–19, and 21–22 of the '043 patent to the scope of the investigation. On October 6, 2004, the Commission investigative attorney filed a response supporting the motion. On the same day, respondents filed a response opposing the motion.

On October 7, 2004, the ALJ issued an ID (Order No. 5) granting the motion to amend the complaint and notice of investigation.

No party petitioned for review of the ID.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.42 of the Commission's Rules of Practice and Procedure (19 CFR 210.42).

By order of the Commission.

Issued: November 1, 2004.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–24693 Filed 11–4–04; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Public Input on Improving Agency Procedures

AGENCY: International Trade Commission.

ACTION: Notice of changes in agency procedures.

SUMMARY: On December 4, 2002, the United States International Trade Commission invited the public to provide input on specific ways in which it could improve its conduct of antidumping duty (AD) and countervailing duty (CVD) investigations (67 FR 72221, December 4, 2002). After consideration of the comments that were received, the Commission has made some changes to its internal procedures not requiring amendment to its rules.

FOR FURTHER INFORMATION CONTACT: Marilyn R. Abbott, Secretary, United States International Trade Commission, telephone (202) 205–2000. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal at (202) 205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*).

SUPPLEMENTARY INFORMATION: The preamble below is designed to give notice of certain non-regulatory changes in Commission procedures. The preamble begins with a discussion of the background leading up to these changes in procedures and includes a description of the changes in procedure (most of which are already being implemented) that do not require amendments to the Commission's Rules. In addition to these non-regulatory changes, the Commission has also decided to propose certain amendments to its Rules of Practice and Procedure, which are contained in a Notice of Proposed Rulemaking that has been published elsewhere in today's **Federal Register**.

Background

On December 4, 2002, the United States International Trade Commission published a notice in the **Federal Register** (67 FR 72221) inviting the public to provide input on specific ways in which it could improve its conduct of AD and CVD investigations under 19 U.S.C. 1671 *et seq*. The notice requested that such comments be filed within 90 days of publication of that notice in the **Federal Register**. Nine sets of comments were received, which suggested a number of changes to Commission rules, questionnaires, opinions, hearings and other practices.

The Commission appreciates the time and effort those who provided comments took to present their views, and believes that the comments have contributed to improving Commission procedures. The comments stimulated an internal review of the Commission's non-regulatory practices in AD and CVD proceedings. That internal review has in turn resulted in certain changes in practices. Some of the changes were not specifically suggested by any comment. As is its normal practice, the Commission will continue to evaluate its procedures on an ongoing basis and will consider modifying them as is appropriate. Although the December 4, 2002 Notice noted that a hearing on these proposals might be held, after reviewing the comments, the Commission decided that such a hearing would not be necessary.

Overview of the Changes in Commission Procedures in Antidumping Duty and CVD Investigations Not Requiring Amendment of the Rules

Preliminary Phase Investigations

The Commission has decided to adjust its procedures specific to preliminary phase investigations by providing for opening statements by petitioners and respondents at the outset of preliminary conferences to improve the focus of the conference and the questions posed by the staff to the parties. Because preliminary phase investigations do not involve the filing of written submissions or briefs prior to the conference, a brief opening statement by each side at the outset will enable those in attendance to know the principal contentions of each side. Further, in order to improve the ability of the parties to prepare for the conference, the Commission will endeavor to make the first release of business proprietary data obtained by the Commission under Administrative Protective Order (APO) at least two days prior to the conference when this is feasible.

Final Phase Investigations

For final phase investigations, there were several suggestions regarding time lines for issuance of the Commission's prehearing report and for the filing of prehearing briefs. Current Commission practice has been to issue the business proprietary version of the report five business days before prehearing briefs are due, with the public version issued soon thereafter. After due consideration of all proposals, the Commission will now seek to issue the business proprietary version of the prehearing report about ten business days prior to the hearing. As noted in the Notice of Proposed Rulemaking, which has been published in today's **Federal Register**, in light of the earlier release of the prehearing report, the Commission is also proposing to amend its rule to require prehearing briefs to be filed five business days before the hearing, rather than the four business days that is now the deadline. This will provide somewhat more time for the Commission, its staff, and all parties to consider the arguments and information presented in the prehearing report and briefs.

One comment requested that the Commission allow a party to file new factual information to rebut information presented for the first time by a party in its posthearing brief. Currently, pursuant to rule 207.30 and 19 U.S.C. 1677m(g), parties have an opportunity, at a date specified by the Commission (which is after the date for the submission of posthearing briefs), to submit final comments on factual information. Pursuant to the rule and the statute, new factual information contained in those final comments must be disregarded by the Commission. The suggestion that has been made would effectively require the Commission to allow an additional submission, between the time of the posthearing briefs and the submission of these final comments, for parties to provide factual information to rebut new information contained in other parties' posthearing briefs. This would in turn require that this time come at the expense of other activities in the already crowded period late in the investigation.

After careful consideration, it was decided that adding this additional opportunity to submit factual information this late in the investigation would not add a sufficient benefit to the Commission's investigation to justify shortening the time allotted to other events late in the investigation process. Throughout the course of an antidumping or countervailing duty investigation that proceeds to a final determination, parties to the Commission investigation(s) have at least nine opportunities to provide factual information or argument, or both, to the Commission: (1) Responses to the Commission's questionnaire in the preliminary phase of the investigation, (2) testimony and argument at the preliminary staff conference, (3) argument and information in postconference briefs, (4) written comments on draft questionnaires in the final phase of the

investigation, (5) responses to the Commission's questionnaire, (6) argument and information in prehearing briefs, (7) testimony and argument at the hearing, (8) argument and information in posthearing briefs, and information in response to Commissioner or staff questions and (9) final comments, though without submission of new factual data, after posthearing briefs have been submitted. (Petitioners have an initial additional opportunity to provide factual information in the form of the petition filed at the beginning of the investigation.)

The Commission understands the desire for parties to have ''one more opportunity'' to make their case, and particularly the desire to rebut factually the latest iteration of other parties' arguments or the latest data submissions by other parties or other persons. However, in light of the statutory deadlines in these investigatory proceedings, which the Commission cannot extend, adding another brief or opportunity for more factual submissions late in the investigative process would create problems in light of the need for the Commission and staff to evaluate, summarize, and consider the information and argument provided. The Commission also needs to allot sufficient time before the impending statutory deadline to write an opinion that explains its determination(s).

In light of this concern, the Commission wishes to restate its current practice and to clarify that normally no new factual information volunteered by a party after the filing of its posthearing brief will be considered by the Commission unless the information is in response to a specific request for that information by a Commissioner or member of the Commission staff. If a party comes into possession of some highly relevant fact that was not available for submission to the Commission earlier, it must seek leave to file such new factual information, justifying both why the ''new'' factual information could not have been submitted at an earlier date (normally, because it would represent such a recent occurrence that it could not have been provided earlier), and why the new information is sufficiently significant to warrant adding to the factual record of the case this late.

Such requests for leave will not be routinely granted. Simply wishing to rebut or respond to a factual assertion made in another party's posthearing brief is not a sufficient justification, nor is, for example, the proffered submission of a ''new'' affidavit that could have been provided at an earlier stage of the proceeding (unless the affidavit was specifically requested by a Commissioner or Commission staff).[1] In the past, the Commission has only on rare instances ''reopened'' the factual record on its own initiative to allow consideration of (and party comment on) late developments. For example, it did so in response to a significant correction by the Commerce Department of its final determination that resulted in the exclusion from its affirmative determination of a major subject exporter, and in response to a modification by the President of import relief measures under section 201 of the Trade Act of 1974 that potentially had a major effect on conditions of competition for the domestic industry.

Questionnaires

While questionnaires for specific investigations reflect the unique issues pertinent to individual investigations, the following are among the changes the Commission has made to its ''generic'' questionnaires:

—A checklist will be provided with U.S. producer and importer questionnaires to assist recipients in providing complete responses.

—When requesting capacity figures, questionnaires will request that capacity be allocated between products produced on the same equipment.

—Foreign producers will be requested to supply the basis for any projections of capacity, production, shipments, and inventories.

—In five-year review questionnaires to foreign producers, a question will be added seeking a comparison of prices in the U.S. with prices for the same product in foreign markets.

—Purchaser questionnaires will be mailed to purchasers listed in lost sale/revenue allegations by domestic producers. Also, purchasers listed in lost sales/revenue allegations by domestic producers will be asked whether the purchaser switched from a domestic supplier to a subject import supplier, or obtained a price reduction from a domestic supplier based on subject import competition during the period of investigation, even if the specific lost sale/revenue allegation could not be confirmed.

The Commission has also completed an internal review of its questionnaires, which resulted in the elimination of redundant or marginally relevant questions, and the revision of some ambiguous questions to clarify the data being sought. The Commission is also including a question in all questionnaires seeking comment on any changes that the recipient believes may improve the clarity, ease of response, or usefulness of the questionnaire.

Staff Reports

Reports will now include (in Chapter 1) a description of the major firms supplying the market for the product(s) at issue. In investigations involving multiple countries, it was suggested that the Commission report import pricing data on a weight-averaged cumulated basis in assessing the degree of underselling by subject imports. The Commission has decided to add this aggregated data, but will continue to provide country-specific pricing data as well in its reports.

Staff reports will also include more detailed information concerning lost sale/revenue allegations.

By Order of the Commission.

Issued: November 1, 2004.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–24703 Filed 11–4–04; 8:45 am]

BILLING CODE 7020–02–P

[1] It is well-recognized that agencies need to provide some cut-off for submissions so ''the debate does not go on indefinitely.'' *Avesta AB* v. *United States*, 689 F. Supp. 1173, 1188 (Ct. Int'l Trade 1988). *See also Chefline Corp.* v. *United States*, 219 F. Supp. 2d 1303, 1308, n. 5 (Ct. Int'l Trade 2002); *General Motors Corp.* v. *United States,* 827 F. Supp. 774, 781–783 (Ct. Int'l Trade 1993) (upholding the Commission's reliance on data submitted late in the proceeding when other parties were not allowed to respond, noting ''material injury investigations are not adversarial in a formal sense, and it is ultimately ITC's responsibility to evaluate the data it gathers.'').

DEPARTMENT OF JUSTICE

Coordinating Council on Juvenile Justice and Delinquency Prevention

[OJP (OJJDP) Docket No. 1410]

Notice of Meeting

AGENCY: Coordinating Council on Juvenile Justice and Delinquency Prevention.

ACTION: Notice of meeting.

SUMMARY: The Coordinating Council on Juvenile Justice and Delinquency Prevention (Council) is announcing the December 3, 2004, meeting of the Council.

DATES: Friday, December 3, 2004, 9 a.m.–12 p.m.

ADDRESSES: The meeting will take place at the Frances Perkins Department of Labor Building, Room N–4437, 200 Constitution Avenue, NW., Washington, DC. (Enter at 3rd and C Streets, NW.).

FOR FURTHER INFORMATION CONTACT: Timothy Wight, Designated Federal

Official for the Coordinating Council on Juvenile Justice and Delinquency Prevention, by telephone at 202–514–2190, or by e-mail at *Timothy.Wight@usdoj.gov*.

SUPPLEMENTARY INFORMATION: The Coordinating Council on Juvenile Justice and Delinquency Prevention, established pursuant to section 3(2)A of the Federal Advisory Committee Act (5 U.S.C. App. 2), will meet to carry out its advisory functions under Section 206 of the Juvenile Justice and Delinquency Prevention Act of 2002, 42 U.S.C. 5601, *et seq.* Documents such as meeting announcements, agendas, minutes, and interim and final reports will be available on the Council's Web page at *http://www.JuvenileCouncil.gov*. (You may also verify the status of the meeting at that Web address.)

Although designated agency representatives attend, the Council is composed of the Attorney General (Chair), the Secretary of Health and Human Services, the Secretary of Labor, the Secretary of Education, the Secretary of Housing and Urban Development, the Administrator of the Office of Juvenile Justice and Delinquency Prevention (Vice Chair), the Director of the Office of National Drug Control Policy, the Chief Executive Officer of the Corporation for National and Community Service, and the Assistant Secretary for Homeland Security, Immigrations and Customs Enforcement. Nine additional members are appointed by the Speaker of the House of Representatives, the Senate Majority Leader, and the President of the United States.

The agenda for this meeting will include: (a) Review of past Council actions, (b) discussion of the Final Report of the White House Task Force for Disadvantaged Youth, (c) discussion and Council recommendations regarding Federal agencies that hold juvenile offenders, nonoffenders, and undocumented juveniles, (d) the National Youth Anti-Drug Media Campaign, and (e) discussion and Council recommendations regarding youth employment training programs.

For security purposes, members of the public who wish to attend the meeting must pre-register by calling the Juvenile Justice Resource Center at 301–519–6473 (Daryel Dunston) or 301–519–5790 (Karen Boston), no later than November 23, 2004. To register online, please go to *http://www.JuvenileCouncil.gov/meetings.html*. Space is limited.

Note: Photo identification will be required for admission to the meeting.

Written Comments

Interested parties may submit written comments by November 23, 2004, to Timothy Wight, Designated Federal Official for the Coordinating Council on Juvenile Justice and Delinquency Prevention, at *Timothy.Wight@usdoj.gov*. The Coordinating Council on Juvenile Justice and Delinquency Prevention expects public statements presented at its meetings will not be repetitive of previously submitted statements. No oral comments will be permitted at this meeting.

Dated: November 1, 2004.

J. Robert Flores,

Vice-Chair, Coordinating Council on Juvenile Justice and Delinquency Prevention.

[FR Doc. 04–24698 Filed 11–4–04; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–55,789]

Boston Scientific, Murrieta, CA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on October 14, 2004 in response to a worker petition filed by a company official on behalf of workers at Boston Scientific, Murrieta, California.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 22nd day of October, 2004.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E4–3028 Filed 11–4–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–55,792]

Burner Systems International, Inc., Mansfield, OH; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on October 14, 2004 in response to petition filed by a company official on behalf of workers at Burner Systems International, Inc., Mansfield, Ohio.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

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

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E4–3029 Filed 11–4–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W 55,678]

C&D Technologies, LLC, Formerly CelesticaMilwaukie, OR; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on September 24, 2004 in response to a petition filed by a company official on behalf of workers at C&D Technologies, LLC, formerly Celestica, Milwaukie, Oregon.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 22nd day of October 2004.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E4–3023 Filed 11–4–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment And Training Administration

[TA–W–55,763]

Contractor's Engineer, LLCNeodesha, KS; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on October 8, 2004 in response to a petition filed by a company official on behalf of workers at Contractor's Engineer, LLC, Neodesha, Kansas (TA–W–55,763).

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 20th day of October 2004.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E4–3025 Filed 11–4–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–55,709]

Facilities Management and Maintenance Services of Conway, Inc. Conway, AR; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on September 30, 2004, in response to a petition filed by the state on behalf of workers at Facilities Management and Maintenance Services of Conway, Inc., Conway, Arkansas.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 20th day of October, 2004.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E4–3024 Filed 11–4–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–55,587]

General Electric Hickory Facility Conover, NC; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on September 9, 2004 in response to a petition filed on behalf of workers of General Electric, Hickory Facility, Conover, North Carolina.

The Department has deemed the petition invalid because the three petitioners belong to different business groups within the corporate structure of General Electric. When filed by workers, a petition must contain a defined worker group to be deemed acceptable for consideration of adjustment assistance eligibility. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 19th day of October, 2004.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E4–3021 Filed 11–4–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–55,662]

JDS Uniphase, Ewing, NJ; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on September 23, 2004 in response to a petition filed by a State agency representative on behalf of workers at JDS Uniphase, Ewing, New Jersey. Workers at the subject firm produced advanced fiber optics components.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 19th day of October 2004.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E4–3022 Filed 11–4–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–55,427]

Kincaid Furniture Taylorsville, NC; Notice of Negative Determination Regarding Application for Reconsideration

By application of September 23, 2004, a petitioner requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA). The denial notice was signed on September 8, 2004 and published in the **Federal Register** on September 23, 2004 (69 FR 57093).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) if in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The TAA petition, which was filed on behalf of workers at Kincaid Furniture, Taylorsville, North Carolina engaged in the production of upholstered furniture products (sofas and chairs), was denied because criterion (1) was not met. The investigation revealed no decline in employment during the relevant time period.

In the request for reconsideration, the petitioner alleges that the company official of the subject firm did not report accurate employment data and that there was a significant number of layoffs among the administrative support at Kincaid Furniture in Taylorsville, North Carolina. The petitioner also stated upon further contact that a big portion of production employees has been recently separated from the subject firm.

A company official was contacted in regards to these allegations. Two of the company officials confirmed the accuracy of the employment numbers provided by the subject firm during the original investigation and verified that employment at the subject firm increased by approximately fifteen percent during the relevant time period. The company official also stated that there were no recent separations at the subject firm as alleged by the petitioner.

The petitioner further alleges that because workers of several sister companies at various locations were granted certification for TAA, workers of the subject firm should also be eligible for TAA.

When assessing eligibility for TAA, the Department makes its determinations based on the requirements as outlined in Section 222 of the Trade Act. In particular, the Department considers the relevant employment data for the facility where the petitioning worker group was employed. As employment levels at the subject facility did not decline in the relevant period, criteria (I.A.) of Section (a)(2)(A) has not been met.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify

reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 27th day of October, 2004.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E4–3020 Filed 11–4–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W–55,782]

Kurdziel Industries, Inc. Sparta, MI; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on October 13, 2004 in response to a petition filed by a company official on behalf of workers at Kurdziel Industries, Inc., Sparta, Michigan.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 20th day of October, 2004.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc.E4–3026 Filed 11–4–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–55,785]

Polysort, LLC, Akron, OH; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on October 13, 2004 in response to a worker petition which was filed by a company official on behalf of workers at Polysort, LLC, Akron, Ohio.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC this 19th day of October, 2004.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E4–3027 Filed 11–4–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment And Training Administration

Proposed Information Collection RequestSubmitted for Public Comment and Recommendations; Disaster Unemployment Assistance Handbook and Operating Forms

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration (ETA) is soliciting comments concerning the proposed extension of the Disaster Unemployment Assistance (DUA) Handbook and Program Operating forms, including the ETA 90–2, Disaster Payment Activities under the Stafford Disaster Relief Act. A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Submit comments on or before January 4, 2004.

ADDRESSES: Send comments to Miriam Thompson, Office of Workforce Security, Division of Unemployment Insurance Operations, U.S. Department of Labor, Room S4231, 200 Constitution Avenue, NW., Washington, DC 20210, telephone: 202–693–3226 (this is not a toll-free number) or *thompson.miriam@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Public Law 100–707 (Sections 410 and 423) provides for benefit assistance to ''any individual unemployed as a result of a major disaster.'' The President is directed by the Act to provide DUA through agreements with states that in his judgment have an adequate system for administering DUA. Through agreements between the states and the Secretary of Labor, act as agents of the Secretary for the purpose of providing assistance to applicants in the various states who are unemployed as a result of a major disaster. Without the data obtained from these reports, ETA would have insufficient information about the program as it is administered by the states.

II. Desired Focus of Comments

Currently, the Department of Labor is soliciting comments concerning the proposed extension for the collection of the DUA Handbook and Program Operating forms. Comments are requested to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed above in the addressee section of this notice.

III. Current Actions

Type of Review: Extension without change of currently approved collection.

Agency: Employment and Training Administration.

Title: Employment and Training Administration (ETA) Disaster Unemployment Assistance (DUA) Handbook and Program Operating Forms, Including the ETA 90–2, Disaster Payment Activities under the Stafford Disaster Relief Act.

OMB Number: 1205–0051.

Agency Number(s): DUA Handbook and Program Operating Forms, including the ETA 90–2.

Affected Public: Individuals, State Governments.

Cite/Reference	Total respondents	Frequency	Total responses	Average time per response	Burden hours
ETA 90–2	50	6	300	1/6	50
Initial Application	11,000®	1	11,000	1/6	1,833
Supplemental to Initial Application (self-empl.)	3,800®	1	3,800	1/6	633
Weekly Claim	11,000®	*6	66,000	1/12	5,500
Notice of Overpayment	235	1	235	1/4	59
Cost/Expense Report	50	**	75	1/4	19
Final Report	50	1	50	1	50
Miscellaneous Recordkeeping	50	n/a	81,335	1/40	2,033
Totals	26,235		162,795		10,177

Total Burden Cost (capital/startup): $0.00.

Total Burden Cost (operating/maintaining): $ 0.00.

Comments submitted in response to this notice will be summarized and/or included in the request for the Office of Management and Budget's approval of the information collection request; they will also become a matter of public record.

Cheryl Atkinson,

Administrator, Office of Workforce Security.

[FR Doc. E4–3030 Filed 11–4–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c) (2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed revision of ''The Consumer Expenditure Surveys: The Quarterly Interview and the Diary.'' A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before January 4, 2005.

ADDRESSES: Send comments to Amy A. Hobby, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 4080, 2 Massachusetts Avenue, NE., Washington, DC 20212, telephone number 202–691–7628. (This is not a toll free number.)

FOR FURTHER INFORMATION CONTACT: Amy A. Hobby, BLS Clearance Officer, telephone number 202–691–7628. (See **ADDRESSES** section.)

SUPPLEMENTARY INFORMATION:

I. Background

The Consumer Expenditure (CE) Surveys collect data on consumer expenditures, demographic information, and related data needed by the Consumer Price Index (CPI) and other public and private data users. The continuing surveys provide a constant measurement of changes in consumer expenditure patterns for economic analysis and to obtain data for future CPI revisions. The CE Surveys have been ongoing since 1979.

The data from the CE Surveys are used (1) for CPI revisions, (2) to provide a continuous flow of data on income and expenditure patterns for use in economic analysis and policy formulation, and (3) to provide a flexible consumer survey vehicle that is available for use by other Federal Government agencies. Public and private users of price statistics, including Congress and the economic policymaking agencies of the Executive branch, rely on data collected in the CPI in their day-to-day activities. Hence, data users and policymakers widely accept the need to improve the process used for revising the CPI. If the CE Surveys were not conducted on a continuing basis, current information necessary for more timely, as well as more accurate, updating of the CPI would not be available. In addition, data would not be available to respond to the continuing demand from the public and private sectors for current information on consumer spending.

In the Quarterly Interview Survey, each consumer unit (CU) in the sample is interviewed every three months over five calendar quarters. The sample for each quarter is divided into three panels, with CUs being interviewed every three months in the same panel of every quarter. The Quarterly Interview Survey is designed to collect data on the types of expenditures that respondents can be expected to recall for a period of three months or longer. In general the expenses reported in the Interview Survey are either relatively large, such as property, automobiles, or major appliances, or are expenses which occur on a fairly regular basis, such as rent, utility bills, or insurance premiums.

The Diary (or recordkeeping) Survey is completed at home by the respondent family for two consecutive one-week periods. The primary objective of the Diary Survey is to obtain expenditure data on small, frequently purchased items which normally are difficult to recall over longer periods of time.

II. Desired Focus of Comments

The Bureau of Labor Statistics is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Action

The Consumer Expenditure Quarterly Interview Survey has recently undergone a thorough review since its conversion to a Computer Assisted Personal Interview (CAPI) collection instrument in April, 2003. The proposed changes from this review fall into two major categories: streamlining the current questions in several sections and updating several questions and sections to reflect the current marketplace.

In the streamlining category, the BLS deleted or collapsed obsolete questions. The BLS collapsed all types of cooking stoves into one category, collapsed rarely used fuel types to one code in the utility section, collapsed all types of televisions into one code, and deleted questions related to options on vehicles that are now common. The BLS also eliminated redundant questions in the two insurance sections simplifying the collection of policies.

To keep the survey current, question wording changed and some new codes were added. Examples of additions to existing questions include adding the word, ''minivan,'' to the vehicle screening questions; adding wording to questions and sections regarding online payments, automatic deductions, transit subsidies, and flexible spending accounts; and adding weight reduction centers to a membership question. Examples of adding additional codes include new categories for handheld personal music players, PDAs or personal digital assistants, video equipment and installation for vehicles, electronic toll passes like EZ Pass, Global Positioning System (GPS) services, and dating services. Similarly, a new section was added to capture different types of internet expenses such as membership to entertainment sites and the purchase of downloaded music or video files. These changes were made to keep the survey current with products available in the marketplace.

A full list of the proposed changes to the Quarterly Interview Survey is available upon request. The Diary Survey will have no changes for 2005.

Type of Review: Revision of a currently approved collection.

Agency: Bureau of Labor Statistics.

Title: The Consumer Expenditure Surveys: The Quarterly Interview and the Diary.

OMB Number: 1220–0050.

Form	Total respondents	Frequency	Total responses	Average time per response	Estimated total burden (hours)
CE Quarterly Interview CAPI instrument	10,157	4	40,628	70	47,400
Quarterly Interview Reinterview CPI instrument	3,283	1	3,283	15	821
CE Diary: Household Questionnaire CAPI instrument	7,530	3	22,590	25	9,413
CE Diary: CE–801, Record of Your Daily Expenses	7,530	2	15,060	105	26,355
CE Diary Reinterview CAPI instrument	954	1	954	15	239
Totals	17,687	.....	82,515	.....	84,228

Please note: Reinterview respondents are a subset of the original number of respondents for each survey. Therefore, they are not counted again in the totals. Also, for the Diary, the ''Record of Your Daily Expenses'' respondents are the same as the ''Household Questionnaire'' respondents.

Affected Public: Individuals or households.

Total Burden Cost (Capital/Startup): $0.

Total Burden Cost (Operating/Maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed in Washington, DC, this 25th day of October, 2004.

Cathy Kazanowski,

Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. 04–24732 Filed 11–4–04; 8:45 am]

BILLING CODE 4510–24–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Council on the Humanities Advisory Committee; Notice of Meeting

November 1, 2004.

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended) notice is hereby given the National Council on the Humanities will meet in Washington, DC on November 18–19, 2004.

The purpose of the meeting is to advise the Chairman of the National Endowment for the Humanities with respect to policies, programs, and procedures for carrying out his functions, and to review applications for financial support from and gifts offered to the Endowment and to make recommendations thereon to the Chairman.

The meeting will be held in the Old Post Office Building, 1100 Pennsylvania Avenue, NW., Washington, DC. A portion of the morning and afternoon sessions on November 18–19, 2004, will not be open to the public pursuant to subsections (c)(4), (c)(6) and (c)(9)(B) of section 552b of Title 5, United States Code because the Council will consider information that may disclose: trade secrets and commercial or financial information obtained from a person and privileged or confidential; information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; and information the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency action. I have made this determination under the authority granted me by the Chairman's Delegation of Authority dated July 19, 1993.

The agenda for the session on November 18, 2004 will be as follows:

Committee Meetings

(Open to the Public) Policy Discussion:

9–10:30 a.m.
Challenge Grants—Room 420
Education Programs—Room 507
Preservation and Access—Room 415
Research Programs—Room 315

(Closed to the Public) Discussion of specific grant applications and programs before the Council:

10:30 a.m. until Adjourned
Challenge Grants—Room 420
Education Programs—Room 507
Preservation and Access—Room 415
Research Programs—Room 315

2–3:30 p.m.
Heroes of History Lecture—Room 527

The morning session on November 19, 2004 will convene at 9 a.m., in the 1st Floor Council Room M–09, and will be open to the public, as set out below. The agenda for the morning session will be as follows:

A. Minutes of the Previous Meeting.

B. Reports.
1. Introductory Remarks.
2. Staff Report.
3. Congressional Report.
4. Budget Report.
5. Reports on Policy and General Matters.
a. Challenge Grants.
b. Education Programs.
c. Preservation and Access.
d. Research Programs.
e. Heroes of History Lecture.

The remainder of the proposed meeting will be given to the consideration of specific applications and closed to the public for the reasons stated above.

Further information about this meeting can be obtained from Daniel Schneider, Advisory Committee Management Officer, National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, or by calling (202) 606–8322, TDD (202) 606–8282. Advance notice of any special needs or accommodations is appreciated.

Michael McDonald,

Acting Advisory Committee, Management Officer.

[FR Doc. 04–24699 Filed 11–4–04; 8:45 am]

BILLING CODE 7536–01–P

NATIONAL SCIENCE FOUNDATION

President's Committee on the National Medal of Science; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: President's Committee on the National Medal of Science (1182).

Date and Time: Tuesday, November 23, 2004, 8:30 a.m.–2 p.m.

Place: Room 1235, National Science Foundation, 4201 Wilson Blvd, Arlington, VA.

Type of Meeting: Closed.

Contact Person: Mrs. Susan E. Fannoney, Program Manager, Room 1220, National Science Foundation, 4201 Wilson Blvd, Arlington, VA 22230. Telephone: 703/292–8096.

Purpose of Meeting: To provide advice and recommendations to the President in the selection of the 2004 National Medal of Science recipients.

Agenda: To review and evaluate nominations as part of the selection process for awards.

Reason for Closing: The nominations being reviewed include information of a personal nature where disclosure would constitute unwarranted invasions of personal privacy. These matters are exempt under 5 U.S.C. 552b(c)(6) of the Government in the Sunshine Act.

Dated: November 2, 2004.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 04–24734 Filed 11–4–04; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–390]

Tennessee Valley Authority; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–90, issued to Tennessee Valley Authority (the licensee), Docket No. 50–390, Watts Bar Nuclear Plant, Unit 1, Rhea County, Tennessee.

The proposed amendment would provide a one-time change to Function 4a, ''Reactor Coolant System (RCS) Hot Leg Temperature Indication,'' of Technical Specification (TS) Table 3.3.4–1. The proposed amendment would allow Watts Bar Unit 1 to continue operating until the next refueling outage (scheduled for the spring of 2005) with one out of four RCS hot leg temperature indications inoperable in the Auxiliary Control Room.

The reason for the exigency is the unanticipated failure of Temperature Indicator (TI) 1–TI–68–65C that provides indication in the Auxiliary Control Room (ACR) for the hot leg temperature of RCS Loop 4. Upon discovery of this condition, TVA entered Action A of TS 3.3.4. The 30-day allowed outage time for Action A of TS 3.3.4 will expire on November 20, 2004, at approximately 2:27 p.m. e.s.t. Based on the actions taken, the problem most likely exists in the instrumentation (transmitter or thermocouple) located within the Reactor Building's Polar Crane Wall. While the plant is operating, the radiological conditions in this area prohibit access by plant personnel. Therefore, the repairs cannot be safely implemented until the unit is shut down. If the proposed amendment is not granted, TS 3.3.4 would require that plant to be shut down by November 20, 2004, as repairs to the Loop 4 TI cannot be made while operating. The shutdown of the plant would result in an unnecessary operational transient since the indication parameters that remain available in the ACR are adequate to safely shut down the plant should an emergency arise.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

Pursuant to 10 CFR 50.91(a)(6) for amendments to be granted under exigent circumstances, the NRC staff must determine that the amendment request involves 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. 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?

No. The proposed TS change to allow operation with only 3 of 4 loop remote shutdown indications for Reactor Coolant System hot leg temperature until the Spring 2005 refueling outage is only applicable to the following conditions:

1. Fire or smoke in the Main Control Room (MCR),
2 An evacuation of the MCR due to some other (non-fire) unspecified reason, and
3. The design basis flood.

The inoperability of the one T(hot) indicator does not change the probability of occurrence for these events since it is not an accident initiator. The T(hot) indicators on the four loops are non-safety related equipment. During safe shutdown for a MCR evacuation event, design basis flood or fire related event, no fuel damage is postulated to occur, nor is the integrity of the reactor coolant pressure boundary or containment barriers postulated to be lost. Sufficient redundancy exists with the operational instrumentation to ensure that decay heat removal functions are not adversely impacted by this change. 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?

No. The proposed TS change does not alter the function of the Remote Shutdown System which is to achieve and maintain safe reactor shutdown from outside the MCR. The TS instrumentation and controls required will be such that sufficient capability is retained for

decay heat removal via the Steam Generators (SGs) to provide the indication required for safe shutdown capabilities. The change will not result in the installation of any new equipment or system. The T(hot) instrument is used for indication only and has no automatic control functions. No new operations procedures will be created by this change. Appropriate operational procedures will be updated to clarify that the Loop 4 T(hot) indication in the Auxiliary Control Room (ACR) is not available during the remainder of Cycle 6. No new operating conditions or modes will be created by this proposed change. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in margin of safety?

No. The radiological dose consequences are not impacted since this change is only applicable to the following conditions:

1. Fire or smoke in the Main Control Room (MCR),
2 An evacuation of the MCR due to some other (non-fire) unspecified reason, and
3. The design basis flood.

During safe shutdown for a MCR evacuation event, design basis flood or fire related event, no fuel damage is postulated to occur, nor is the integrity of the reactor coolant pressure boundary or containment barriers postulated to be lost. Sufficient redundancy exists with the operational instrumentation to ensure that decay heat removal functions are not adversely impacted by this 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.

The Commission is seeking public comments on this proposed determination. Any comments received within 14 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 14-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 14-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* (**Note:** Public access to ADAMS has been temporarily suspended so that security reviews of publicly available documents may be performed and potentially sensitive information removed. Please check the NRC Web site for updates on the resumption of ADAMS access.) If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner/requestor is aware and on which the petitioner/requestor intends to rely to establish those facts or expert opinion. The petitioner/requestor must provide 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, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide

when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Nontimely requests and/or petitions and contentions will not be entertained absent a determination by the Commission or the presiding officer of the Atomic Safety and Licensing Board that the petition, request and/or the contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309(a)(1)(i)–(viii).

A request for a hearing or a petition for leave to intervene must be filed by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; (2) courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff; (3) e-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, *HEARINGDOCKET@NRC.GOV;* or (4) facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff at (301) 415–1101, verification number is (301) 415–1966. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and it is requested that copies be transmitted either by means of facsimile transmission to (301) 415–3725 or by e-mail to *OGCMailCenter@nrc.gov.* A copy of the request for hearing and petition for leave to intervene should also be sent to General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11A, Knoxville, Tennessee 37902, attorney for the licensee.

For further details with respect to this action, see the application for amendment dated October 29, 2004, which is available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically 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.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, (301) 415–4737, or by e-mail to *pdr@nrc.gov.*

Dated in Rockville, Maryland, this 2nd day of November 2004.

For the Nuclear Regulatory Commission.

James J. Shea,

Project Manager, Section 1, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 04–24806 Filed 11–5–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 30–35059–CivP; ASLBP No. 04–834–01–CivP]

U.S. Inspection Services; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 Fed. Reg. 28,710 (1972), and the Commission's regulations, *see* 10 CFR 2.104, 2.300, 2.303, 2.309, 2.311, 2.318, and 2.321, notice is hereby given that an Atomic Safety and Licensing Board is being established to preside over the following proceeding: U.S. Inspection Services, Dayton, Ohio, (Civil Monetary Penalty).

This proceeding concerns a request for hearing submitted on September 24, 2004, by U.S. Inspection Services (USIS) in response to a September 1, 2004 notice (69 FR 54,816 (Sept. 10, 2004)), regarding a Notice Of Violation and Proposed Imposition of Civil Penalty associated with an inspection of USIS activities on September 12, 2003, that indicated USIS had not been conducting its activities in full compliance with NRC requirements.

The Board is comprised of the following administrative judges:

Ann M. Young, Chair, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Alex S. Karlin, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Dr. Peter S. Lam, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

All correspondence, documents, and other materials shall be filed with the administrative judges in accordance with 10 CFR 2.302.

Issued at Rockville, Maryland, this 1st day of November 2004.

G. Paul Bollwerk, III,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 04–24705 Filed 11–4–04; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of November 8, 2004:

An Open Meeting will be held on Tuesday, November 9, 2004 at 10 a.m. in Room 1C30, the William O. Douglas Room; a Closed Meeting will be held on Tuesday, November 9, 2004 at 11:30 a.m., and a Closed Meeting will be held on Wednesday, November 10, 2004 at 10 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), (9)(B), and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Atkins, as duty officer, voted to consider the items listed for the closed meeting in closed session and determined that no earlier notice thereof was possible.

The subject matter of the Open Meeting scheduled for Tuesday, November 9, 2004 will be:

1. The Commission will consider whether to publish for public comment a release setting forth the following proposals that relate to national securities exchanges and registered securities associations that are self-regulatory organizations (''SROs''). In particular, the Commission will consider whether to propose the following:

A. New Rules 6a–5 and 15Aa–3 under the Exchange Act, which would require SROs to implement certain minimum governance standards, including a majority independent board, fully independent Nominating, Governance, Audit, Compensation, and Regulatory Oversight Committees, and the separation of an SRO's regulatory functions from its market operations and other business interests (''Governance Standards Proposal'').

B. Amendments to Rules 6a–2, 15Aa–1, and Rule 15Aa–2 (redesignated Rule 15Aj–1) and to Form 1 and to new Form 2 (redesignated Form X–15AA–1) and repeal of Forms X–15Aj–1 and X–15Aj–2 under the Exchange Act, which would require the SROs to provide to the Commission, and publicly disclose, greater and more current information about their operation and structure, including their governance processes, regulatory programs, financial condition, and ownership (''Transparency Proposal'').

C. New Rule 17a–26 under the Exchange Act, which would require SROs to file with the Commission quarterly and annual reports containing specified information on the operation of their regulatory programs, including their examination, investigation, and enforcement activities (''SRO Reporting Proposal'').

D. New Rules 6a–5(o) and 15Aa–3(o), new Rule 17a–27, and amendments to Form 1 and new Form 2, which would require SROs to (i) restrict ownership and voting levels of individual members to no more than 20% and (ii) report significant accumulations of ownership by any person, and would require SRO members to report significant ownership interest information as well (''SRO Ownership Proposal'').

E. New Regulation AL, which would impose reporting and notification requirements on an SRO that lists or trades its own securities or those of its trading facilities or affiliates (''SRO Self-Listing Proposal'').

F. Amendment to Rule 17a–1 under the Exchange Act, which would codify the current practice of the SROs to keep at least one copy of their required books and records in the United States (''Books and Records Proposal'').

The Commission also will consider whether to publish for public comment a Concept Release, which would request and examine public comment on a variety of issues relating to the efficacy of the current self-regulatory system, including the possibility of implementing specified enhancements to the current SRO system or pursuing one of several possible alternative regulatory models.

For further information, please contact Geraldine Idrizi at (202) 942–7317 (Governance Standards Proposal); Susie Cho at (202) 942–0748 or Leah Mesfin at (202) 942–0196 (Transparency Proposal); Richard Holley at (202) 942–8086 (SRO Reporting Proposal); Sonia Trocchio at (202) 942–0753 (SRO Self-Listing Proposal, SRO Ownership Proposal, and Books and Records Proposal); and Christopher Stone at (202) 942–7938 (Concept Release).

2. The Commission will hear oral argument on appeals by Leslie A. Arouh and the Division of Enforcement of an initial decision of an administrative law judge. Arouh was formerly an associated person with First Union Capital Markets (''First Union''), a registered broker-dealer. The law judge concluded that Arouh participated in an adjusted trading scheme which consisted of First Union's (1) buying $100 million of corporate bonds at prices above the prevailing market price from a group of accounts at ARM Capital Advisors LLC (''ARM''), a registered investment adviser, (2) selling the same bonds, at market price, to a different group of ARM accounts shortly thereafter, resulting in a $1.376 million loss to First Union, and (3) selling to ARM accounts bonds that were marked up sufficiently above the prevailing market price to reimburse First Union's losses on the first two legs.

The law judge found Arouh willfully violated Section 17(a) of the Securities Act of 1933, Section 10(b) of the Securities Exchange Act of 1934, and Exchange Act Rule 10b–5. The law judge suspended Arouh from association with a broker or dealer for ninety days and ordered Arouh to pay a civil money penalty of $330,000.

Arouh argues that the record does not support the law judge's findings of violation, that the sanctions imposed by the law judge are excessive, and that no sanctions are warranted. The Division has appealed the sanctions, arguing that, in addition to the civil money penalty, the Commission should bar Arouh permanently from association with any broker or dealer and impose a cease-and-desist order against him.

Among the issues likely to be considered are:

A. Whether respondent committed the alleged violations; and

B. If so, whether sanctions should be imposed in the public interest.

The subject matter of the Closed Meeting scheduled for Tuesday, November 9, 2004 will be: Post argument discussion.

The subject matter of the Closed Meeting scheduled for Wednesday, November 10, 2004 will be:

Formal orders of investigations;

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings of an enforcement nature; and

An adjudicatory matter.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact the Office of the Secretary at (202) 942–7070.

Dated: November 2, 2004.

Jonathan G. Katz,

Secretary.

[FR Doc. 04–24812 Filed 11–3–04; 11:18 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27907]

Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

November 1, 2004.

Notice is hereby given that the following filings(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by November 24, 2004, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After November 24, 2004, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Black Hills Corporation, et al. (70–10237)

Black Hills Corporation (''Black Hills''), a public-utility holding company exempt under section 3(a)(1) of the Act by rule 2, and its subsidiaries, including Black Hills Power, Inc. (''Black Hills Power'' or ''Utility Subsidiary''), its electric-utility company subsidiary (collectively, ''Subsidiaries''), all located at 625 Ninth Street, Rapid City, SD 57701 (collectively, ''Applicants''), have filed an application-declaration, as amended (''Application'') with the Commission under sections 6, 7, 9, 10, 11, 12, 13, 32, 33, 34 of the Act and rules 42, 43, 45, 52, 53, 54, 58 and 88 through 92.

I. Background

Black Hills, a South Dakota corporation, is an integrated energy company with three principal subsidiaries engaged in three major lines of business: (i) Black Hills Power, a subsidiary electric-utility company engaged in the generation, transmission, distribution and sale of electricity to customers in South Dakota, Wyoming and Montana and the wholesale sale of power in the western United States,[1] (ii) Black Hills Energy, Inc. (''Black Hills Energy''), a direct wholly owned subsidiary engaged, through subsidiaries, in the development, ownership and operation of exempt wholesale generators, as defined in section 32 of the Act (''EWGs''), and qualifying facilities as defined in the Public Utility Regulatory Policies Act of 1978 (''PURPA'') (''QFs''), the production, transportation and marketing of natural gas, oil, coal and other energy commodities, power marketing and other energy-related activities; and (iii) Black Hills FiberCom, LLC (''Black Hills FiberCom''), a subsidiary engaged in telecommunications activities and which Applicants anticipate will become an exempt telecommunications company, as defined in section 34 of the Act (''ETC''). Black Hills Power is regulated as a public-utility company by the states of South Dakota, Wyoming and Montana, with these states regulating Black Hills Power's retail electric rates and charges and most of its securities issuances. Black Hills Power is also subject to regulation, under the Federal Power Act, by the Federal Energy Regulatory Commission (''FERC''). Black Hills Energy, directly and indirectly, owns interests in nonutility subsidiaries, all primarily engaged in energy-related or telecommunications activities (''Nonutility Subsidiaries'').

Black Hills proposes to continue to compete in the utility business by developing generation projects, expanding its power marketing operations and pursuing additional, related growth opportunities. Black Hills seeks authorizations to enable it and its Subsidiaries to operate and engage in financing and investment activities, intrasystem services and other related activities and transactions following its registration as a public-utility holding company under the Act. Black Hills states that it intends to register as a public-utility holding company under section 5 of the Act upon the issuance of the Commission's order in this matter.

Upon its registration as a public-utility holding company, Black Hills proposes to form Black Hills Services Company, Inc. (''Black Hills Services''), to provide centralized services (such as accounting, financial, human resources, information technology and legal services) to the companies in the Black Hills system (''Black Hills System''). Black Hills also intends to purchase an additional electric-utility company, Cheyenne Light, Fuel & Power Company, which is currently a subsidiary of Xcel Energy, Inc., a registered holding company under the Act.[2]

II. Summary of Requested Authority

Applicants request the following financing authorizations, for the period beginning with the effective date of an order issued in this matter, through December 31, 2007 (''Authorization Period''), and authorizations for certain related actions, as described in more detail in subsequent sections of this notice:

1. For Black Hills, directly or indirectly, to retain or refinance existing outstanding financing arrangements and debt issuances in the total amount of up to $1.534 billion, consisting of approximately (a) $807.1 million in utility and nonutility debt arrangements; (b) up to $350 million in short-term debt and available credit lines (''Existing Short-Term Debt''); and (c) $367.7 million in guarantees and other forms of credit support (''Existing Guarantees'') (collectively, ''Existing Financings'');

2. For Black Hills and its Subsidiaries, to issue and sell securities, of up to an additional $1 billion in securities outstanding at any one time (''Aggregate Additional Financing Limit''), comprised of:

(a) For Black Hills, (i) common stock (''Common Stock,'' as defined below), (ii) preferred stock and preferred stock equivalent securities (collectively, ''Preferred Securities,'' as defined below), (iii) unsecured debt (''Long-Term Debt'') (excluding the additional issuance of 2.7 million shares of common stock under various plans, described below); and

(b) For the Subsidiaries, (a) common stock (''Subsidiary Common Stock,'' as defined below), (b) preferred stock and preferred stock equivalent securities (''Subsidiaries Preferred Securities,'' as described below), (c) unsecured and secured short-term debt (''Subsidiary Short-Term Debt'') and (d) unsecured and secured long-term debt (''Subsidiary Long-Term Debt'');

3. For Black Hills and its Subsidiaries, to enter into transactions to manage interest rate risk, including anticipatory hedging transactions (together, ''Interest Rate Hedging Transactions'');

4. For Black Hills and its Subsidiaries, to issue grantees and other credit support (''Guarantees'') in an aggregate amount of up to $400 million (excluding Existing Guarantees) (''Additional Guarantee Limit'');

5. For Black Hills and its Subsidiaries, (a) to form financing entities (''Financing Subsidiaries,'' as defined below) and (b) to issue and sell securities through Financing Subsidiaries, subject to the Aggregate Additional Financing Limit;

6. For Black Hills and its Subsidiaries, to establish two money pools and enter into certain intrasystem financing arrangements;

7. For Black Hills, directly or indirectly through Nonutility Subsidiaries to engage, and make investments, in nonutility activities (such as EWGs, FUCOs, energy-related activities or subsidiaries authorized under rule 58 (''Rule 58 Subsidiaries'') and other energy-related activities, assets or subsidiaries (collectively, ''Permitted Nonutility Investments'')):

(a) to (i) engage in energy marketing and brokering (''Energy Marketing,'' as further defined below) in Canada and Mexico and elsewhere in the world outside of the United States (subject to the Commission's reservation or jurisdiction over these activities outside of the United States, Mexico and Canada), and (ii) render energy management services (''Energy Management Services,'' as described below) and consulting services (''Consulting Services,'' as described below) anywhere in the world outside of the United States (collectively ''Non-U.S. Energy-Related Subsidiaries'');

(b) to invest in energy-related assets (''Energy-Related Assets,'' as further defined below) in an amount of up to $300 million (''Energy-Related Assets Financing Limit'');

(c) to invest in an aggregate amount of up to $1.4 billion in EWGs and FUCOs

[1] Black Hills Power has approximately 60,000 retail customers in eleven counties throughout a 9,300 square mile service territory in portions of western South Dakota, eastern Wyoming and southern Montana. It also sells bundled capacity and energy service to Gillette, Wyoming and wholesale capacity and energy to other wholesale customers; owns generating facilities in its South Dakota service area, in Wyoming's Powder River Basin (just west of Black Hills Power's service territory) and a small transmission system (consisting of 230 kV and smaller transmission facilities in southwest South Dakota and northeast Wyoming, with a 69 kV distribution extension into southeast Montana, totalling 2,195 miles of transmission facilities).

[2] *See* SEC File Nos. 70–10229 (May 14, 2004) and 70–10225 (October 14, 2004).

(excluding its existing investments) (''EWG/FUCO Financing Limit''); and

(d) to engage, and invest an amount of up to $100 million (on a revolving fund basis), in (i) preliminary development activities (''Development Activities,'' as defined below) and (ii) administrative and management activities (''Administrative Activities,'' as defined below) related to EWGs, FUCOs, Rule 58 Subsidiaries, Energy-Related Assets and Non-U.S. Energy-Related Subsidiaries;

8. For Black Hills and its Subsidiaries, to alter the capital stock of all 50%-or-more owned Subsidiaries, subject to the Commission's reservation of jurisdiction over partially owned Subsidiaries;

9. For Nonutility Subsidiaries, to pay dividends out of capital and unearned surplus (including revaluation reserve);

10. For Black Hills, directly or through Nonutility Subsidiaries, to acquire the securities of one or more corporations, trusts, partnerships, limited liability companies or other entities organized exclusively for the purpose of acquiring, holding and/or financing or facilitating the acquisition or disposition of Permitted Nonutility Investments (''Intermediate Subsidiaries'');

11. For Black Hills and its Subsidiaries, to undertake internal reorganizations of subsidiaries and businesses;

12. For Black Hills, for the Commission to find, concerning the formation of a service company, that Black Hills Services will be so organized and so conducted as to meet the requirements of section 13(b) of the Act and that the filing of a Form U–13–1 is unnecessary; to be permitted an interim transition period after registration (no later than 12 months following the date of the Commission's order in this matter), to implement the service company; and to be excepted, among other things, from various at-cost rules applicable to transactions among Black Hills System companies; and

13. For Black Hills, to retain all of its existing investments in (a) EWGs and QFs, (b) energy-related exploration, production, transportation and marketing of energy commodities, power marketing and other activities; (c) telecommunications activities and (d) related businesses.

III. General Financing Parameters and Use of Proceeds

Black Hills proposes that the following general terms be applicable to the external financing transactions.

A. Effective Cost of Money

Applicants propose that the effective cost of capital on the proposed Preferred Securities, Short-Term Debt and Long-Term Debt and Black Hills' Subsidiaries' preferred securities, short-term debt and long-term debt will not exceed competitive market rates available at the time of the issuance of securities, having the same or reasonably similar terms and conditions issued by companies of reasonably comparable credit quality; *provided that* in no event will the effective cost of capital exceed, (1) on any series of Preferred Securities, Long-Term Debt or Subsidiary Preferred Securities or Subsidiary Long-Term Debt, 500 basis points over a U.S. Treasury security having a remaining term equal to the term of the series; and (2) on Short-Term Debt, or Subsidiary Short-Term Debt, 300 basis points over the London Interbank Offered Rate (''LIBOR'') for maturities of less than one year.

B. Maturity of Debt and Final Redemption of Preferred Securities

Applicants state that the maturity of the proposed long-term indebtedness will not exceed 50 years. In addition, they state that all preferred securities will be redeemed no later than 50 years after their issuance.

C. Issuance Expenses

Applicants state that the underwriting fees, commissions, or other similar remuneration paid in connection with the non-competitive issue, sale or distribution of a security that is the subject of this Application (not including any original issue discount) will not exceed 5% of the principal or total amount of the security being issued.

D. Common Equity Ratio and Investment Grade Condition

The consolidated common equity of Black Hills was 47% of total consolidated capitalization (common equity, preferred stock and long-term and short-term debt, including current maturities on long-term debt), as of June 30, 2004, Black Hills and its Utility Subsidiary commit that they will each maintain a common equity ratio (as reflected in the most recent 10–K or 10–Q (filed with the Commission as required by the Securities Exchange Act of 1934, as amended (''34 Act''), and as adjusted to reflect subsequent events that affect capitalization) of at least 30% of capitalization.

Applicants represent that, apart from securities issued for the purpose of funding money pool operations, no guarantees or other securities, other than common stock, may be issued in reliance upon the authorization to be granted by the Commission in this matter, unless (i) the security to be issued, if rated, is rated investment grade; (ii) all outstanding securities of the issuer, that are rated, are rated investment grade; and (iii) all outstanding securities of Black Hills (the holding company in the Black Hills System), that will be registered, that are rated, are rated investment grade (''Investment Grade Condition''). For purposes of this Investment Grade Condition, a security will be deemed to be rated ''investment grade,'' if it is rated investment grade by at least one nationally recognized statistical rating organization, as that term is used in paragraphs (c)(2)(vi)(E), (F) and (H) of rule 15c3–1 under the 34 Act. The Investment Grade Condition ratings test will not apply to any issuance of common stock. Applicants request that the Commission reserve jurisdiction over the issuance of any of such securities that are rated below investment grade. Applicants further request that the Commission reserve jurisdiction over the issuance of any guarantee or other securities at any time that the conditions set forth in clauses (i) through (iii) above are not satisfied.

E. Use of Proceeds

Applicants state that proceeds from the sale of securities in external financing transactions will be used for general corporate purposes, including, in part, capital expenditures of the Black Hills System, working capital requirements of the Black Hills System, the acquisition, retirement or redemption under rule 42 of the securities previously issued by Black Hills or its Subsidiaries and other purposes, including direct or indirect investment in authorized assets and securities (*i.e.,* energy-related assets and companies, EWGs, FUCOs and ETCs).

IV. Retention and Refinancing of Existing Financing

Applicants request authorizations, during the Authorization Period, for Black Hills, directly or indirectly, to retain and refinance existing outstanding financing arrangements and debt issuances in the total amount of up to $1.534 billion, consisting of, approximately, (a) $807.1 million in Utility and Nonutility debt arrangements; (b) up to $350 million in short-term debt and available credit lines (the Existing Short-Term Debt); and (c) $376.7 million in guarantees and other forms of credit support (the Existing Guarantees).[3] With respect to its Existing Short-Term Debt, Black Hills requests that the Commission include in its approval the retention and refinancing of Black Hills' existing revolving credit facilities (up to $350 million in borrowing ability at any one time on a short-term basis), although Black Hills may not draw down the full amount of its facilities at the time of a Commission order and, thus, not have actually incurred ''short-term debt.''[4]

[3] Existing Financings are described in detail in Exhibit I–2 of the Application.

[4] Applicants note that this request includes amounts that have been obtained through Financing

Continued

V. Proposed Additional Financing and Other Related Authority

Applicants request authority to issue and sell additional equity and debt securities in an amount of up to $1 billion and Additional Guarantees in an amount of up to $400 million, among other things, in addition to the refinancing of its Existing Financings (described above), during the Authorization Period. Specifically, Black Hills requests authorization to issue, directly and indirectly, (a) common stock (other than 2.7 million shares for employee benefits plans or stock purchase and dividend reinvestment plans, discussed below), (b) preferred stock and preferred securities, (c) long-term debt and (d) short-term debt, in an aggregate amount of up to $1 billion (the Aggregate Additional Financing Limit), and guarantees and other credit support in an aggregate amount of up to $400 million (the Additional Guarantee Limit). Applicants also seek financing authority (a) for certain energy-related investments, in an aggregate amount of up to $300 million (the Energy-Related Assets Financing Limit), and (b) for additional investments in EWGs and FUCOs, in an aggregate amount of up to $1.4 billion (the EWG/FUCO Financing Limit), during the Authorization Period and other related authority, described further, below.

A. Common Stock

Black Hills now requests authority to issue and sell its common stock, denominated as ''common stock,'' and including (unless the context indicates otherwise) outstanding options, warrants and other stock purchase rights exercisable for Black Hills' common stock (but not Black Hills' Preferred Stock that is convertible into its common stock, prior to conversion) (''Common Stock''), subject to the Aggregate Additional Financing Limit of up to $1 billion, during the Authorization Period.

In addition, Black Hills requests authority to issue up to 2.7 million additional shares of Common Stock through various plans, in accordance with the terms of the programs.[5] Black Hills proposes in this regard, from time to time, to issue new shares and/or acquire in open market transactions, or by some other method, up to 400,000 additional shares of Black Hills Common Stock, during the Authorization Period. Black Hills also proposes to issue new shares and/or acquire in open market transactions, or by some other method, up to 2.3 million additional shares of Black Hills Common Stock under the employee stock-based plans (excluding shares that may be issued through the exercise of outstanding options and issuance of shares for outstanding restricted stock units and performance shares), from time to time, during the Authorization Period.[6]

B. Preferred Securities

Black Hills requests authority to issue additional shares of its authorized Preferred Stock, defined below, or other types of preferred securities of Black Hills Corporation (including trust-preferred securities, monthly income preferred securities and equity-linked securities) (together, ''Preferred Securities''), directly or indirectly through one or more financing entities (''Financing Subsidiaries,'' as defined below), organized by Black Hills, subject to the Aggregate Additional Financing Limit. Preferred Stock is defined as stock of Black Hills Corporation denominated as ''preferred stock'' and having preference rights with respect to payment of dividends and other benefits, which may include, in certain circumstances, the right of conversion into Common Stock.[7]

C. Debt Securities

1. Long-Term Debt

Black Hills requests authority to issue and sell unsecured long-term debt securities, comprised of notes and debentures and other forms of unsecured indebtedness having maturities of one year or longer (''Long-Term Debt''), up to the Aggregate Additional Financing Limit (which excludes renewals of Existing Financings).[8]

2. Short-Term Debt

Black Hills seeks authority to issue unsecured short-term debt securities, comprised of commercial paper, promissory notes and other forms of indebtedness having maturities of less than one year (''Short-Term Debt''), up to the Aggregate Additional Financing Limit (which excludes renewals of Existing Financings).[9]

Subsidiaries. Applicants also note that they are requesting authority to retain existing Financing Subsidiaries. *See* sections V.F. and VI, below, Existing Financing Subsidiaries are Black Hills Nevada Real Estate Holdings LLC, Black Hills Valmont Colorado Inc., E–Next A Equipment Leasing Company LLC and Las Vegas Cogeneration Energy Financing Company LLC.

[5] Black Hills currently maintains a divided reinvestment plan (''DRP'') for its shareholders and various employee stock-based plans (an employee stock purchase plan (the ''ESPP''), a Short-Term Incentive Plan, a 1996 Stock Option Plan, a 1999 Stock Option Plan and a 2001 Omnibus Incentive Compensation Plan). Black Hills' DRP enables its shareholders to reinvest dividends and make optional cash investments to purchase additional shares of common stock. Black Hills' ESPP sells shares of Black Hills common stock to employees at 90% of the stock's market price on the offering date. At June 30, 2004, 129,244 shares have been reserved and are available for issuance under the ESPP. Under the Short-Term Incentive Plan, certain key employees are awarded short-term incentive bonuses, a portion or all of which may be paid in common stock. The 1996 and 1999 Stock Option Plans permit Black Hills to grant stock options to its employees. The 2001 Omnibus Incentive Compensation Plan permits it to issue restricted stock, restricted stock units, performance shares, performance units, stock appreciation rights, stock options and other awards, as determined by the Compensation Committee of the Board of Directors.

[6] Black Hills proposes that its common stock financings may be effected by underwriting agreements customary in the industry and public distributions effected by private negotiation with underwriters, dealers or agents, as described below, or through competitive bidding among underwriters. In addition, it is proposed that sales may be made through private placements or other non-public offerings to one or more persons. Black Hills states that all common stock sales would be at rates or prices and under conditions negotiated or based upon, or otherwise determined by, competitive capital markets. Black Hills may also buy back shares of its stock or options during the Authorization Period in accordance with rule 42.

[7] Preferred Securities may be issued in one or more series with rights, preferences and priorities, as may be determined by Black Hills' Board of Directors. Dividends or distributions on Preferred Securities will be made periodically, but may be made subject to terms, which allow the issuer to defer dividend payments for specified periods. Preferred Securities may be convertible or exchangeable into shares of Black Hills common stock or indebtedness. Preferred Securities may be sold directly through underwriters or dealers in connection with an acquisition in a manner similar to that described for common stock.

[8] Any long-term debt may: (a) Be convertible into any other securities of Black Hills; (b) will have maturities ranging from one to 50 years; (c) be subject to optional and/or mandatory redemption, in whole or in part, at par or at various premiums above the principal amount; (d) be entitled to mandatory or optional sinking fund provisions; (e) provide for reset of the coupon as required by a remarketing arrangement; (f) be subject to tender or the obligation of the issuer to repurchase at the election of the holder or upon the occurrence of a specified event; (g) be called from existing investors by a third party; and (h) be entitled to the benefit of positive or negative financial or other covenant. Maturity dates, interest rates, redemption and sinking fund provisions, tender or repurchase and conversion features, if any, with respect to the long-term securities of a particular series, as well as any associated placement, underwriting or selling agent fees, commissions and discounts, if any, will be established by negotiation or competitive bidding. Borrowings from the banks and other financial institutions may be unsecured and *pari passu* with debt securities issued under the Black Hills Indenture and the short-term credit facilities. Specific terms of any borrowings will be determined by Black Hills at the time of issuance and will comply in all regards with the parameters of the financing authorization described in section III, above.

[9] Commercial paper may be sold in established domestic and European commercial markets. Commercial paper would be sold to dealers at the discount rate or the coupon rate *per annum* prevailing at the date of issuance for commercial paper of comparable quality and maturities sold to commercial paper dealers generally. It is expected that the dealers acquiring commercial paper from

D. Subsidiary Financings

Applicants also request that Black Hills' Subsidiaries be authorized to issue and sell Subsidiary Common Stock and Subsidiary Preferred Securities, Subsidiary Long-Term Debt and Subsidiary Short-Term Debt, subject to the Aggregate Additional Financing Limit and the parameters described in section III, above, during the Authorization Period. Black Hills' Utility Subsidiary and its Nonutility Subsidiaries request this financing authority to the extent that Subsidiaries may require financing that is outside rule 52 exempt financing.[10] The Utility Subsidiary specifically requests authority to issue unsecured and secured short-term debt securities, including commercial paper and credit lines, subject to the Aggregate Additional Financing Limit and the parameters described in section III, above, during the Authorization Period.

E. Financing Risk Management Devices

Black Hills, directly or indirectly through its Subsidiaries, requests authority to enter into interest rate hedging transactions utilizing various financial instruments (collectively, ''Interest Rate Hedges''), subject to certain limitations and restrictions, in order to reduce or manage interest rate costs. Black Hills will not engage in speculative transactions.

Applicants state that Interest Rate Hedges (other than exchange-traded interest rate futures or options contracts)[11] will only be entered into with counterparties whose senior debt ratings, or the senior debt ratings of any credit support providers who have guaranteed the obligations of such counterparties, as published by Standard and Poor's Ratings Group, are equal to or greater than BBB, or an equivalent rating from Moody's, Fitch Investor Service or Duff and Phelps (''Approved Counterparties''). Applicants also state that fees, commissions and other amounts payable to an Approved Counterparty or exchange or other party (excluding, however, the swap or option payments) in connection with an Interest Rate Hedge, will not exceed those generally obtainable in competitive markets for parties of comparable credit quality.

Applicants also request authority to enter into interest rate hedging transactions for anticipated debt offerings (''Anticipatory Hedges''). Black Hills states that Anticipatory Hedges would be utilized to fix an/or limit the interest rate risk associated with any new issuance.[12] Anticipatory Hedges may be executed on-exchange (''On-Exchange Trades''), through brokers by the opening of futures and/or options positions traded on the Chicago Board of Trade, the opening of over-the-counter positions with one or more Approved Counterparties (''Off-Exchange Trades'') or a combination of On-Exchange Trades and Off-Exchange Trades.

Applicants state that they will comply with Statement of Financial Accounting Standards No. 133 (''SFAS 133''), ''Accounting for Derivatives Instruments and Hedging Activities'' or other standards relating to accounting for derivative transactions as are adopted and implemented by the Financial Accounting Standards Board (''FASB''). The Interest Rate Hedges and Anticipatory Hedges will qualify for hedge accounting treatment under the FASB standards in effect and as determined at the date Interest Rate Hedges or Anticipatory Hedges are entered into.

F. Additional Guarantees ($400 Million)

Applicants request authority to guarantee performance of a Subsidiary or an affiliate and to provide other forms of credit support (''Guarantees'') in an aggregate principal amount not to exceed $400 million outstanding at any one time, the Additional Guarantee Limit, during the Authorization Period. Applicants also request authority to charge each Subsidiary a guarantee fee that is comparable to those fees charged by third parties. Black Hills further requests that any Guarantees outstanding at the end of the Authorization Period be permitted to continue until expiration or termination in accordance with their terms.[13]

G. Financing Subsidiaries

Applicants request authority to acquire, directly or indirectly, the equity securities of one or more corporations, trusts, partnerships, limited liability companies, or other entities, created specifically for the purpose of facilitating the financing of authorized and exempt activities (including authorized and exempt acquisitions) (''Financing Subsidiaries''), through the issuance of Subsidiary Common Stock or Subsidiary Preferred Securities, or Subsidiary Long-Term Debt, and to transfer of the proceeds to the Black Hills System company involved.[14] Applicants also request authority to issue Guarantees for the Financing Subsidiaries, subject to the Additional Guarantee Limit. Applicants further request authority to enter into support, servicing or expense agreements (''Expense Agreements'') for obligations of Financing Subsidiaries.[15] Applicants request authority for Financing Subsidiaries to pledge revenues or other assets or grant security interests solely to accommodate the intrasystem mirror structure of the financings; *provided that* the security pledged will not consist of the assets (other than an income stream in support of the financing) or stock of any Black Hills operation subsidiary.[16]

Black Hills and its Subsidiaries also request authority to issue and sell to any Financing Subsidiary, from time to time, in one or more series, unsecured debentures, unsecured promissory notes, or other unsecured debt

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Black Hills will offer the paper at a discount to corporate, institutional and, with respect to European commercial paper, individual investors. Institutional investors are expected to include commercial banks, insurance companies, pension funds, investment trusts, foundations, colleges and universities, and finance companies.

[10] Applicants anticipate that the majority of the financings will be exempt from prior Commission authorization under rule 52(b).

[11] Interest Rate Hedges will include the use of financial instruments commonly used in today's capital markets, such as interest rate forwards, futures, swaps, caps, collars, floors and structured notes (*i.e.,* a debt instrument in which the principal and/or interest payments are linked to the value of an underlying asset or index), or transactions involving the purchase or sale, including short sales, of government or agency (*e.g.,* Fannie Mae) obligations or LIBOR-based swap instruments.

[12] Anticipatory Hedges may be implemented through: (a) A forward sale of exchange-traded Interest Rate Hedges (a ''Forward Sale''); (b) the purchase of put options on Interest Rate Hedges (a ''Put Options Purchase''); (c) a Put Options Purchase in combination with the sale of call options Interest Rate Hedges (a ''Zero Cost Collar''); (d) transactions involving the purchase or sale, including short sales, of Interest Rate Hedges; or (e) some combination of a Forward Sale, Put Options Purchase, Zero Cost Collar and/or other derivative or cash transactions, including, but not limited to, appropriate structured notes, caps or collars.

[13] Certain Guarantees may be for obligations not capable of exact quantification. For measuring compliance with the $400 million limitation appropriate means will be utilized, including estimation of exposure based on loss experience or projected potential payment amounts. If appropriate, estimates will in accordance with GAAP. Estimates will be reevaluated periodically.

[14] Applicants are also requesting authority to retain existing Financing Subsidiaries. *See* sections IV, above, and VI, below.

[15] In an Expense Agreement, an Applicant would provide financial support and pay necessary operating expenses of a Financing Subsidiary to facilitate the subsidiary's agreements with third parties in financing activities approved through this Application.

[16] *See* section V.N., below. Applicants also request approval under section 13(b) of the Act and rules 87 and 90 to provide these services at market prices but only for so long as an Expense Agreement in place. Applicants explain that, to have ratings agencies recognize Financing Subsidiaries as separate from their parents or affiliates, Expense Agreements must be at market prices (*i.e.,* the contracts would be assumable by a successor without interruption or an increase of fees).

instruments (''Notes'').[17] Applicants further request authority for the Financing Subsidiaries to apply the proceeds of any external financing by a Financing Subsidiary, plus the amount of any equity contribution made to it, from time to time, by its parent corporation and other funds that may be available, or obtained in an exempt financing transaction, to purchase Notes. Applicants state that amounts issued by Financing Subsidiaries to third parties will be subject to the Aggregate Additional Financing Limit. However, Applicants request that underlying intrasystem mirror debt (including Notes), and parent guarantee, not be so included, so as to avoid double counting.

H. Money Pools

Black Hills and its Utility Subsidiary request authorization to establish a utility money pool (''Utility Money Pool'') and Black Hills and its Nonutility Subsidiaries request authority to establish a nonutility money pool (''Nonutility Money Pool''), separate from the Utility Money Pool.[18] Black Hills also requests that utility-related Financing Subsidiaries be permitted to participate in the Utility Money Pool (due to their financing relationship with the Utility Subsidiary). Black Hills also asks the Commission to reserve jurisdiction over the addition of other participants to the Money Pools in the future.

The Utility Subsidiary, to the extent not exempted under rule 52, requests authority to make unsecured short-term borrowings from, contribute surplus funds to, and to lend and extend credit to (and acquire promissory notes from) other participants in the Utility Money Pool, through the Utility Money Pool.[19]

Applicants propose that the Nonutility Money Pool would be operated on the same terms and conditions as the Utility Money Pool, except that Black Hills' funds made available to Money Pools will be made available to the Utility Money Pool first and only afterward to the Nonutility Money Pool. No loans would be made to, and no borrowings from, the Nonutility Money Pool by a Utility Subsidiary.

Black Hills requests authorization to contribute surplus funds and to lend and extend credit to: (1) The Utility Subsidiary through the Utility Money Pool and (2) the Nonutility Subsidiaries through the Nonutility Money Pool. Black Hills and the Utility Subsidiary, including related Financing Entities, may contribute funds from the issuance of short-term debt to the Utility Money Pool. Black Hills and the Nonutility Subsidiaries may contribute funds from the issuance of short-term debt to the Nonutility Money Pool.[20]

I. Intrasystem Financing

Black Hills and the Subsidiaries request that they be permitted, when making intrasystem loans or extending intrasystem credit (in the event a loan or an extension of credit is not exempt under rules 45(b) or 52), to charge interest at the same effective rate of interest as the daily weighted average of commercial paper, revolving credit and/or other short-term borrowings of the respective lending Subsidiary, including an allocated share of commitment fees and related expenses.[21]

Applicants also request authority for Black Hills, directly or indirectly through a Nonutility Subsidiary, to make loans to partially owned Subsidiaries at interest rates and maturities designed to provide a return to the lending company of not less than its effective cost of capital.[22]

J. Energy-Related Activities and Other Additional Nonutility Investments

Applicants seek authorization for certain activities related to nonutility investments in EWGs, FUCOs and other energy-related investments permitted under rule 58, as well as investments in Energy-Related Assets and Non-U.S. Energy Related Subsidiaries, for the duration of the Authorization Period, *i.e.*, Permitted Nonutility Investments, as discussed below.

1. Certain Energy-Related Activities

Black Hills requests authority, directly or indirectly through Nonutility Subsidiaries, to (a) engage in Energy Marketing[23] in Canada and Mexico and elsewhere in the world outside of the United States, subject to the Commission's reservation of jurisdiction over these activities outside of the United States, Mexico and Canada, and (b) render Energy Management Service[24] and Consulting Services[25]

[17] The terms (*e.g.*, interest rate, maturity, amortization, prepayment terms, default provisions, *etc.*) of the Notes would be designed to parallel the terms of the securities issued by the Financing Subsidiary to which the Notes relate.

[18] Black Hills states that, although it is requesting this authorization, it may not implement either the Utility or Nonutility Money Pool immediately upon registration for various reasons, including the need to meet requirements of state regulatory commissions. Initial participants in the Nonutility Money Pool would be Black Hills Services, Black Hills Energy and Black Hills FiberCom.

[19] Under the proposed Utility Money Pool terms, short-term funds would be available from: (1) Surplus funds in the treasuries of Utility Money Pool participants other than Black Hills, (2) surplus funds in the treasury of Black Hills, and (3) proceeds from bank borrowings by Utility Money Pool participants or the sale of commercial paper by Black Hills or the Utility Subsidiary for loan to the Utility Money Pool. Funds would be made available as Black Hills Services may determine would result in a lower cost of borrowing, consistent with the individual borrowing needs and financing standing of pool participants.

[20] Applicants state that the Money Pools will be operated by Black Hills Services on an at-cost basis and separate records will be maintained for each pool. Surplus funds of the Utility Money Pool and the Nonutility Money Pool may be combined in common short-term investments, but separate records will be maintained and interest will be allocated separately, on a daily basis, to each money pool in the proportion that the amount of each money pool's surplus funds bears to the total amount of surplus funds available for investment from both money pools.

[21] Applicants state that, if no borrowings are outstanding, then the interest rate will be predicated on the Federal Funds' effective rate of interest as quoted daily by the Federal Reserve Bank of New York.

[22] Black Hills states that, generally, loans to, and purchase of capital stock form, borrowing Subsidiaries will be exempt under rule 52 and capital contributions and open account advances without interest will be exempt under rule 45(b). Loans by Black Hills or a Nonutility Subsidiary to a Nonutility Subsidiary generally will have interest rates and maturity dates that are designed to parallel the lending company's effective cost of capital, in accordance with rule 52(b).

[23] Black Hills defines Energy Marketing to consist of the brokering and marketing of electricity, natural gas and other energy commodities, as well as incidental related services, such as fuel management, storage and procurement.

[24] Black Hills defines Energy Management Services to include the marketing, sale, installation, operation and maintenance of various products and services related to energy management and demand-side management, including energy and efficiency audits; meter data management, facility design and process control and enhancements; construction, installation, testing, sales and maintenance of (and training client personnel to operate) energy conservation equipment; design implementation, monitoring and evaluation of energy conservation programs; development and review of architectural, structural and engineering drawings for energy efficiencies, design and specification of energy consuming equipment and general advice on programs; the design, construction, installation, testing, sales, operation and maintenance of new and retrofit heating, ventilating, and air conditioning, electrical and power systems, alarm, security, access control and warning systems, motors, pumps, lighting, water, water-purification and plumbing systems, building automation and temperature controls, installation and maintenance of refrigeration systems, building infrastructure wiring supporting voice, video, data and controls networks, environmental monitoring and control, ventilation system calibration and maintenance, piping and fire protection systems, and design, sale, engineering, installation, operation and maintenance of emergency or distributed power generation systems, and related structures, in connection with energy-related needs; and the provision of services and products designed to prevent, control, or mitigate adverse effects of power disturbances on a customer's electrical systems.

[25] Applicants define Consulting Services to include technical and consulting services involving technology assessments, power factor correction and harmonics mitigation analysis, meter reading and repair, rate schedule design and analysis, environmental services, engineering services, billing services (including consolidation or

anywhere in the world outside of the United States. To the extent that operations outside the U.S. involve additional or different risks than U.S. operations, Black Hills states that it will evaluate and seek to mitigate those risks in a manner similar to the manner it evaluates EWG and FUCO investments, described below.

2. Additional Investments in Energy-Related Assets ($300 Million)

Black Hills also requests authority, directly or indirectly through Nonutility Subsidiaries, to invest in nonutility energy assets that are incidental and related to its business as an electricity and energy commodities marketer and broker or to its other energy-related businesses, including natural gas exploration and production, gathering, processing, storage and transportation facilities and equipment, liquid oil reserves and transportation and storage facilities, gas or coal reserves, electric metering and customer electric equipment and associated facilities, and other physical assets that are incidental to and reasonably necessary in the day-to-day conduct of energy marketing, brokering and trading operations or other energy-related businesses (''Energy-Related Assets'') in an amount of up to $300 million (''Energy-Related Assets Financing Limit'').[26] Black Hills further defines Energy-Related Assets to exclude additional investments in EWGs or FUCOs, addressed in section V.1.3., below. Black Hills states that Energy-Related Assets will be acquired only in the countries in which it is authorized to conduct its electricity and energy commodities marketing and brokering business (currently the United States and, if approved, Canada and Mexico).

3. Additional Investment in EWGs and FUCOs ($1.4 Billion)

Applicants seek financing authority in an aggregate amount of up to $1.4 billion for additional investments in EWGs and FUCOs during the Authorization Period (excluding Black Hills investment as of June 30, 2004, of $705 million in EWGs)[27] (''EWG/FUCO Investment Limit''). Black Hills states that the proposed amount represents approximately 458% of Black Hills' ''average consolidate retained earnings,'' as defined in rule 53(a)(1), for the four quarterly periods ending June 30, 2004, and the proposed investment limit of $1.4 billion compare favorably with other EWG/FUCO investment limits authorized by the Commission.

4. Investment in Development Activities and Administrative Activities

Black Hills and its Subsidiaries also request authority to invest, using a ''revolving fund'' concept described below, an amount of up to $100 million, in (i) Development Activities[28] and (ii) Administrative Activities[29] related to EWGs, FUCOs, Rule 58 Subsidiaries, Energy-Related Assets and Energy-Related Subsidiaries. Development Activities will be designed to result in nonutility investments, eventually, such as EWGs, FUCOs, Rule 58 Subsidiaries, Energy-Related Assets or Energy-Related Subsidiaries.

Black Hills proposes a ''revolving fund,'' which would provide that, to the extent that funds are expended for Development Activities (or Administrative Activities, as the case may be) and result in an EWG, FUCO, or a Rule 58 Subsidiary, or other authorized investment, the amount will cease to be allocable to the Development Activities financing limit of $100 million, but will then be allocable to the particular, applicable investment limit related to the investment. For example, Development Activities expenditures that result in an EWG would count against the EWB/FUCO Aggregate Financing Limit (described in section V.1.3., above) and expenditures resulting in a Rule 58 Subsidiary would count against the limitation on investment in rule 58, or expenditures resulting in an Energy-Related Asset would count against the Energy-Related Assets Financing Limit (described in section V.1.s., above), or any other applicable limitation.

K. Changes in Capital Stock of Subsidiaries

Applicants request authority to change the terms of any wholly owned Subsidiary's authorized capital stock capitalization or other interests by an amount deemed appropriate by Black Hills or another intermediate parent company, as needed to accommodate transactions and future issuances. Applicants propose that a wholly owned Subsidiary be able to change the par value, or change between par value and no-par stock, without additional Commission approval.[30]

Black Hills also states that the Utility Subsidiary would only take this action upon receipt of necessary approvals from interested state commission. Black Hills also requests that the Commission reserve jurisdiction over these transactions by partially owned Subsidiaries, pending completion of the record.

L. Nonutilities' Payment of Dividends Out of Capital and Unearned Surplus

Black Hills Energy and Black Hills FiberCom also request that they be permitted, directly or indirectly through their Nonutility Subsidiaries, to pay dividends, from time to time, out of capital and unearned surplus (including revaluation reserve), to the extent permitted under applicable state corporate law, during the Authorization Period.

M. Intermediate Subsidiaries

Black Hills requests authority to acquire, directly or indirectly through the Utility Subsidiary or Nonutility Subsidiaries, the securities of one or more corporations, trusts, partnerships, limited liability companies or other entities to be created and organized exclusively for the purpose of acquiring, holding and/or financing or facilitating the acquisition or disposition of investments (''Intermediate Subsidiaries'').[31] Black Hills states that,

centralized billing, bill desegregation tools and bill inserts), risk management services, communications systems, information systems/data processing, system planning, strategic planning, finance, general management consulting including training activities, feasibility studies, and other similar related services.

[26] Black Hills states that Energy-Related Assets will not include any ''utility assets'' within the meaning of the Act.

[27] Black Hills has no FUCOs.

[28] Development Activities will include due diligence and design review; market studies; preliminary engineering; site inspection; preparation of bid proposals, including, in connection with these activities, posting of bid bonds; application for required permits and/or regulatory approvals; acquisition of site options and options on other necessary rights; negotiation and execution of contractual commitments with owners of existing facilities, equipment vendors, construction firms, power purchasers, thermal ''hosts,'' fuel suppliers and other project contractors; negotiation of financing commitments with lenders and other third-party investors; and such other preliminary activities as may be required in connection with the purchase, acquisition, financing or construction of facilities or the acquisition of securities of, or interests in, new businesses.

[29] Administrative Activities will include personnel, accounting, engineering, legal, financial and other support activities necessary to manage Black Hills and its Subsidiaries' investments in nonutility subsidiaries.

[30] Applicants state that they cannot ascertain at this time how a Subsidiary's financing may be effected under rule 52, including, for example, what portion may be a sale of capital securities (*i.e.,* common or preferred stock) to Black Hills or an intermediate parent or whether it may exceed then-authorized capital stock or whether capital stock with no par value may be used.

[31] Black Hills states that there are various legal and business reasons for using Intermediate Subsidiaries. Limited purpose subsidiaries are often necessary or desirable to facilitate financing the acquisition and ownership of a FUCO, an EWG or other enterprise. The laws of some foreign countries may require that a bidder in a privatization program be organized in that country. Using one or more

Continued

to the extent that it provides funds to an Intermediate Subsidiary for investment in an EWG, FUCO or a Rule 58 Subsidiary or other investment, the amount will be included in Black Hills' Aggregate EWG/FUCO Financing Limit of $1.4 billion or other applicable financing limit, as the case may be.

N. Internal Corporate Reorganizations

Applicants request authority to undertake internal reorganizations of Subsidiaries and businesses. Internal reorganizations may be accomplished through a contribution, sale, distribution, assignment or other transfer from one entity, and the acquisition by another entity, of the securities, asset or interests in an entity. None of the proposed reorganizations will include a transfer of assets or securities of a Subsidiary that owns or operates utility assets within the meaning of sections 2(a)(3), 2(a)(4) and 2(a)(18) of the Act.

Black Hills and its Subsidiaries request authority to sell or to cause any Subsidiary to sell, or otherwise transfer, (1) businesses, (2) the securities of current Subsidiaries engaged in some or all of these businesses, or (3) investments which do not involve a Subsidiary (*i.e.,* less than 10% voting interest) to a Subsidiary, and to acquire the assets of businesses, subsidiaries or other investment interests or, alternatively, to transfer securities or assets by share exchanges, share distributions or dividends, followed by contribution of securities or assets to a Subsidiary. Black Hills also requests that it be permitted, following direct or indirect acquisition of securities of Nonutility Subsidiaries, to transfer securities or assets of Nonutility Subsidiaries to other Subsidiaries using any of these methods or to liquidate or merge Nonutility Subsidiaries.

O. Intrasystem Service Transactions

Black Hills states that the Black Hills System will engage in a variety of affiliate transactions for the provision of goods, services and construction, under rules 87, 90 and 91. For an interim period following registration, no longer than 12 months after the date of the Commission's order in this matter, Applicants request various exceptions to the at-cost rules, among other things, as described more fully below.

1. Establishment of Black Hills Services Company

Black Hills expects to form Black Hills Services within 60 days of the issuance of the Commission's order in this matter. Black Hills seeks authority to delay, for a period not longer than 12 months following the date of its registration, the full implementation of all service agreements and arrangements and required accounting systems and cost allocation methodologies. The transition period is necessary to accommodate the complexities of the formation of the service company.[32] In addition, Black Hills commits, however, to implement the at-cost requirements as soon as practicable.

In connection with the formation of the service company, Black Hills requests that the Commission find that Black Hills Services will be so organized and shall be so conducted as to meet the requirements of section 13(b), and that the filing of a Form U–13–1 is unnecessary, or, alternatively, that this Application be deemed to constitute a filing on Form U–13–1 as required by rule 88.

Black Hills Services will be the service company subsidiary for the Black Hills System and will provide Black Hills Power, any future utility subsidiaries and Black Hills' Nonutility Subsidiaries with some or all of the following services: administrative, management and support services, including services relating to support of electric and gas plant operations (*i.e.,* energy supply management of the bulk power and natural gas supply, procurement of fuels, coordination of electric and natural gas distribution systems, maintenance, construction and engineering work); customer bills, and related matters; materials management; facilities; real estate; rights of way; human resources; finance; accounting; internal auditing; information systems; corporate planning and research; public affairs; corporate communications; legal; environmental matters; and executive services.[33] The cost of services provided by Black Hills Services will be directly assigned, distributed or allocated by activity, project, program, work order or other appropriate basis. Black Hills Services will be staffed primarily by personnel transferred from Black Hills, Black Hills Power and certain Nonutility Subsidiaries. It will have its headquarters in Rapid City, South Dakota, and will conduct substantial operations in Rapid City and Golden, Colorado.

2. Services, Goods and Assets Involving a Utility Subsidiary

The Utility Subsidiary may provide to other associate companies, services that are incidental to its utility businesses, including, but not limited to, infrastructure services maintenance, storm outage emergency repairs, supply planning services, switchyard activities and services of personnel with specialized expertise related to the operation of the utility. To the extent these services might exceed those allowable under applicable rules, Black Hills seeks approval for Black Hills Power to provide services to any other Subsidiary.

3. Nonutility Subsidiary Transactions

Black Hills requests authorization for Black Hills Services and the Nonutility Subsidiaries to enter into agreements (and/or continue the effectiveness of existing agreements, described in section V.N.4, below) to provide construction, goods or services to certain associate companies at fair market prices determined without regard to cost. Specifically, Black Hills seeks an exemption for Black Hills Services and the Nonutility Subsidiaries under section 13(b) from the cost standards of rules 90 and 91 (to the extent that rule 90(d) does not apply), if the company being provided construction, goods or service is: (1) A FUCO or an EWG that derives no part of its income, directly or indirectly, from the generation, transmission, or distribution of electric energy for sale within the U.S.; (2) an EWG that sells electricity at market-based rates that have been approved by the FERC or appropriate state public-utility commission, *provided that* the purchaser of the EWG's electricity is not an affiliated public-utility or an affiliate that resells the power to an affiliated public-utility; (3) a QF that sells electricity exclusively at rates negotiated at arm's-length to one or more industrial or commercial customers purchasing the electricity for their own use and not for resale, or to an electric utility company (other than an affiliated electric utility) at the purchaser's ''avoided cost,'' as determined under PURPA; (4) an EWG or a QF that sells electricity at rates based upon its cost of service, as approved by FERC or any state public-utility commission having jurisdiction,

Intermediate Subsidiaries may allow Black Hills to secure more favorable U.S. and foreign tax treatment and achieve tax efficient corporate structures, minimizing state or federal taxes. Intermediate Subsidiaries may also isolate business risks and facilitate adjustments to ownership interests or raising debt or equity capital in domestic or foreign markets.

[32] Black Hills states that, first, appropriate personnel from Black Hills and its Subsidiaries will be transferred to Black Hills Services' employ, subject to requirements associated with the transfer employee benefit, health and pension plans, contracts, licenses, and permits to Black Hills Services and subject to approvals and consents from regulators, counterparties and vendors.

[33] Black Hills Services will have total equity capital of not more than $10,000.

provided that the purchaser of the electricity is not an affiliated public-utility; or (5) an ETC, an ''energy-related'' company under rule 58 or any other Nonutility Subsidiary that (i) is partially owned, *provided that* the ultimate purchaser of goods or services is not a Utility Subsidiary, (ii) is engaged solely in the business of developing, owning, operating, and/or providing services or goods to Nonutility Subsidiaries described in (1) through (4) above, or (iii) does not derive, directly or indirectly, any part of its income from sources within the U.S. and is not a public-utility company operating within the U.S.

4. Request for Exemption for Existing Affiliate Arrangements

Black Hills requests a determination that the Subsidiaries may continue to engage in certain affiliate transactions under rule 87(a)(3) or otherwise. Black Hills also seeks approval for Black Hills Power and affiliated EWGs to provide services (such as engineering and technical support functions, fuel procurement, information systems, maintenance, quality assurance, management services and support and safety review) at cost as defined in rules 90 and 91, to each other.

VI. Retention

Black Hills is engaged in various nonutility businesses through Subsidiaries and through affiliated business ventures, including the following: (1) EWGs and QFs, (2) investments in energy-related businesses involving exploration and production, transmission and distribution and cogeneration, among other things; and (3) telecommunications activities. Applicants also request that they be permitted to retain existing Financing Subsidiaries, Black Hills Nevada Real Estate Holdings LLC, Black Hills Valmont Colorado Inc., E-Next A Equipment Leasing Company LLC, and Las Vegas Cogeneration Energy Financing Company LLC.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–24738 Filed 11–4–04; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50618/File No. S7–12–01]

Order Extending Temporary Exemption of Banks, Savings Associations, and Savings Banks From the Definition of ''Broker'' Under Section 3(a)(4) of the Securities Exchange Act of 1934

November 1, 2004.

I. Background

The Gramm-Leach-Bliley Act (''GLBA'') repealed the blanket exception of banks from the definitions of ''broker'' and ''dealer'' under the Securities Exchange Act of 1934 (''Exchange Act'')[1] and replaced this full exception with functional exceptions incorporated in amended definitions of ''broker'' and ''dealer.'' Under the GLBA, banks that engage in securities activities either must conduct those activities through a registered broker-dealer or ensure that their securities activities fit within the terms of a functional exception to the amended definitions of ''broker'' and ''dealer.''

The GLBA provided that the amended definitions of ''broker'' and ''dealer'' were to become effective May 12, 2001. On May 11, 2001, the Securities and Exchange Commission (''Commission'') issued interim final rules (''Interim Rules'') to define certain terms used in, and grant additional exemptions from, the amended definitions of ''broker'' and ''dealer.''[2] Among other things, the Interim Rules extended the exceptions and exemptions granted to banks under the statute and Interim Rules to savings associations and savings banks. They also included a temporary exemption that gave banks time to come into full compliance with the more narrowly-tailored exceptions from broker-dealer registration.[3] To further accommodate the banking industry's continuing compliance concerns, the Commission delayed the effective date of the bank ''broker'' and ''dealer'' rules through a series of orders that ultimately extended the temporary exemption from the definition of ''broker'' to November 12, 2004, and from the definition of ''dealer'' to September 30, 2003.[4]

In June 2004, the Commission proposed Regulation B, which would revise and replace the Interim Rules.[5] The comment period for Regulation B expired on September 1, 2004,[6] and the Commission has received over 105 comments, including comments from the banking industry, banking regulators, and members of Congress.

In the Interim Rules, the Commission adopted Exchange Act Rule 15a–7,[7] which provided that banks must begin complying with the GLBA on January 1, 2002. We proposed to amend this provision in Regulation B by providing banks and other financial institutions until January 1, 2006, to begin complying with the GLBA.[8]

II. Extension of Temporary Exemption From Definition of ''Broker''

The Commission is carefully considering comments to determine what final action should be taken with regard to the Regulation B proposal. The Commission anticipates that this review process will not be completed before the exemption from the Interim Rules relating to the definition of ''broker'' expires on November 12, 2004.

Therefore, the Commission finds that extending the temporary exemption of banks, savings associations, and savings banks from the definition of ''broker'' is necessary and appropriate in the public interest, and is consistent with the protection of investors. The Commission believes that extending the exemption from the definition of ''broker'' until March 31, 2005, will prevent banks and other financial institutions from unnecessarily incurring costs to comply with the statutory scheme based on the current Interim Rules and will give the Commission time to fully consider comments received on Regulation B and

[1] As defined in Exchange Act Sections 3(a)(4) and 3(a)(5) [15 U.S.C. 78c(a)(4) and 78c(a)(5)].

[2] *See* Definition of Terms in and Specific Exemptions for Banks, Savings Associations, and Savings Banks Under Sections 3(a)(4) and 3(a)(5) of the Securities Exchange Act of 1934, Exchange Act Release No. 44291 (May 11, 2001), 66 FR 27760 (May 18, 2001).

[3] 17 CFR 240.15a–7.

[4] *See* Exchange Act Release No. 44570 (July 18, 2001); Exchange Act Release No. 45897 (May 8, 2002); and Exchange Act Release No. 46745 (October 30, 2002); Exchange Act Release No. 47649 (April 8, 2003) (extending the exemption from the definition of ''broker'' until November 12, 2004); Exchange Act Release No. 47366 (February 13, 2003) (extending exemption from the definition of ''dealer'' until September 30, 2003). On February 13, 2003, the Commission adopted amendments to certain parts of the Interim Rules that define terms used in the dealer exceptions, as well as certain dealer exemptions (''Dealer Release'') Exchange Act Release No. 47364 (February 13, 2003), 68 FR 8686 (February 24, 2003). Therefore, this order is limited to an extension of the temporary exemption from the definition of ''broker''.

[5] Exchange Act Release No. 49879 (June 17, 2004), 69 FR 39682 (June 30, 2004)

[6] *See* Exchange Act Release No. 50056 (July 22, 2004) 69 FR 44988 (July 28, 2004) (extending comment period on Regulation B until September 1, 2004).

[7] 17 CFR 240.15a–7.

[8] In proposing Regulation B, the Commission proposed Rule 781 as a re-designation of Rule 15a–7 and proposed a compliance date of January 1, 2006. *See* 17 CFR 242.781.

take any final action on the proposal as necessary, including consideration of any modification necessary to the proposed compliance date.

III. Conclusion

Accordingly, pursuant to Section 36 of the Exchange Act,[9]

It Is Hereby Ordered that banks, savings associations, and savings banks are exempt from the definition of the term ''broker'' under the Exchange Act until March 31, 2005.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4–3031 Filed 11–4–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50616; File No. SR–CHX–2004–22]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by The Chicago Stock Exchange, Incorporated to Modify Certain Charges that are Payable by CHX Specialists That Trade NASDAQ/NM Securities

November 1, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice hereby is given that on September 27, 2004, the Chicago Stock Exchange, Incorporated (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. 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 CHX proposes to amend its membership dues and fees schedule (the ''Fee Schedule''), to modify certain charges that are payable by CHX specialists that trade NASDAQ/NM securities. The text of the proposed rule change is available at the Office of the Secretary, the Commission and the CHX.

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 CHX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received regarding the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CHX has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The CHX proposes to amend its Fee Schedule to modify certain charges that are payable by CHX specialists that trade NASDAQ/NM (''Over-the-Counter'' or ''OTC'') securities. Specifically, the changes to the Fee Schedule would (a) modify the formula for calculating the monthly fixed fee that is payable by OTC specialists; (b) establish a flat monthly CUSIP fee of $2,000 per OTC specialist firm, regardless of the number of issues traded; and (c) eliminate application and assignment fees for OTC issues that are assigned without competition.

Fixed fees. The current monthly fixed fee payable by specialists trading OTC securities is calculated for each firm by subtracting, from the fixed fee charged to the firm in December 2003, a firm's pro rata share of a specific dollar amount. Additional reductions of the fixed fee are available to firms that meet specific share volume targets.

Under the proposed new fee calculation, the CHX would increase the basic amount paid by its OTC specialist firms to help the CHX better cover its costs of supporting the OTC specialist program, but would provide incentives, through fixed fee reductions, to specialist firms that trade additional Nasdaq/NM securities and thus increase the number of issues traded on the CHX. Specifically, the CHX would calculate the basic fixed fee by charging OTC specialist firms the greater of $20,000 or each firm's pro rata share of $60,000. A firm's pro rata share would be based on the number of firms trading OTC securities in a particular month.[3] The CHX would also automatically increase the basic monthly fixed fee by $.0024 per share for all MAX-executed shares above 20 million shares, up to $30,000 per firm, to recognize the fact that the CHX's costs of supporting the OTC specialist program would increase with substantial increases in its specialists' trading volume. As a final component of its fixed fee proposal, however, the CHX would reduce the fixed fee by $100 for each additional Nasdaq/NM issue assigned to an OTC specialist firm, subject to a maximum monthly reduction of $10,000 per firm. As noted above, this fee reduction provides an incentive to OTC specialist firms to trade additional Nasdaq/NM securities.

CUSIP, application and assignment fees. As noted above, the CHX also proposes to replace its current per-issue CUSIP fee with a flat fee and to eliminate the application and assignment fees that otherwise would be assessed when Nasdaq/NM issues are assigned without competition.[4] These two proposals—like the proposed modification in the fixed fee—are designed to encourage specialist firms to trade additional Nasdaq/NM securities by allowing them to do so without absorbing additional costs.[5]

The CHX believes that these changes to the Fee Schedule represent a fair allocation of the costs associated with the OTC specialist program.[6] As noted above, the changes are also intended to provide OTC specialists with an appropriate incentive to increase the number of OTC issues traded by an OTC specialist (consistent with the OTC specialist's duties as a specialist), which could allow the CHX's members to offer their customers access to a wider array of specialist-traded OTC securities.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(4) of the Act[7] in that it provides for the equitable allocation of reasonable dues, fees and

[9] 15 U.S.C. 78mm.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] For example, if two specialist firms were trading OTC securities, each firm would pay $30,000. If three specialist firms were trading OTC securities, each firm would pay $20,000.

[4] The CHX would continue to charge specialist assignment fees with respect to securities that are assigned to a specialist firm in competition with other firms, reflecting the increased administrative costs associated with allocating stocks in competition.

[5] The proposed elimination of the application and assignment fees would reduce fees for any OTC specialist firm that seeks to trade additional securities. The proposed changes to the CUSIP fee would reduce the CUSIP fees currently charged to two of the CHX's OTC specialist firms and would increase, slightly, the CUSIP fees currently charged one of the CHX's OTC specialist firms.

[6] At a basic level, many of the CHX's costs of supporting the OTC specialist program do not vary based on the number of OTC specialist firms or the number of issues traded. These costs, however, can increase with substantial increases in trading volume. The CHX's proposed changes to the fixed fee are consistent with these principles.

[7] 15 U.S.C. 78(f)(b)(4).

other charges among the CHX's members.

B. Self-Regulatory Organization's Statement of Burden on Competition

The CHX does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments Regarding 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

The proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [8] and subparagraph (f)(2) of Rule 19b–4 thereunder [9] because it establishes or changes a due, fee or other charge imposed by the CHX. At any time within 60 days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purpose of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–CHX–2004–22 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathon G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–CHX–2004–22. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CHX. 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 No. SR–CHX–2004–22 and should be submitted on or before November 26, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4–3015 Filed 11–4–04; 8:45 am]

BILLING CODE 8010–01–P

[8] 15 U.S.C. 78s(b)(3)(A)(ii).

[9] 17 CFR 240.19b–4(f)(2).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50611; File No. SR–NASD–2004–027]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Investment Company Portfolio Transactions

October 29, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 10, 2004, the National Association of Securities Dealers, Inc. (''NASD''), filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD. NASD amended the proposed rule change on September 17, 2004.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.[4]

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD is proposing to amend NASD Conduct Rule 2830(k). Below is the text of the proposed rule change. Proposed new language is *italicized*; proposed deletions are in [brackets].

* * * * *

Rule 2830. Investment Company Securities

(a) through (j) No change.

(k) Execution of Investment Company Portfolio Transactions

(1) No member shall, directly or indirectly, favor or disfavor the sale or distribution of shares of any particular investment company or group of investment companies on the basis of brokerage commissions received or expected by such member from any source, including such investment company, or any covered account.

(2) No member shall sell shares of, or act as underwriter for, an investment company, if the member knows or has reason to know that such investment company, or an investment adviser or principal underwriter of the company, has a written or oral agreement or understanding under which the company directs or is expected to direct portfolio securities transactions (or any commission, markup or other remuneration resulting from any such transaction) to a broker or a dealer in consideration for the promotion or sale of shares issued by the company or any other registered investment company.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Patrice Gliniecki, Senior Vice President and Deputy General Counsel, NASD, to Katherine England, Assistant Director, Division of Market Regulation, Commission, dated September 16, 2004 (''Amendment No. 1''). Amendment No. 1 modified proposed Rule 2830(k)(2) to clarify that its prohibition would apply to situations in which an investment company directs or is expected to direct portfolio transactions in exchange for distribution. Amendment No. 1 also modified that proposed prohibition to clarify that it would apply not only to the distribution of shares of a fund that directs portfolio transaction commissions to the distributing broker, but also to the distribution of the shares of any other registered investment company. Amendment No. 1 further clarified the description of the purpose of the proposed rule change.

[4] The Commission recently amended rule 12b–1, 17 CFR 270.12b1–1, under the Investment Company Act of 1940, 15 U.S.C. 80a, to prohibit open-end management investment companies from paying for the distribution of their shares with brokerage commissions. *See* Investment Company Act Release No. 26591 (Sept. 2, 2004), 69 FR 54728 (Sept. 9, 2004). This NASD rule proposal corresponds with the Commission's action.

[(2)] *(3)* No member shall, directly or indirectly, demand or require brokerage commissions or solicit a promise of such commissions from any source as a condition to the sale or distribution of shares of an investment company.

[(3)] *(4)* No member shall, directly or indirectly, offer or promise to another member, brokerage commissions from any source as a condition to the sale or distribution of shares of an investment company and no member shall request or arrange for the direction to any member of a specific amount or percentage of brokerage commissions conditioned upon that member's sales or promise of sales of shares of an investment company.

[(4)] *(5)* No member shall circulate any information regarding the amount or level of brokerage commissions received by the member from any investment company or covered account to other than management personnel who are required, in the overall management of the member's business, to have access to such information.

[(5)] *(6)* No member shall, with respect to such member's activities as underwriter of investment company shares, suggest, encourage, or sponsor any incentive campaign or special sales effort of another member with respect to the shares of any investment company which incentive or sales effort is, to the knowledge or understanding of such underwriter-member, to be based upon, or financed by, brokerage commissions directed or arranged by the underwriter-member.

[(6)] *(7)* No member shall, with respect to such member's retail sales or distribution of investment company shares:

(A) Provide to salesmen, branch managers or other sales personnel any incentive or additional compensation for the sale of shares of specific investment companies based on the amount of brokerage commissions received or expected from any source, including such investment companies or any covered account. Included in this prohibition are bonuses, preferred compensation lists, sales incentive campaign or contests, or any other method of compensation which provides an incentive to sales personnel to favor or disfavor any investment company or group of investment companies based on brokerage commissions;

(B) Recommend specific investment companies to sales personnel, or establish ''recommended,'' ''selected,'' or ''preferred'' lists of investment companies, regardless of the existence of any special compensation or incentives to favor or disfavor the shares of such company or companies in sales efforts, if such companies are recommended or selected on the basis of brokerage commissions received or expected from any source;

(C) Grant to salesmen, branch managers or other sales personnel any participation in brokerage commissions received by such member from portfolio transactions of an investment company whose shares are sold by such member, or from any covered account, if such commissions are directed by, or identified with, such investment company or any covered account; or

(D) Use sales of shares of any investment company as a factor in negotiating the price of, or the amount of brokerage commissions to be paid on, a portfolio transaction of an investment company or of any covered account, whether such transaction is executed in the over-the-counter market or elsewhere.

[(7)] *(8)* Provided that the member does not violate any of the specific provisions of this paragraph (k), nothing herein shall be deemed to prohibit:

(A) The execution of portfolio transactions of any investment company or covered account by members who also sell shares of the investment company;

[(B) A member from selling shares of, or acting as underwriter for, an investment company which follows a policy, disclosed in its prospectus, of considering sales of shares of the investment company as a factor in the selection of broker/dealers to execute portfolio transactions, subject to the requirements of best execution;]

[(C)] *(B)* A member from compensating its salesmen and managers based on total sales of investment company shares attributable to such salesmen or managers, whether by use of overrides, accounting credits, or other compensation methods, provided that such compensation is not designed to favor or disfavor sales of shares of particular investment companies on a basis prohibited by this paragraph (k).

(l) through (n) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Rule 2830(k) governs members' execution of investment company portfolio transactions. The rule generally prohibits members from favoring the sale of shares of any investment company on the basis of brokerage commissions received or expected by the member from any source, including the fund. The rule is designed to prevent *quid pro quo* arrangements in which brokerage commissions, which represent an asset of the fund, are used to compensate members for selling fund shares. Rule 2830(k)(7)(B) permits a member to sell the shares of, or act as an underwriter for, an investment company that follows a policy, disclosed in its prospectus, of considering sales of shares of the investment company as a factor in the selection of broker-dealers to execute fund portfolio transactions, subject to the requirements of best execution. NASD proposes to eliminate this provision, due to concerns that members have misconstrued the limited nature of the provision and the fact that the provision does not change the general prohibitions of the rule.

The proposed rule change also would include language, in new Rule 2830(k)(2), that would clarify that no member may sell the shares of, or act as underwriter for, an investment company if the member knows, or has reason to know, that such investment company, or an investment adviser or principal underwriter of the company, has a written or oral agreement or understanding under which the company directs or is expected to direct portfolio securities transactions (or any commission, markup or other remuneration resulting from the transaction) to a broker or a dealer in consideration for the promotion or sale of shares issued by the company or any other registered investment company.[5] Under the proposed rule change, a member would not violate Rule 2830(k) solely because the member promotes or sells the shares of an investment

[5] Proposed new paragraph (k)(2) would add an objective proscription, in that the broker-dealer's intent to favor or disfavor a particular fund would not be relevant to that prohibition. The existing proscription of paragraph (k)(1), in contrast, turns upon the question of whether a broker-dealer favors or disfavors a fund based on receipt or expected receipt of brokerage commissions.

company that directs fund portfolio transactions to the member. However, a member would violate Rule 2830(k) if the member engages in the type of conduct prohibited under paragraphs (1) through (7).

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[6] which requires, among other things, that NASD rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. One important purpose of Rule 2830(k) is to help eliminate conflicts of interest in the sale of investment company securities, and the proposed rule change will improve NASD's ability to achieve this objective.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change as amended is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASD–2004–027 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–NASD–2004–027. The file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549.

Copies of such filing will also be available for inspection and copying at the principal office of NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASD–2004–027 and should be submitted by November 26, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4–3016 Filed 11–4–04; 8:45 am]

BILLING CODE 8010–01–P

[6] 15 U.S.C. 78o–3(b)(6).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50601; File No. SR–NASD–2004–160]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by the National Association of Securities Dealers, Inc. To Extend the Operation of NASD's Alternative Display Facility on a Pilot Basis

October 28, 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 21, 2004, the National Association of Securities Dealers, Inc. (''NASD'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. NASD has designated the proposed rule change as constituting a ''non-controversial'' rule change under paragraph (f)(6) of Rule 19b–4 under the Act,[3] which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD is proposing to extend for nine months, to July 26, 2005, the operation of NASD's Alternative Display Facility (''ADF'') on a pilot basis. The ADF pilot program, as approved by the SEC on July 24, 2002, and extended on April 17, 2003 and January 26, 2004, will expire on October 26, 2004. The pilot permits members to quote and trade only Nasdaq-listed securities on or through the ADF.

Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

* * * * *

4000A. NASD ALTERNATIVE DISPLAY FACILITY

4100A. General

NASD Alternative Display Facility (''ADF'') is the facility to be operated by NASD on a nine-month pilot basis for members that choose to quote or effect trades in Nasdaq securities (''ADF-

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

eligible securities'') otherwise than on Nasdaq or on an exchange. The ADF will collect and disseminate quotations, compare trades, and collect and disseminate trade reports. Those NASD members that utilize ADF systems for quotation or trading activities must comply with the Rule 4000A, Rule 5400 and Rule 6000A Series, as well as all other applicable NASD Rules. The ADF pilot will expire on [October 26, 2004] *July 26, 2005*.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On July 24, 2002, the Commission approved SR–NASD–2002–97,[4] which authorizes NASD to operate the ADF on a pilot basis for nine months, pending the consideration of SR–NASD–2001–90, in which NASD proposes to operate the ADF on a permanent basis. NASD subsequently filed for immediate effectiveness proposed rule changes SR–NASD–2003–67 to extend the pilot until January 26, 2004,[5] and SR–NASD–2004–012 to extend the pilot until October 26, 2004.[6] As described in detail in SR–NASD–2001–90, the ADF is a quotation collection, trade comparison, and trade reporting facility developed by NASD in accordance with the Commission's SuperMontage Approval Order[7] and in conjunction with Nasdaq's proposal to register as a national securities exchange.[8] In addition, since the Commission gave its initial approval to the ADF pilot, NASD has filed several other ADF-related rule change proposals, some of which are effective and have been incorporated into the operation and administration of the pilot.[9]

As proposed in SR–NASD–2001–90, the ADF would provide market participants the ability to quote and trade Nasdaq and exchange-listed securities. The current ADF pilot program, however, permits operation of the ADF with respect to Nasdaq securities only. This is because several regulatory issues relating to the trading of exchange-listed securities on the ADF have not been resolved.

The ADF has been operating successfully during the pilot period. The SEC acknowledged this fact when it approved the launch of SuperMontage, stating that the ADF met the conditions set forth in its SuperMontage Approval Order to provide an alternative quotation collection, trade comparison, and trade reporting facility. NASD believes that the ADF has since continued to honor those conditions. Meanwhile, the issues related to trading exchange-listed securities—and by extension, approval of the operation of the ADF on a permanent basis—remain unresolved. Accordingly, NASD believes it is appropriate to extend the pilot period for ADF trading in Nasdaq securities for nine months or until approval of SR–NASD–2001–90.

The proposed rule change will become effective upon filing, will be implemented at the close of business on October 26, 2004, and will expire on July 26, 2005.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[10] which requires that NASD rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination among persons engaged in regulating, clearing, settling, processing information and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. In addition, this rule proposal is consistent with Section 15A(b)(6) of the Act because it does not permit unfair discrimination between customers, issuers, brokers, or dealers, fix minimum profits, impose any schedule or fix rates of commissions, allowances, discounts, or other fees to be charged by members, or regulate matters not related to the purposes of the Act or the administration of NASD.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has been filed by NASD as a ''non-controversial'' rule change under Rule 19b–4(f)(6) under the Act,[11] in that the proposed rule change does not significantly affect the protection of investors or the public interest and does not impose any significant burden on competition. NASD has requested that the Commission waive the requirement that the rule change not become operative for 30 days after the date of the filing, as set forth in Rule 19b–4(f)(6)(iii), to

[4] Securities Exchange Act Release No. 46249 (July 24, 2002), 67 FR 49822 (July 31, 2002).

[5] Securities Exchange Act Release No. 47633 (April 10, 2003), 68 FR 19043 (April 17, 2003).

[6] Securities Exchange Act Release No. 49131 (January 27, 2004), 69 FR 5229 (February 3, 2004).

[7] Securities Exchange Act Release No. 43863 (January 19, 2001), 66 FR 8020 (January 26, 2001).

[8] Securities Exchange Act Release No. 44396 (June 7, 2001), 66 FR 31952 (June 13, 2001).

[9] On January 30, 2003, NASD filed proposed rule change SR–NASD–2003–009 to revise the transaction and quotation-related fees applicable to ADF activity during the pilot program. The rule change proposal became effective upon filing, with an implementation date of February 17, 2003. On January 6, 2004, the Commission granted accelerated approval to SR–NASD–2003–145, a proposal to amend the NASD ADF pilot rules to give jurisdiction to a three-member subcommittee of NASD's Market Regulation Committee (MRC) to review system outage determinations under Rule 4300A(f) and excused withdrawal denials under Rule 4619A. The rule change proposal became effective contemporaneously with the Commission's approval. On December 4, 2003, NASD filed for immediate effectiveness a proposed rule change to amend Rule 4613A(c) to clarify that NASD may suspend quotations in the ADF displayed by any market participant, including an ECN, that are no longer reasonably related to the prevailing market.

Additionally, NASD filed with the Commission two other rule change proposals. On March 12, 2004, the Commission approved SR–NASD–2003–175, a rule change proposal to repeal Rule 4613A(e)(1), which requires members that display priced quotations for a Nasdaq security in two or more market centers to display the same priced quotations for that security in each market center. On August 18, 2004, the Commission approved SR–NASD–2004–002, a proposed rule change to amend NASD Rule 4300A to require an ADF Market Participant to provide advance written notice to NASD's ADF Market Operations before denying electronic access to its ADF quote to any NASD member in the limited circumstances where a broker-dealer fails to pay contractually obligated costs for access to the Market Participant's quotations.

[10] 15 U.S.C. 78*o*–3(b)(6).

[11] 17 CFR 240.19b–4(f)(6).

prevent the current ADF pilot program from lapsing. The Commission finds good cause for the proposed rule change to become operative prior to the 30th day after the date of publication of notice of filing thereof because the proposed rule change is to prevent the benefits provided by the current ADF pilot program from lapsing.[12]

At any time within 60 days of this filing, the Commission may summarily abrogate this proposal if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- *Send an e-mail to rule-comments@sec.gov.* Please include File Number SR–NASD–2004–160 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–NASD–2004–160. 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 offices of the NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number NASD–2004–160 and should be submitted on or before November 26, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4–3017 Filed 11–4–04; 8:45 am]

BILLING CODE 8010–01–P

[12] Rule 19b–4(f)(6) also requires self-regulatory organizations to give written notice of proposed rule changes filed pursuant to this subsection at least five business days prior to filing. NASD complied with this requirement.

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50606; File No. SR–NASD–2004–074]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendment No. 1 Thereto by the National Association of Securities Dealers, Inc. To Clarify and Modify Market Marker Quote Re-Entry Obligations

October 29, 2004.

On April 28, 2004, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), submitted to 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 NASD Rule 4620 to clarify and modify market maker quote re-entry obligations in the event that a quote is withdrawn by Nasdaq's systems because of a dividend application or a trading halt. On August 31, 2004, Nasdaq filed Amendment No. 1 to the proposed rule change. The **Federal Register** published the proposed rule change, as amended, for comment on September 21, 2004.[3] The Commission received no comments on the proposal.

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.[4] In particular, the Commission believes that the proposed rule change is consistent with Section 15A(b)(6) of the Act,[5] which requires, among other things, that NASD's rules be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission believes that the proposed rule change appropriately establishes the time frames by which market makers must re-enter two-sided quotations when quotes are withdrawn by Nasdaq's systems due to dividend applications and trading halts. The Commission notes that, under the proposal, if a market maker failed to enter a new quotation prior to the close of the regular market session on the day of the systems withdrawal or, generally, on the day when trading resumed following a trading halt,[6] the market maker could be reinstated only when Nasdaq MarketWatch received a request from the market maker prior to the close of regular trading on the next day and Nasdaq MarketWatch determined that the market maker was not attempting to avoid its market making obligations by failing to re-enter a two-sided quotation earlier.[7]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (SR–NASD–2004–074) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4–3019 Filed 11–4–04; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 50372 (September 14, 2004), 69 FR 56468 (''Notice'').

[4] 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).

[5] 15 U.S.C. 78*o*–3(b)(6).

[6] If the resumption of trading following a trading halt occurs when the market is not in regular session, the market maker would need to enter the new two-sided quotation prior to the opening of the next regular session.

[7] Nasdaq has stated that it will monitor market maker reactivation requests for any pattern of delays that might indicate that a market maker was attempting to avoid its obligations and in such cases will deny immediate reactivation and deem the market maker's registration in the security as having been voluntarily terminated. *See* Notice.

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50603; File No. SR–NYSE–2004–22]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendments No. 1 and No. 2 Thereto to the Proposed Rule Change by the New York Stock Exchange, Inc. Regarding Listing and Trading of streetTRACKS® Gold Shares

October 28, 2004.

I. Introduction

On June 7, 2004, the New York Stock Exchange, Inc. (''Exchange'' or ''NYSE'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC''), 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 list and trade streetTRACKS® Gold Shares (''Shares''), which represent units of fractional undivided beneficial interests in and ownership of the streetTRACKS® Gold Trust℠ (''Trust''). The proposed rule change was published for comment in the **Federal Register** on June 17, 2004.[3] On September 13, 2004, the Exchange filed Amendment No. 1 to the proposal.[4] On October 28, 2004, the Exchange filed Amendment No. 2 to the proposal.[5] The Commission received no comment letters regarding the proposed rule change. This order approves the Exchange's rule change as amended.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 49849 (June 10, 2004), 69 FR 31437 (June 17, 2004) (''Notice'').

[4] *See* Amendment No. 1 that reflects certain amendments to the Registration Statement about the addition of a marketing agent, a wholly-owned subsidiary of State Street Corporation, and changes to fees and expenses.

[5] In Amendment No. 2, the Exchange (1) requested accelerated approval of the proposal, as amended; (2) clarified that the Exchange, via a Web site link to the Trust's Web site, would disseminate at least every 15 seconds an updated indicative spot price of gold and Intraday Indicative Value (''IIV''); (3) clarified that the continuous dissemination of the updated indicative spot price of gold and IIV via the Exchange's Web site link to the Trust's Web site were a condition of continued listing of the Shares; (4) confirmed that the NYSE would file a proposed rule change before exempting the shares from the Exchange's ''Market-on-Close/Limit-on-Close/Pre-opening Price Indications'' Policy; (5) clarified additional information about the Shares to be provided on the Exchange's Web site, via a link to the Trust's Web site; and (6) clarified proposed rule text relating to Investment Company Units (''ICUs'') and provisions in the information circular given to members, describing the Shares.

II. Description of Proposal

The NYSE proposes to list and trade shares in a new type of trust that will hold gold as its sole asset. The value of each Share, which will correspond to a fixed amount of gold,[6] will fluctuate with the spot price of gold. In effect, purchasing Shares in the Trust will provide investors a new mechanism to participate in the gold market. To facilitate trading of the new product, the NYSE has proposed new Rules 1300 and 1301 that will govern the trading of Shares on the Exchange.[7] Information about the liquidity, depth, and pricing mechanisms of the international gold market, management and structure of the Trust, and description of the Shares follows below.

A. Description of the Gold Market

The global trade in gold consists of over-the-counter (''OTC'') transactions in spot, forwards, and options and other derivatives, together with exchange-traded futures and options. In its filing with the Commission, the NYSE provided a description of the world-wide gold market as well as a description of the characteristics of gold supply and demand. The global gold market consists of the following components, described briefly below.[8]

The OTC Market

The OTC market trades on a 24-hour per day continuous basis and accounts for most global gold trading. Liquidity in the OTC market can vary from time to time during the course of the 24-hour trading day. Fluctuations in liquidity are reflected in adjustments to dealing spreads—the differential between a dealer's ''buy'' and ''sell'' prices. According to the Registration Statement, the period of greatest liquidity in the gold market is typically that time of the day when trading in the European time zones overlaps with trading in the United States, which is when OTC market trading in London, New York and other centers coincides with futures and options trading on the COMEX. This period lasts for approximately four hours each New York business day morning.

The OTC market has no formal structure and no open-outcry meeting place. The main centers of the OTC market are London, New York, and Zurich. Bullion dealers have offices around the world, and most of the world's major bullion dealers are either members or associate members of the London Bullion Market Association (''LBMA''), a trade association of participants in the London Bullion market.

The Exchange states that there are no authoritative published figures for overall world-wide volume in gold trading. There are certain published sources that do suggest the significant size of the overall market. The LBMA publishes statistics compiled from the five members offering clearing services.[9] The Exchange notes that the monthly average daily volume figures published by the LBMA for 2003 range from a high of 19 million to a low of 13.6 million troy ounces per day. The Exchange also notes that the COMEX publishes price and volume statistics for transactions in contracts for the future delivery of gold. COMEX figures for 2003 indicate that the average daily volume for gold futures contracts was 4.9 million troy ounces per day.[10]

Futures Exchanges

The Exchange states that the most significant gold futures exchanges are the COMEX division of the NYMEX and the Tokyo Commodity Exchange (''TOCOM'').[11] Trading on these exchanges is based on fixed delivery dates and transaction sizes for the futures and options contracts traded. Trading costs are negotiable. According to the Exchange, as a matter of practice, only a small percentage of the futures market turnover ever comes to physical delivery of the gold represented by the contracts traded. Both exchanges permit

[6] Initially, each Share will correspond to one-tenth of a troy ounce of gold. The amount of gold associated with each Share is expected to decrease over time as the Trust incurs and pays maintenance fees and other expenses.

[7] The applicability of the new rules is expressly limited to the Shares. As set forth in the Notice for the proposal, the proposed rules incorporate by reference other NYSE rules governing ICUs and, in addition, set forth guidelines for member organizations acting as specialist in the Shares.

[8] For more information on the gold market and gold supply and demand, *see* the Notice, *supra* note 3.

[9] Information regarding clearing volume estimates by the LBMA can be found at *http://www.lbma.org.uk/clearing_table.htm*. The three measures published by LBMA are: volume, the amount of metal transferred on average each day measured in million of troy ounces; value, measured in U.S. dollars, using the monthly average London PM fixing price; and the number of transfers, which is the average number recorded each day. The statistics exclude allocated and unallocated balance transfers where the sole purpose is for overnight credit and physical movements arranged by clearing members in locations other than London.

[10] Information regarding average daily volume estimates by the COMEX (a division of NYMEX) can be found at *http://www.nymex.com/jsp/markets/md_annual_volume6.jsp#2*. The statistics are based on gold futures contracts, each of which relates to 100 troy ounces of gold.

[11] The Exchange notes that there are other gold exchange markets, such as the Istanbul Gold Exchange, the Shanghai Gold Exchange, and the Hong Kong Chinese Gold & Silver Exchange Society.

trading on margin. COMEX operates through a central clearance system. TOCOM has a similar clearance system. In each case, the exchange acts as a counterparty for each member for clearing purposes.

Gold Market Regulation

There is no direct regulation of the global OTC market in gold. However, indirect regulation of some of the overseas participants does occur in some capacity. In the United Kingdom, responsibility for the regulation of the financial market participants, including the major participating members of the LBMA, falls under the authority of the Financial Services Authority (''FSA'') as provided by the Financial Services and Markets Act 2000 (''FSM Act''). Under the FSM Act, all UK-based banks, together with other investment firms, are subject to a range of requirements, including fitness and properness, capital adequacy, liquidity, and systems and controls. The FSA is responsible for regulating investment products, including derivatives, and those who deal in investment products. Regulation of spot, commercial forwards, and deposits of gold and silver not covered by the FSM Act is provided for by The London Code of Conduct for Non-Investment Products, which was established by market participants in conjunction with the Bank of England, and is a voluntary code of conduct among market participants.

The Exchange states that participants in the United States OTC market for gold are generally regulated by their institutional supervisors, which regulate their activities in the other markets in which they operate. For example, participating banks are regulated by the banking authorities. In the United States, the Commodity Futures Trading Commission, an independent government agency with the mandate to regulate commodity futures and option markets in the United States, regulates market participants and has established rules designed to prevent market manipulation, abusive trade practices, and fraud.

The Exchange states that TOCOM has authority to perform financial and operational surveillance on its members' trading activities, scrutinize positions held by members and large-scale customers, and monitor the price movements of futures markets by comparing them with cash and other derivative markets' prices.

B. Trust Management and Structure

The Exchange proposes to list and trade Shares, which represent units of fractional undivided beneficial interest in and ownership of the Trust. The purpose of the Trust is to hold gold bullion.[12] The investment objective of the Trust is for the Shares to reflect the performance of the price of gold, less the Trust's expenses.

The Trust is an investment trust and is not managed like a corporation or an active investment vehicle. The Trust has no board of directors or officers or persons acting in a similar capacity. The Trust is not a registered investment company under the Investment Company Act of 1940 (''1940 Act'') and is not required to register under such Act.

World Gold Trust Services, LLC, a wholly owned limited liability company of the World Gold Council,[13] is the sponsor of the Trust (''Sponsor''). The Bank of New York is the trustee of the Trust (''Trustee''), HSBC Bank USA, an indirect wholly owned subsidiary of HSBC Holdings plc, is the custodian of the Trust (''Custodian''), and State Street Global Markets LLC, a wholly-owned subsidiary of State Street Corporation, is the Marketing Agent of the Trust (the ''Marketing Agent''). The Marketing Agent and Custodian are registered broker-dealers. The Custodian and Marketing Agent and their affiliates, and affiliates of the Trustee, may act as Authorized Participants or purchase or sell gold or Shares for their own account as agent for their customer and for accounts over which they exercise investment discretion.[14] The Exchange states, that to the extent deemed appropriate by these entities, information barriers will exist between the Custodian, Marketing Agent, Trustee, and their affiliates transacting in the gold cash market or the Shares; however, the Exchange is not requiring such information barriers. UBS Securities LLC is to be the initial purchaser of the Shares (''Initial Purchaser''), as described below. The Sponsor, Trustee, Custodian and Initial Purchaser are not affiliated with one another or with the Exchange.

C. Trust Expenses and Management Fees

Generally, the assets of the Trust (*e.g.,* gold bullion) will be sold to pay Trust expenses and management fees. In Amendment No. 1, the NYSE amended the proposal to reflect an increase in these management fees.[15] These expenses and fees will reduce the value of an investor's Share as gold bullion is sold to pay such costs. Ordinary operating expenses of the Trust include (1) fees paid to the Sponsor, (2) fees paid to the Trustee, (3) fees paid to the Custodian, (4) fees paid to the Marketing Agent, and (5) various Trust administration fees, including printing and mailing costs, legal and audit fees, registration fees, and NYSE listing fees. The Trust's estimated ordinary operating expenses are accrued daily and reflected in the NAV of the Trust.

D. Description and Characteristics of the Shares

1. Liquidity

The Exchange states that the Shares may trade at a discount or premium relative to the NAV per Share because of non-concurrent trading hours between the major gold markets and the NYSE. While the Shares will trade on the NYSE until 4:15 p.m. New York time, liquidity in the OTC market for gold will be reduced after the close of the COMEX at 1:30 p.m. New York time. During this time, trading spreads and the resulting premium or discount on the Shares may widen as a result of reduced liquidity in the OTC gold market.

Because of the potential for arbitrage inherent in the structure of the Trust, the Sponsor believes that the Shares will not trade at a material discount or premium to the underlying gold held by the Trust. The Exchange states that the arbitrage process, which in general provides investors the opportunity to profit from differences in prices of assets, increases the efficiency of the markets, serves to prevent potentially manipulative efforts, and can be expected to operate efficiently in the case of the Shares and gold.

2. Creation and Redemption of Trust Shares

The Trust will create Shares on a continuous basis only in aggregations of 100,000 Shares (such aggregation referred to as a ''Basket''). Authorized Participants are the only persons that may place orders to create and redeem

[12] The Exchange states that the Commission has permitted the listing of prior products for which the underlying was a commodity or otherwise was not a security trading on a regulated market. *See, e.g.,* Securities Exchange Act Release Nos. 19133 (October 14, 1982) (approving the listing of standardized options on foreign currencies); 36505 (November 22, 1995) (approving the listing of dollar-denominated delivery foreign currency options on the Japanese Yen); and 36165 (August 29, 1995) (approving listing standards for, among other things, currency and currency index warrants). The Exchange also states that there are other securities trading on regulated markets that invest in commodities or in royalty interests based on commodities. *See, e.g.,* Central Fund of Canada (Registration No. 033–15180) (symbol CEF)); Hugoton Royalty Trust (Registration No. 333–68441) (symbol HGT).

[13] The World Gold Council is a not-for-profit association registered under Swiss law.

[14] *See infra* note 18.

[15] *See* Amendment No. 1, *supra* note 4.

Baskets. Authorized Participants purchasing Baskets will be able to separate a Basket into individual Shares for resale.

Authorized Participants purchasing a Basket must make an in-kind deposit of gold (''Gold Deposit''), together with, if applicable, a specified cash payment (''Cash Deposit'',[16] and together with the Gold Deposit, the ''Creation Basket Deposit''). The Sponsor anticipates that in the ordinary course of the Trust's operations a cash deposit will not be required for the creation of Baskets. Similarly, the Trust will redeem Shares only in Baskets, principally in exchange for gold and, if applicable, a cash payment (''Cash Redemption Amount'' [17] and together with the gold, the ''Redemption Distribution'').

The Exchange states that certain Authorized Participants are expected to have the facility to participate directly in the gold bullion market and the gold futures market. The Sponsor believes that the size and operation of the gold bullion market make it unlikely that an Authorized Participant's direct activities in the gold or securities markets will impact the price of gold or the price of the Shares. The Exchange states that each Authorized Participant is (i) regulated as a broker-dealer regulated under the Act and registered with the National Association of Securities Dealers, Inc. (''NASD''), or (ii) is exempt from being, or otherwise is not required to be, regulated as a broker-dealer under the Act or registered with the NASD, and in either case is qualified to act as a broker or dealer in the states or other jurisdictions where the nature of its business so requires.[18] Certain Authorized Participants will be regulated under federal and state banking laws and regulations. The Exchange states that each Authorized Participant will have its own set of rules and procedures, internal controls, and information barriers as it determines is appropriate in light of its own regulatory regime. Authorized Participants may act for their own accounts or as agents for broker-dealers, custodians, and other securities market participants that wish to create or redeem Baskets. An order for one or more Baskets may be placed by an Authorized Participant on behalf of multiple clients.

The total amount of gold and any cash required for the creation or redemption of each Basket will be in the same proportion to the total assets of the Trust (net of accrued and unpaid fees, expenses and other liabilities) on the date the Purchase Order is properly received as the number of Shares to be created in respect of the Creation Basket Deposit bears to the total number of Shares outstanding on the date the Purchase Order is received. Except when aggregated in Baskets, the Shares are not redeemable. The Trust will impose transaction fees in connection with creation and redemption transactions.

The Trustee will determine the NAV [19] and daily adjusted NAV (''ANAV'') of the Trust on each business day at the earlier of the London PM Fix for such day or 12 p.m. New York time.[20] In determining the Trust's NAV and ANAV, the Trustee will value the gold held by the Trust based on the London PM Fix price for a troy ounce of gold. Once the value of the gold has been determined, the Trustee will determine the ANAV of the Trust by subtracting all accrued fees (other than the fees to be computed by reference to the ANAV or custody fees based on the value of the gold held by the Trust), expenses, and other liabilities of the Trust from the total value of the gold and all other assets of the Trust (other than any amounts credited to the Trust's reserve account, if established). Then the ANAV of the Trust is used to compute the Trustee's, the Sponsor's, and Marketing Agent's fees.[21] To determine the Trust's NAV, the Trustee will subtract from the ANAV the amount of estimated accrued but unpaid fees that are based on the ANAV (*e.g.,* the Trustee's, the Sponsor's and Marketing Agent's fees) and the amount of custody fees, which are based on the value of the gold held by the Trust. The Trustee will also determine the NAV per Share by dividing the NAV of the Trust by the number of the Shares outstanding as of the close of trading on the NYSE.

UBS Securities LLC, the Initial Purchaser, is expected to purchase 100,000 Shares, which will comprise the seed Basket. The Initial Purchaser has, subject to conditions, also agreed to purchase 900,000 Shares, which comprise the initial Baskets. The Trust will receive all proceeds from the offering of the seed Basket and the initial Baskets in gold bullion. In connection with the offering and sale of the initial Baskets, the Initial Purchaser will be paid a fee by the Sponsor at the time of its purchase of the initial Baskets. In addition, the Initial Purchaser may receive commissions/fees from investors who purchase Shares from the initial Baskets through their commission/fee-based brokerage accounts.

3. Information About Underlying Gold Holdings

The last sale price for the Shares will be disseminated over the Consolidated Tape. There is a considerable amount of gold price and gold market information available on public Web sites and through professional and subscription services. In most instances, real-time information is only available for a fee, and information available free of charge is subject to delay (typically, 20 minutes).

The Exchange states that investors may obtain on a 24-hour basis gold pricing information based on the spot price for a troy ounce of gold from various financial information service providers, such as Reuters and

[16] The amount of any required Cash Deposit will be determined as follows: (1) The fees, expenses and liabilities of the Trust will be subtracted from any cash held or receivable by the Trust as of the date an Authorized Participant places an order to purchase one or more Baskets (''Purchase Order''); (2) the remaining amount will be divided by the number of Baskets outstanding and then multiplied by the number of Baskets being created pursuant to the Purchase Order. If the resulting amount is positive, that amount will be the required Cash Deposit. If the resulting amount is negative, the amount of the required Gold Deposit will be reduced by a number of fine ounces of gold equal in value to that resulting amount, determined by reference to the price of gold used in calculating the NAV of the Trust on the Purchase Order date. Fractions of an ounce of gold of less than 0.001 of an ounce included in the Gold Deposit amount will be disregarded.

[17] The Cash Redemption Amount is equal to the excess (if any) of all assets of the Trust other than gold less all estimated accrued but unpaid fees, expenses, and other liabilities, divided by the number of Baskets outstanding and multiplied by the number of Baskets included in the Authorized Participant's order to redeem one or more Baskets (''Redemption Order''). The Trustee will distribute any positive Cash Redemption Amount through DTC to the account of the Authorized Participant at DTC. If the Cash Redemption Amount is negative, the credit to the Authorized Participant's unallocated account (''Authorized Participant Unallocated Account'') will be reduced by the number of fine ounces of gold equal in value to that resulting amount, determined by reference to the price of gold used in calculating the NAV of the Trust on the Redemption Order date. Fractions of a fine ounce of gold included in the Redemption Distribution of less than 0.001 of an ounce will be disregarded. Redemption Distributions will be subject to the deduction of any applicable tax or other governmental charges due.

[18] The Commission notes that as of October 1, 2003, the temporary exemption for banks from the definition of ''dealer'' under the Exchange Act expired. Accordingly, banks that act as Authorized Participants should consider whether they are ''dealers'' under the federal securities laws. *See* Exchange Act Section 3(a)(5); Securities Exchange Act Release No. 47364 (February 14, 2003).

[19] The NAV of the Trust is the aggregate value of the Trust's assets less its liabilities (which include accrued expenses).

[20] According to the Exchange, the London fix is the most widely used benchmark for daily gold prices and is quoted by various financial information sources.

[21] The Custodian's fee is not calculated based on ANAV, but rather the value of the gold held by the Trust.

Bloomberg. Reuters and Bloomberg provide at no charge on their Web sites delayed information regarding the spot price of gold and last sale prices of gold futures, as well as information about news and developments in the gold market. Reuters and Bloomberg also offer a professional service to subscribers for a fee that provides information on gold prices directly from market participants. An organization named EBS provides an electronic trading platform to institutions such as bullion banks and dealers for the trading of spot gold, as well as a feed of live streaming prices to Reuters and Moneyline Telerate subscribers. The Exchange states that complete real-time data for gold futures and options prices traded on the COMEX (a division of the NYMEX) is available by subscription from Reuters and Bloomberg. The NYMEX also provides delayed futures and options information on current and past trading sessions and market news free of charge on its Web site. The Exchange also notes that there are a variety of other public Web sites providing information on gold, ranging from those specializing in precious metals to sites maintained by major newspapers, such as *The Washington Post.* Many of these sites offer price quotations drawn from other published sources, and as the information is supplied free of charge, it generally is subject to time delays.[22] Current gold spot prices are also available with bid/ask spreads from gold bullion dealers.

In addition, the NYSE, via a link to the Trust's Web site, will provide at no charge continuously updated bids and offers indicative of the spot price of gold on its own public Web site, *http://www.nyse.com.*[23] The Trust Web site will also provide an a calculation of the estimated NAV (also known as the Intraday Indicative Value or ''IIV'') of a Share as calculated by multiplying the indicative spot price of gold by the quantity of gold backing each Share. Comparing the IIV with the last sale price of the Shares helps an investor to determine whether, and to what extent, Shares may be selling at a premium or a discount to NAV. Notwithstanding that they will be provided free of charge, the indicative spot price and IIV per Share will be provided on an essentially real-time basis.[24] The Trust Web site will also provide the NAV of the Trust as calculated each business day by the Sponsor. In addition, the Web site for the Trust will contain the following information, on a per Share basis, for the Trust: (a) The IIV as of the close of the prior business day and the mid-point of the bid-ask price [25] in relation to such IIV (''Bid/Ask Price''), and a calculation of the premium or discount of such price against such IIV; and (b) data in chart format displaying the frequency distribution of discounts and premiums of the Bid/Ask Price against the IIV, within appropriate ranges, for each of the four previous calendar quarters. The Web site for the Trust will also provide the Trust's prospectus, as well as the two most recent reports to stockholders. Finally, the Trust Web site will also provide the last sale price of the Shares as traded in the United States market, subject to a 20-minute delay.[26]

E. Initial Share Issuance and Continued Listing

It is anticipated that a minimum of three Baskets will be outstanding at the commencement of trading on the Exchange. The number of Shares per Basket is 100,000.

The Exchange's applicable continued listing criteria require it to delist the Shares if any of the following occur: (1) Following the initial twelve-month period beginning upon the commencement of trading of the Shares, there are fewer than 50 record and/or beneficial holders of the Shares for 30 or more consecutive trading days; (2) the value of gold is no longer calculated or available on at least a 15-second delayed basis from a source unaffiliated with the Sponsor, the Trust, the Custodian, Marketing Agent, or the Exchange, or the Exchange stops providing the hyperlink on the Exchange's Web site to any such unaffiliated gold value; (3) the IIV is no longer made available on at least a 15-second delayed basis; or (4) such other event shall occur or condition exist that, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable. In addition, the Exchange will remove Shares from listing and trading upon termination of the Trust.

The Exchange's original listing fee applicable to the listing of the Trust will be $5,000. The annual continued listing fee for the Trust will be $2,000.

F. Exchange Trading Rules and Policies

New NYSE Rule 1300 (''Equity Gold Shares'') deals with the trading of the Shares. New NYSE Rule 1300(c) establishes that the Shares are included in the definition of ''securities'' under NYSE Rule 3 and are subject to all applicable trading rules. New NYSE Rule 1300(a) states that, for purposes of NYSE Rule 13 (''Definitions of Orders''), NYSE Rule 36.30 (''Communications Between Exchange and Members'' Offices''), NYSE Rule 98 (''Restrictions on Approved Person Associated With a Specialist's Member Organization''), NYSE Rule 104 (''Dealings by Specialists''), NYSE Rule 105(m) (''Guidelines for Specialists'' Specialty Stock Option Transactions Pursuant to Rule 105''), NYSE Rule 460.10 (''Specialists Participating in Contests''), NYSE Rule 1002 (''Availability of Automatic Feature''), NYSE Rule 1005 (''Orders May Not Be Broken Into Smaller Accounts''), and all other rules that refer to ICUs, the Shares will be treated the same as ICUs. New NYSE Rule 1300(b) adapts NYSE Rule 105(m) (''Guidelines for Specialists'' Specialty Stock Option Transactions Pursuant to Rule 105'') to the Shares. As is the case with ICUs, an equity specialist, his member organization, other member, allied member or approved person in such member organization or officer or employee thereof is prohibited from acting as a market maker or functioning in any capacity involving market-making responsibilities in the physical gold, gold futures or options on gold futures, or any other gold derivatives. However, an approved person of an equity specialist entitled to an exemption from NYSE Rule 105(m) under NYSE Rule 98 may act in a market making capacity, other than as a specialist in the Shares on another market center, in physical gold, gold futures or options on gold futures, or any other gold derivatives. Additionally, the Exchange does not currently intend

[22] There may be incremental differences in the gold spot price among the various information service sources. While the Exchange believes the differences in the gold spot price may be relevant to those entities engaging in arbitrage or in the active daily trading of gold or gold-based products, the Exchange believes such differences are likely of less concern to individual investors intending to hold the Shares as part of a long-term investment strategy.

[23] The Trust Web site's gold spot price will be provided by The Bullion Desk (*http://www.thebulliondesk.com*). The NYSE will provide a link to the Trust Web site. The Bullion Desk is not affiliated with the Trust, Sponsor, Custodian, or the Exchange. The Exchange states that it has been informed that the gold spot price is indicative only, constructed using a variety of sources to compile a spot price that is intended to represent a theoretical quote that might be obtained from a market maker from time to time. The Trust Web site will indicate that there are other sources for obtaining the gold spot price. In the event that the Trust Web site should cease to provide this indicative spot price from an unaffiliated source (and the intraday indicative value) of the Shares, the NYSE will delist the shares.

[24] The Trust's Web site, to which the Exchange's Web site will link, will disseminate an indicative spot price of gold and the IIV and indicate that these values are subject to an average delay of 5 to 10 seconds.

[25] The bid-ask price of the Trust is determined using the highest bid and lowest offer on the Consolidated Tape as of the time of calculation of the closing day IIV.

[26] The last sale price of the Shares in the secondary market is available on a real-time basis for a fee from regular data vendors.

to exempt the Shares from the Exchange's ''Market-on-Close/Limit-on-Close/Pre-Opening Price Indications'' Policy, although the Exchange may do so in the future if, after having experience with the trading of the Shares, the Exchange believes such an exemption is appropriate.[27]

New NYSE Rule 1301 requires trading and information barriers for member organizations acting as specialist in the Shares. Specifically, a member organizations acting as specialist in the Shares is obligated to conduct all trading in the Shares in its specialist account, subject only to the ability to have one or more investment accounts, all of which must be reported to the Exchange (*see* NYSE Rules 104.12 an 104.13). Such member organization acting as specialist must also report to the Exchange and keep current a list identifying all accounts for trading physical gold, gold futures or options on gold futures, or any other gold derivatives, which the specialist may have or over which it may exercise investment discretion. Under the rule, any trading by the member organization that is the specialist in the Shares of physical gold or gold derivatives in an account over which the member organization controls, directly or indirectly, trading activities or has a direct interest in the profits or losses is prohibited, except to the extent such accounts and trading activities are reported to the Exchange as required under the rule. Furthermore, a member organization that is the specialist in the Shares will be required to make its books, records and other relevant information pertaining to its transactions and those of any member, allied member, approved person, registered or non-registered employee affiliated with the member for its or their own accounts in physical gold and gold derivatives available to the Exchange upon request. In addition, the registered specialist in the Shares will be prohibited from using any material nonpublic information from any person associated with a member or employee of such person regarding trading of physical gold or any gold derivative products.

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares. Trading on the Exchange in the Shares may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include (1) the extent to which trading is not occurring in gold or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In addition, trading in Shares is subject to trading halts caused by extraordinary market volatility pursuant to the Exchange's ''circuit breaker'' rule.[28]

Trading in Shares on the Exchange will be effected normally until 4:15 p.m. each business day. The minimum trading increment for Shares on the Exchange will be $0.01.

G. Surveillance

The Exchange's surveillance procedures will be comparable to those used for ICUs currently trading on the Exchange and will incorporate and rely upon existing NYSE surveillance procedures governing equities. In addition, for intermarket surveillance purposes, the Exchange has entered into a reciprocal Memorandum of Understanding (''MOU'') with the NYMEX (of which COMEX is a division) for the sharing of information related to any financial instrument based, in whole or in part, upon an interest in or performance of gold.

The Exchange will also adopt new NYSE Rule 1301 (''Equity Gold Shares: Securities Accounts and Orders of Specialists'') to ensure that specialists handling Equity Gold Shares provide the Exchange with all necessary information relating to their trading in physical gold and in gold futures contracts and options thereon or any other gold derivative.[29] As a general matter, the Exchange has regulatory jurisdiction over its member organizations and any person or entity controlling a member organization. The Exchange also has regulatory jurisdiction over a subsidiary or affiliate of a member organization that is in the securities business. A member organization subsidiary or affiliate that does business only in commodities would not be subject to NYSE jurisdiction, but the Exchange could obtain certain information regarding the activities of such subsidiary or affiliate through reciprocal agreements with regulatory organizations of which such subsidiary or affiliate is a member.

H. Suitability

Pursuant to NYSE Rule 405, before a member, member organization, allied member or employee of such member organization undertakes to recommend a transaction in Shares, such member or member organization should make a determination that such Shares are suitable for such customer. The Exchange states that any recommendation is made with respect to such Shares, the person making the recommendation should have a reasonable basis for believing at the time of making the recommendation that the customer has such knowledge and experience in financial matters that he or she may reasonably be expected to be capable of evaluating the risks and any special characteristics of the recommended transaction, and is financially able to bear the risks of the recommended transaction.

I. Information Circular

The Exchange will distribute an information circular to its members in connection with the trading in the Shares. The circular will discuss the special characteristics and risks of trading this type of security. Specifically, the circular, among other things, will discuss what the Shares are, how a Basket is created and redeemed, the requirement that members and member firms deliver a prospectus to investors purchasing the Share prior to or concurrently with the confirmation of a transaction, applicable Exchange rules, dissemination information regarding the indicative price of gold and IIV, trading information, and the applicability of suitability rules. The information circular will also explain that the Trust is subject to various fees and expenses described in the Registration Statement, and that the number of ounces of gold required to create a Basket or to be delivered upon a redemption of a Basket will gradually decrease over time because the Shares comprising a Basket will represent a decreasing amount of gold due to the sale of the Trust's gold to pay the Trust's expenses. The information circular will also reference the fact that there is no regulated source of last sale information regarding physical gold, and that the Commission has no jurisdiction over the trading of gold as a physical commodity.

In the information circular, members and member organizations will be informed that procedures for purchases and redemptions of Shares in Baskets and that Shares are not individually

[27] To do so, the Exchange acknowledges it would file a proposed rule change. *See* Amendment No. 2.

[28] NYSE Rule 80B.

[29] NYSE Rule 1301 also states that, in connection with trading physical gold, gold futures or options on gold futures or any other gold derivatives (including Shares), the specialist shall not use any material nonpublic information received from any person associated with a member or employee of such person regarding trading by such person or employee in physical gold, gold futures or options on gold futures, or any other gold derivatives. For the purpose of NYSE Rule 1301, ''person associated with a member'' shall have the same meaning ascribed to it in Section 3(a)(21) of the Act.

redeemable but are redeemable only in Basket-size aggregations or multiples thereof. The information circular will also advise members of their suitability obligations with respect to recommended transactions to customers in the Shares. The circular will also discuss any relief if granted by the Commission or the staff from any rules under the Act.

The Information Circular will likewise disclose that the NAV for Trust Shares will be calculated as of the earlier of the London PM Fix for such day or 12 p.m. New York time each day that the NYSE is open for trading.

III. Discussion

After careful consideration, the Commission finds that the proposed rule change is consistent with the Act [30] and the rules and regulations thereunder applicable to a national securities exchange.[31] In particular, the Commission believes that the Exchange will be able to monitor for trading abuses in the Shares and thereby satisfying its obligations under Section 6(b)(1) of the Act [32] to enforce compliance by its members with the Act and its own rules.

A. Surveillance

Information sharing agreements with markets trading securities underlying a derivative are an important part of a self-regulatory organization's ability to monitor for trading abuses in derivative products. It is not possible, however, to enter into an information sharing agreement with the OTC gold market. Nevertheless, the Commission believes that the unique liquidity and depth of the gold market, together with the MOU with NYMEX (of which COMEX is a Division) and NYSE Rules 1300(b) and 1301, create the basis for the NYSE to monitor for fraudulent and manipulative practices in the trading of the Shares.

The Commission has previously approved the listing and trading of foreign currency options, for which there is no self-regulatory organization or Commission surveillance of the underlying markets, on the basis that the magnitude of the underlying currency market militated against manipulations through inter-market trading activity.[33] The Commission reasoned that the underlying currency spot market was active and that the inter-bank foreign currency spot market, in general, ''was an extremely large, diverse market comprised of banks and other financial institutions worldwide.''[34] The Commission further noted that the foreign currency spot market is supplemented by ''equally deep and liquid markets for standardized options and futures on foreign currencies and options on those futures.''[35] The depth and liquidity of the underlying spot market allayed some of the Commission's concerns with improper trading practices involving the options market and a related market, such as capping, pegging, front-running and mini-manipulation.

The Commission believes that the OTC market for gold has many of the same qualities as the market for foreign currencies. In particular, the gold spot market is extremely deep and liquid. The LBMA estimates that the monthly average daily volume for 2003 ranged from a high of 19 million to a low of 13.6 million troy ounces per day.[36] In addition, COMEX figures for 2003 indicate that the average daily volume for gold futures contracts was 4.9 million ounces per day.[37] In addition, the NYSE has entered into a MOU with NYMEX (of which COMEX is a division), the U.S. market that trades gold futures and options on such futures.

Finally, NYSE Rule 1301 will require that the specialist handling the Shares provide the Exchange with information relating to its trading in physical gold and in gold futures contracts and options or any other gold derivative. These reporting and recordkeeping requirements will assist the exchange in identifying situations potentially susceptible to manipulation. NYSE Rule 1301 will also prohibit the specialist in the Shares from using any material, nonpublic information received from any person associated with a member or employee of such person regarding trading by such person or employee in physical gold, gold futures or options or gold futures, or any other gold derivatives (including the Shares). In addition, NYSE Rule 1300(b) will prohibit the specialist in the Shares from being affiliated with a market maker in physical gold, gold futures, or options on gold futures unless information barriers are in place that satisfy the requirements in NYSE Rule 98. The Commission believes that the NYSE can adequately surveil trading in the Shares, notwithstanding the lack of a surveillance sharing agreement with the market trading the product on which Shares are based.

B. Dissemination of Information About the Shares

The Commission believes that sufficient venues for obtaining reliable gold price information exist so that investors in the Shares can monitor the underlying spot market in gold relative to the NAV of their Shares. There is a considerable amount of gold price and gold market information available 24 hours per day on public Web sites and through professional and subscription services. In addition, the NYSE, via a link to the Trust's Web site, will provide at no charge continuously updated (at least every 15 seconds) bids and offers indicative of the spot price of gold on its own public Web site, *http://www.nyse.com* from a source unaffiliated with the Sponsor, the Trust, the Custodian, Marketing Agent, or the Exchange.

The Commission also notes that the Trust's Web site is and will be publicly accessible at no charge, and will contain the Share's NAV as of the prior business day, a calculation of the premium or discount of the Bid-Asked Price of the Shares as of close of trading in relation to the closing IIV. Additionally, the Trust's Web site, to which the NYSE will link, will also provide the IIV updated at least every 15 seconds.[38] The Commission believes that dissemination of this information will facilitate transparency with respect to the proposed Shares and diminish the risk of manipulation or unfair informational advantage.

C. Listing and Trading

The Commission finds that the Exchange's proposed rules and procedures for the listing and trading of the proposed Shares are consistent with the Act. Shares will trade as equity securities subject to NYSE rules

[30] 15 U.S.C. 78f(b).

[31] In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[32] 15 U.S.C. 78f(b)(1).

[33] *See* 1982 Approval Order, *supra* note 12.

[34] *See* Securities Exchange Act Release No. 33732 (March 8, 1994), 59 FR 12023–01 (March 15, 1994).

[35] *Id.*

[36] There are no authoritative published figures for overall worldwide volume in gold trading. The LBMA publishes statistics compiled from the six members offering clearing services. Information regarding clearing volume estimates by the LBMA can be found at *http://www.lbma.org.uk/clearing_table.htm.*

[37] Information regarding average daily volume estimates by the COMEX (a division of NYMEX) can be found at *http://www.nymex.com/jsp/markets/md_annual_volume6.jsp#2.* The statistics are based on gold futures contracts, each of which relates to 100 ounces of gold.

[38] The Commission notes that the Sponsor, not the Trustee, calculates the Shares' NAV. Similarly, the Sponsor, not the Trustee or an independent third-party calculates the IIV. Concerns about the Sponsor's role in calculating these values are mitigated because of the widely accessible information about the value of gold, which is the sole asset of the Trust.

including, among others, rules governing trading halts, responsibilities of the specialist, account opening, and customer suitability requirements. In addition, the Shares will be subject to NYSE listing and delisting/suspension rules and procedures governing the trading of ICUs on the NYSE.[39] The Commission believes that listing and delisting criteria for the Shares should help to maintain a minimum level of liquidity and therefore minimize the potential for manipulation of the Shares. Finally, the Commission believes that the information circular the Exchange will distribute will inform members and member organizations about the terms, characteristics and risks in trading the Shares.

IV. Amendment Nos. 1 and 2

The NYSE has requested that the Commission grant accelerated approval to Amendment Nos. 1 and 2 to the proposed rule change.[40] The Commission believes that the amendments proposed in Amendment No. 1 regarding the Marketing Agent, a registered broker-dealer, certain fees and expenses, and other minor changes to the proposal, provide clarity and additional detail, but do not change the substance of the proposal. Similarly, Amendment No. 2 clarifies the dissemination of the IIV and indicative spot price of gold, additional information about the Shares to be provided on the NYSE Web site, and rule text relating to ICUs and requests accelerated approval of Amendments Nos. 1 and 2. Because these amendments clarify and make other minor changes to the proposal, the Commission therefore finds good cause, consistent with Section 19(b)(2) of the Act,[41] to approve Amendment Nos. 1 and 2 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**.

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the Amendment No. 1 and No. 2 are consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2004–22 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–NYSE–2004–22. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2004–22 and should be submitted on or before November 26, 2004.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[42] that the proposed rule change (SR–NYSE–2004–22), is approved and Amendment Nos. 1 and 2 are approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[43]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4–3018 Filed 11–4–04; 8:45 am]

BILLING CODE 8010–01–P

[39] *See* NYSE Rule 1300.

[40] See Amendments Nos. 1 and 2, *supra* notes 4 and 5.

[41] 15 U.S.C. 78s(b)(2).

[42] 15 U.S.C. 78s(b)(2).

[43] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 4871]

Notice of Meetings; United States International Telecommunication Advisory Committee, International Telecommunication Union Telecommunications Development Advisory Group Preparations

The Department of State announces meetings of the U.S. International Telecommunication Advisory Committee. The purpose of the Committee is to advise the Department on policy and technical issues with respect to the International Telecommunication Union (ITU). The purpose of these meetings is to prepare for the December 2004 meeting of the Telecommunications Development Advisory Group (TDAG).

An ITAC meeting will be held on Friday, November 19, 2004, at the State Department from 10 a.m. to 12 p.m. to begin preparations for the meeting of the ITU Telecommunications Development Advisory Group, which will take place December 15–17, 2004, in Geneva, Switzerland. An additional meeting is scheduled concerning preparations for the TDAG on Wednesday, December 8, 2004, from 10 a.m. to 12 p.m. All of these meetings will be at the Department of State in Room 2533A.

Members of the public may attend these meetings and are welcome to participate in the discussions, subject to the discretion of the Chair. Directions to meeting location may be determined by calling the ITAC Secretariat at 202 647–2592. Entrance to the State Department is controlled; in order to get precleared for each meeting, people planning to attend should send an e-mail to *mccorklend@state.gov* no later than 48 hours before the meeting. This e-mail should include the name of the meeting and date of meeting, your name, social security number, date of birth, and organizational affiliation. One of the following valid photo identifications will be required for admission to the State Department: U.S. driver's license, passport, U. S. Government identification card. Enter the Department of State from the C Street Lobby; in view of escorting requirements, non-Government attendees should plan to arrive not less than 15 minutes before the meeting begins.

Dated: November 1, 2004.

Doreen McGirr,

Director, ITU–D, Bureau of Economic and Business Affairs, Department of State.

[FR Doc. 04–24775 Filed 11–4–04; 8:45 am]

BILLING CODE 4710–45–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Generalized System of Preferences (GSP): Initiation of a Review To Consider the Designation of Azerbaijan as a Beneficiary Developing Country Under the GSP

AGENCY: Office of the United States Trade Representative.

ACTION: Notice and solicitation of public comment with respect to the eligibility of Azerbaijan for the GSP program.

SUMMARY: This notice announces the initiation of a review to consider the designation of Azerbaijan as a beneficiary developing country under the GSP program and solicits public comment relating to the designation criteria. Comments are due on December 10th, 2004 in accordance with the requirements for submissions, explained below.

ADDRESSES FOR SUBMISSIONS: Submit comments by electronic mail (e-mail) to: *FR0440@ustr.gov.* For assistance or if unable to submit comments by e-mail, contact the GSP Subcommittee, Office of the United States Trade Representative; USTR Annex, Room F–220; 1724 F Street, NW., Washington, DC 20508 (Tel. 202–395–6971).

FOR FURTHER INFORMATION CONTACT: Contact the GSP Subcommittee, Office of the United States Trade Representative; USTR Annex, Room F–220; 1724 F Street, NW., Washington, DC 20508 (Telephone: 202–395–6971, Facsimile: 202–395–9481).

SUPPLEMENTARY INFORMATION: The GSP Subcommittee of the Trade Policy Staff Committee (TPSC) has initiated a review in order to make a recommendation to the President as to whether Azerbaijan meets the eligibility criteria of the GSP statute, as set out below. After considering the eligibility criteria, the President is authorized to designate Azerbaijan as a beneficiary developing country for purposes of the GSP.

Interested parties are invited to submit comments regarding the eligibility of Azerbaijan for designation as a GSP beneficiary developing country. Documents not submitted in accordance with the below instructions might not be considered in this review. If unable to provide submissions by e-mail, please contact the GSP Subcommittee to arrange for an alternative method of transmission.

Eligibility Criteria

The trade benefits of the GSP program are available to any country that the President designates as a GSP ''beneficiary developing country.'' In designating countries as GSP beneficiary developing countries, the President must consider the criteria in sections 502(b)(2) and 502(c) of the Trade Act of 1974, as amended (19 U.S.C. 2462(b)(2), 2462(c)) (''the Act''). Section 502(b)(2) provides that a country is ineligible for designation if:

1. Such country is a Communist country, unless—

(a) The products of such country receive nondiscriminatory treatment, (b) Such country is a WTO Member (as such term is defined in section 2(10) of the Uruguay Round Agreements Act) (19 U.S.C. 3501(10)) and a member of the International Monetary Fund, and (c) Such country is not dominated or controlled by international communism.

2. Such country is a party to an arrangement of countries and participates in any action pursuant to such arrangement, the effect of which is—

(a) To withhold supplies of vital commodity resources from international trade or to raise the price of such commodities to an unreasonable level, and (b) To cause serious disruption of the world economy.

3. Such country affords preferential treatment to the products of a developed country, other than the United States, which has, or is likely to have, a significant adverse effect on United States commerce.

4. Such country—

(a) Has nationalized, expropriated, or otherwise seized ownership or control of property, including patents, trademarks, or copyrights, owned by a United States citizen or by a corporation, partnership, or association which is 50 percent or more beneficially owned by United States citizens, (b) Has taken steps to repudiate or nullify an existing contract or agreement with a United States citizen or a corporation, partnership, or association which is 50 percent or more beneficially owned by United States citizens, the effect of which is to nationalize, expropriate, or otherwise seize ownership or control of property, including patents, trademarks, or copyrights, so owned, or (c) Has imposed or enforced taxes or other exactions, restrictive maintenance or operational conditions, or other measures with respect to property, including patents, trademarks, or copyrights, so owned, the effect of which is to nationalize, expropriate, or otherwise seize ownership or control of such property, unless the President determines that—

(i) Prompt, adequate, and effective compensation has been or is being made to the citizen, corporation, partnership, or association referred to above, (ii) Good faith negotiations to provide prompt, adequate, and effective compensation under the applicable provisions of international law are in progress, or the country is otherwise taking steps to discharge its obligations under international law with respect to such citizen, corporation, partnership, or association, or (iii) A dispute involving such citizen, corporation, partnership, or association over compensation for such a seizure has been submitted to arbitration under the provisions of the Convention for the Settlement of Investment Disputes, or in another mutually agreed upon forum, and the President promptly furnishes a copy of such determination to the Senate and House of Representatives.

5. Such country fails to act in good faith in recognizing as binding or in enforcing arbitral awards in favor of United States citizens or a corporation, partnership, or association which is 50 percent or more beneficially owned by United States citizens, which have been made by arbitrators appointed for each case or by permanent arbitral bodies to which the parties involved have submitted their dispute.

6. Such country aids or abets, by granting sanctuary from prosecution to, any individual or group which has committed an act of international terrorism or the Secretary of State makes a determination with respect to such country under section 6(j)(1)(A) of the Export Administration Act of 1979 (50 U.S.C. Appx. section 2405(j)(1)(A)) or such country has not taken steps to support the efforts of the United States to combat terrorism.

7. Such country has not taken or is not taking steps to afford internationally recognized worker rights to workers in the country (including any designated zone in that country).

8. Such country has not implemented its commitments to eliminate the worst forms of child labor.

Section 502(c) provides that, in determining whether to designate any country as a GSP beneficiary developing country, the President shall take into account:

1. An expression by such country of its desire to be so designated;

2. The level of economic development of such country, including its per capita gross national product, the living standards of its inhabitants, and any other economic factors which the President deems appropriate;

3. Whether or not other major developed countries are extending generalized preferential tariff treatment to such country;

4. The extent to which such country has assured the United States that it will

provide equitable and reasonable access to the markets and basic commodity resources of such country and the extent to which such country has assured the United States that it will refrain from engaging in unreasonable export practices;

5. The extent to which such country is providing adequate and effective protection of intellectual property rights;

6. The extent to which such country has taken action to—

(a) Reduce trade distorting investment practices and policies (including export performance requirements); and (b) Reduce or eliminate barriers to trade in services; and

7. Whether or not such country has taken or is taking steps to afford to workers in that country (including any designated zone in that country) internationally recognized worker rights. Note that the Trade Act of 2002 amended paragraph (D) of the definition of the term ''internationally recognized worker rights,'' which now includes: (A) The right of association; (B) the right to organize and bargain collectively; (C) a prohibition on the use of any form of forced or compulsory labor; (D) a minimum age for the employment of children and a prohibition on the worst forms of child labor as defined in paragraph (6) of section 507(4) of the Act; and (E) acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.

Requirements for Submissions

Comments must be submitted to the Chairman of the GSP Subcommittee, Trade Policy Staff Committee. Comments, in English, must be received no later than 5 p.m. on December 10th, 2004.

In order to facilitate prompt consideration of submissions, USTR strongly urges and prefers electronic mail (e-mail) submissions in response to this notice. Hand delivered submissions and facsimile submissions will not normally be accepted.

Persons who make submissions by e-mail should not provide separate cover letters or messages in the message area of the e-mail; information that might appear in any cover letter should be included directly in the attached file containing the submission. The name and organization of the submitter, address, telephone, facsimile and e-mail address, should be included in the attached file itself.

The e-mail submissions should be single copy transmissions in English with the total submission, including attachments, not to exceed 50 double-spaced, standard-size pages (8½ × 11 inch) in 12 point type as a digital file, not exceeding 1 megabyte in size, attached to an e-mail transmission.

Persons making submissions by e-mail should use the following subject line: ''Azerbaijan GSP Eligibility Review.'' Documents must be submitted, in English, as either WordPerfect (''.WPD''), MSWord (''.DOC''), or text (''.TXT'') files. Documents shall not be submitted as electronic image files or contain large imbedded images (for example, ''.JPG'', ''.PDF'', ''.BMP'', ''.TIF'', or ''.GIF''), as these types of files are generally excessively large.

Any supporting documentation submitted as spreadsheets is acceptable as Quattro Pro or Excel, preformatted for printing on 8½ × 11 inch paper. To the extent possible, any data attachments to the submission should be included in the same file as the submission itself and not as separate files, and should not cause the entire submission to exceed the 50 page and 1 megabyte size limits.

Information and comments submitted will be subject to public inspection by appointment with the staff of the USTR Public Reading Room, except for information granted ''business confidential'' status pursuant to 15 CFR 2003.6. If the submission contains business confidential information, a non-confidential version of the submission must also be submitted that indicates where confidential information was redacted by inserting asterisks where material was deleted. In addition, the confidential submission must be clearly marked ''BUSINESS CONFIDENTIAL'' at the top and bottom of each and every page of the document.

The public version that does not contain business confidential information must also be clearly marked at the top and bottom of each and every page (either ''PUBLIC VERSION'' or ''NONCONFIDENTIAL''). Documents that are submitted without any marking might not be accepted or will be considered public documents.

For any document containing business confidential information submitted as an electronic attached file to an e-mail transmission, the file name of the business confidential version should begin with the characters ''BC-'', and the file name of the public version should begin with the characters ''P-''. The ''P-'' or ''BC-'' should be followed by the name of the submitter.

Public versions of all documents relating to this review will be available for review approximately 30 days shortly after the due date by appointment in the USTR public reading room, 1724 F Street NW., Washington, DC. Appointments may be made from 9:30 a.m. to noon and 1 p.m. to 4 p.m., Monday through Friday by calling (202) 395–6186.

H.J. Rosenbaum,

Acting Executive Director GSP; Acting Chairman, GSP Subcommittee of the Trade Policy Staff Committee.

[FR Doc. 04–24776 Filed 11–4–04; 8:45 am]

BILLING CODE 3190–W5–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed the Week Ending October 22, 2004

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. Sections 412 and 414. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2004–19457.

Date Filed: October 20, 2004.

Parties: Members of the International Air Transport Association.

Subject: CTC COMP 0505 dated 22 October 2004, Mail Vote 416, Special Cargo Amending Resolution, Add-On Resolution r1–r2, Minutes: CTC COMP 0504 dated 15 October 2004, Intended effective date: 1 February 2005.

Docket Number: OST–2004–19459.

Date Filed: October 20, 2004.

Parties: Members of the International Air Transport Association.

Subject: PTC2 EUR0 586 dated 22 October 2004, PTC2 Within Europe Expedited Resolutions r1–r12, Intended effective date: 1 December 2004.

Docket Number: OST–2004–19475.

Date Filed: October 22, 2004.

Parties: Members of the International Air Transport Association.

Subject: Mail Vote 417, PTC COMP 1197 dated 22 October 2004, Resolution 010a—Special Passenger Amending, Resolution r1–r2, Intended effective date: 1 November 2004.

Andrea M. Jenkins,

Program Manager, Federal Register Liaison.

[FR Doc. 04–24683 Filed 11–4–04; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Random Drug and Alcohol Testing Percentage Rates of Covered Aviation; Employees for the Period of January 1, 2005, Through December 31, 2005

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: The FAA has determined that the minimum random drug and alcohol testing percentage rates for the period January 1, 2005, through December 31, 2005, will remain at 25 percent of covered aviation employees for random drug testing and 10 percent of covered aviation employees for random alcohol testing.

FOR FURTHER INFORMATION CONTACT: Dr. Mark Crispi, Office of Aerospace Medicine, Drug Abatement Division, Program Analysis Branch (AAM–810), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8442.

Discussion: Pursuant to 14 CFR part 121, appendix I, section V.C, the FAA Administrator's decision on whether to change the minimum annual random drug testing rate is based on the reported random drug test positive rate for the entire aviation industry. If the reported random drug test positive rate is less than 1.00%, the Administrator may continue the minimum random drug testing rate at 25%. In 2003, the random drug test positive rate was 0.56%. Therefore, the minimum random drug testing rate will remain at 25% for calendar year 2005.

Similarly, 14 CFR part 121, appendix J, section III.C, requires the decision on the minimum annual random alcohol testing rate to be based on the random alcohol test violation rate. If the violation rate remains less than 0.50%, the Administrator may continue the minimum random alcohol testing rate at 10%. In 2003, the random alcohol test violation rate was 0.10%. Therefore, the minimum random alcohol testing rate will remain at 10% for calendar year 2005.

SUPPLEMENTARY INFORMATION: If you have questions about how the annual random testing percentage rates are determined please refer to the Code of Federal Regulations Title 14: part 121, appendix I, section V.C (for drug testing), and appendix J, section III.C (for alcohol testing).

Issued in Washington, DC on October 29, 2004.

Jon L. Jordan,

Federal Air Surgeon.

[FR Doc. 04–24690 Filed 11–4–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2004–19524]

Agency Information Collection Activities; Request for Comments; Renewed Approval of an Information Collection; FHWA Highway Design Handbook for Older Drivers and Pedestrians Workshop Participants' Feedback Survey

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FHWA invites public comments about our intention to request the Office of Management and Budget's (OMB) approval to renew an information collection, which is summarized below under Supplementary Information. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by January 4, 2005.

ADDRESSES: You may submit comments identified by DOT DMS Docket Number FHWA–2004–19524 by any of the following methods:

- Web site: *http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- Fax: 1–202–493–2251.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590.
- 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.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ms. Shirley Thompson, 202–366–2154, Office of Safety, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: FHWA Highway Design Handbook For Older Drivers and Pedestrians Workshop Participants' Feedback Survey.

Background: This information collection involves a survey of participants who have attended the FHWA Highway Design Handbook For Older Drivers and Pedestrians Workshop, to determine the extent of use and barriers to the recommendations and guidelines discussed in the handbook and workshop. The FHWA had developed and published in 1998 an ''Older Driver Highway Design Handbook, Recommendation and Guidelines'' for highway designers, traffic engineers, and highway safety specialists involved in the design and operation of highway facilities. The handbook provides information about the characteristics of the older driver road user to highway design, operational, and traffic engineering practitioners by addressing specific roadway features. A revised handbook, ''Guidelines and Recommendations to Accommodate Older Drivers and Pedestrians,'' was published in 2001 that documents new research findings and technical developments since the 1998 publication. A series of workshops began in 1998 to familiarize practitioners with the recommendations and guidelines. Workshops continue to be held to provide information to practitioners from the revised handbook.

This survey is needed to determine if recommendations and guidelines presented to practitioners in past workshops are being utilized in new and redesigned highway facilities to accommodate the needs and functional limitations of an aging population of road users. The survey is also needed to gauge the success of the workshop presentations in providing information, and to determine if adjustments should be considered for future workshops. The survey will be mailed, and for those participants with known e-mail addresses, the survey will be administered electronically to reduce completion time.

Respondents: Participants in past workshops, including highway designers, highway engineers and highway safety specialists.

Frequency: A survey of approximately 250 past workshop participants will be conducted annually.

Estimated Total Annual Burden Hours: The FHWA estimates that each respondent will complete the survey in approximately 10 minutes. The annual surveys to approximately 250 respondents are estimated at 42 burden hours.

Public Comments Invited

You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burden; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review 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.*

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued on: October 29, 2004.

James R. Kabel,

Chief, Management Programs and Analysis Division.

[FR Doc. 04–24691 Filed 11–4–04; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Agency Information Collection Activities: Submission for OMB Review

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice.

SUMMARY: The FHWA has forwarded the new information collection request described in this notice to the Office of Management and Budget (OMB) for review and comment. We published a **Federal Register** Notice on May 3, 2004 (69 FR 24217) with a 60-day public comment period concerning this information collection. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by December 6, 2004.

FOR FURTHER INFORMATION CONTACT: Ms. Kathleen Kendrick,202–366–2035, Office of Real Estate Services, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 7:30 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Uniform Act Focused Certification Program for Right-of-Way Professionals.

Background: FHWA proposes to conduct research to examine and report on training and certification options for right-of-way and other real estate service providers. In addition, the FHWA proposes to assess the market need for the establishment of a new certification program.

Respondents: 54 State or territory transportation agencies, 46 selected cities, counties, and private sector respondents.

Estimated Total Annual Burden: 110 hours.

Frequency: One-time survey.

ADDRESSES: You may send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: DOT Desk Officer. You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burden; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued on: October 29, 2004.

James R. Kabel,

Chief, Management Programs and Analysis Division.

[FR Doc. 04–24692 Filed 11–4–04; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Mahoning and Trumbull Counties, OH

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed project in Mahoning and Trumbull Counties, Ohio.

FOR FURTHER INFORMATION CONTACT: Andy Blalock, Program Delivery Engineer, Federal Highway Administration, 200 N. High Street, Suite 328, Columbus, Ohio 43215, telephone: (614) 280–6823.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Ohio Department of Transportation (ODOT) and the Eastgate Regional Council of Governments (Eastgate), will prepare an environmental impact statement (EIS) on a proposal to improve the connection through the east side of the City of Youngstown and the west side of Hubbard Township with I–80, a major east-west interstate highway located approximately 6 miles north of the City center and I–680 to the south via the U.S. 62/S.R. 7 connector. Eastgate is the sponsor for this proposed action through the completion of the EIS process.

The overall purpose of the improvement is to: Promote future economic development; improve traffic flow; and increase safety and emergency access.

Alternatives under consideration include: (1) Taking no action; (2) constructing a highway on new alignment; (3) other alternatives that may be developed during the NEPA process. The alternative on new alignment is within a project study area of approximately one mile in width and six miles in length.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State and, local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. A series of public meetings has already been held in the project area. In addition, public hearing(s) will be held. Public notice will be given of the time and place of the hearing(s). The draft EIS will be available for public and agency review and comment prior to the public

hearing. No formal scoping meeting is planned at this time.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited form all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of the 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)

Issued on October 28, 2004.

Victoria Peters,

Director, Office of Engineering Operations, Federal Highway Administration, Columbus, Ohio.

[FR Doc. 04–24751 Filed 11–4–04; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Association of American Railroads

[Docket Number FRA–2004–19402]

The Association of American Railroads (AAR) and the Railway Supply Institute (RSI), on behalf of their member companies, seeks a permanent waiver of compliance from the requirements of Title 49 Code of Federal Regulations (CFR) § 232.205(b)(5) *Class I Brake Test—Initial terminal inspection* regarding minimum piston travel. This waiver is necessary to allow a minimum piston travel of six (6) inches, rather than the current requirement of seven (7) inches for cars equipped with eight and one half (8.5) inch or ten (10) inch diameter brake cylinders. Technical data supporting this request was submitted to FRA for review. By granting this wavier, it would provide consistency with the braking systems practice used in Canada which permits a minimum piston travel of six (6) inches, per Section 22.1 of Train Brake Rules, Rule 22, Transport Canada.

By granting this waiver, no special markings or decals would be necessary, as all cars not covered by this waiver are required to have the permissible range of piston travel stencilled or marked on the car or badge plate. Therefore, six (6) to nine (9) inches would be the default range for piston travel absent a decal or marking to the contrary.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.*, Waiver Petition Docket Number FRA–2004–19402) and must be submitted in triplicate to the Docket Clerk, DOT Central Docket Management Facility, Room Pl–401, Washington, DC 20590–0001. Communications received within 30 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at DOT Central Docket Management Facility, Room Pl–401 (Plaza Level), 400 Seventh Street SW., Washington. 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 19377–78). The statement may also be found at *http://dms.dot.gov.*

Issued in Washington, DC on November 1, 2004.

Grady C. Cothen, Jr.,

Acting Associate Administrator for Safety.

[FR Doc. 04–24771 Filed 11–4–04; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with title 49 CFR 211.9 and 211.41, notice is hereby given that the Florida East Coast Railway, L.L.C. (FEC) has petitioned the Federal Railroad Administration (FRA) for renewal of its existing exemption for a waiver of compliance with a requirement of its safety standards. The FEC petition is described below, including the regulatory provisions involved, and the nature of the relief being requested.

Florida East Coast Railway, L.L.C. (FEC)

[Docket Number FRA–2004–19391]

FEC requests a renewal of its existing waiver (FRA Docket Number HS–98–02) to continue the use of their ''Paperless Time Ticket Program'' to produce an electronic record of train and engine employee hours of duty in lieu of manually signed paper records.

The existing FEC waiver, which expires in February 4, 2005, grants relief from Title 49 Code of Federal Regulations (CFR) Part 228.9(a)(1) for the railroad to utilize its computerized system of recording hours of duty data. Part 228.9(a)(1) requires that records maintained under Part 228 be signed by the employee whose time is being recorded, or in the case of train and engine crews, signed by the ranking crew member. The FEC seeks to utilize its secure computerized program of recording hours of duty information which would not comply with the above requirements for a ''signature'' of the employee or ranking crew member without renewed waiver authority. In the current FEC waiver approved program, each of the railroad's train and engine employees has his or her own unique identification number and personal identification number (PIN). The PIN will remain confidential to the employee. When accessing the computer for input of the hours of duty record, required by § 228.11, the (PIN) does not appear on the computer screen when the employee enters his or her number. All data entered under access gained through use of the confidential PIN will be electronically stamped with the entering employee's name along with the date and time of entry. The program will display the entering employee's electronic signature, date and time of entry on the employee's hours of duty record. The FEC requests that the existing waiver authority be continued to use the electronic stamp to

satisfy the signature requirements of the ''Hours of Service of Railroad Employees.'' The railroad maintains that the renewal is in the best interests of all parties, in that, it will continue to reduce unnecessary paperwork and the costs associated therewith while providing the railroads, its employees and the FRA with a superior level of information on a more timely than signed paper records.

Interested parties are invited to participate in these proceedings by submitting written views, data or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis of their request.

All communications concerning these proceedings should identify the appropriate docket number (FRA–2004–19391) and must be submitted to the Docket Clerk, DOT Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. 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 November 1, 2004.

Grady C. Cothen, Jr.,

Acting Associate Administrator for Safety.

[FR Doc. 04–24769 Filed 11–4–04; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with part 211 of title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Mount Rainier Scenic Railroad (MRSR) (Waiver Petition Docket Number FRA–2004–19102)

The Mount Rainier Scenic Railroad (MRSR) seeks a waiver of compliance from certain provisions of the Safety Glazing Standards, 49 CFR part 223, which requires certified glazing in all windows. This request is for one Southern Pacific Caboose, number 1751. The caboose was built in November of 1956. The railroad is in the process of restoring the caboose. When it is complete, it will be used only in excursion services and for display purposes.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.*, Waiver Petition Docket Number FRA–2004–19102) and must be submitted to the Docket Clerk, DOT Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. 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 November 1, 2004.

Grady C. Cothen, Jr.,

Acting Associate Administrator for Safety.

[FR Doc. 04–24767 Filed 11–4–04; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Union Pacific Railroad Company (Waiver Petition Docket Number FRA–2004–19199)

The Union Pacific Railroad Company (UP) seeks a waiver of compliance from certain provisions of 49 CFR part 232, Brake System Safety Standards for Freight and Other Non-Passenger Trains and Equipment. Specifically, § 232.215, Transfer Train Brake Tests and § 232.103(e), which requires at least 85% of a train's brakes to be operative when moving defective equipment in a train. This relief would apply for the movement of ''bad order'' cuts of cars from UP's former 18th Street Yard to UP's former Armstrong Yard in Kansas City, Kansas.

UP contends that the yard in question consists of one large end-to-end yard, which was historically considered separate yards—the former 18th Street Yard and the former Armstrong Yard. Both yards are contiguous and are connected by yard tracks, as well as a main line track. For purposes of clarity, the historical names of the two former yards will be used in this waiver.

The 18th Street Yard has never had repair facilities. When cars are found with defective conditions, they are assembled and moved to the Armstrong Yard as a switching move, where repair facilities are located. UP states that the movement of bad order cars from the 18th Street Yard to the Armstrong Yards typically consists of 30 to 40 cars, once each day, over a distance of 1 to 2 miles (that includes crossing the main line for a distance of 0.5 mile), using only the locomotive brakes to control the movement. There are no public grade crossings anywhere along the route and the route is virtually flat. UP also states that this switching movement has been conducted this way for at least the last 35 years. Recently, FRA took the position that this movement should be treated as a ''transfer train'' movement, requiring a transfer train brake test. This presents a problem for UP, since many of the cars are bad ordered for defective brakes, and at least 85% of the train's brakes would have to be operative if a transfer brake test is required. Accordingly, UP requests a waiver from the requirements of performing a transfer train brake test on the bad order repair movements from 18th Street Yard to Armstrong Yard, as well as relief from the requirement that no less than 85% of a train's brake be operative for these movements, subject to the following conditions:

1. After the train crew has coupled their locomotive(s) to the train, the brake hoses will be connected and the brake pipe pressure will be charged to 60 psi as indicated by an accurate gauge or an end-of-train device at the rear of the train. After brake pipe pressure has been adequately charged, the train would receive a Class III brake test as prescribed in § 232.211(b).

2. Trains will be restricted to 10 mph when moving between the two yards.

3. UP shall immediately notify FRA of any accident during these movements.

Since UP has been conducting these moves as ''switching movements'' for at least the last 35 years, with only the locomotive brakes controlling the movements, they do not believe that safety will be compromised if the waiver is granted with the above conditions. Under this conditional waiver, the movement will have train brakes, in addition to the locomotive brakes. UP cites two waivers that FRA has previously granted allowing road trains to move 2 to 3 miles before a brake test is performed, FRA Docket 2002–13253 and FRA Docket 2002–13399.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.*, Waiver Petition Docket Number FRA–2004–19199) and must be submitted to the Docket Clerk, DOT Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. 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 November 1, 2004.

Grady C. Cothen, Jr.,

Acting Associate Administrator.

[FR Doc. 04–24768 Filed 11–3–04; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

WABCO Locomotive Products

[Waiver Petition Docket Number FRA–2002–13397]

WABCO Locomotive Products (WABCO), a Wabtec company, seeks to amend an existing waiver of compliance to include its new FastBrake line of electronic air brake equipment. The existing waiver, FRA–2002–13397 (a renewal of H–92–3), conditionally extends to five years clean, repair and test intervals for certain pneumatic air brake components contained in 49 CFR 229.27(a)(2) and 49 CFR 229.29(a) for WABCO's EPIC electronic air brake equipment.

In support of this proposal, WABCO states that ''virtually all of the core pneumatic technology that has been service proven in EPIC from the time of its introduction and documented as such under the provisions of the above waiver'' has been transferred into FastBrake ''with little or no change.'' They state that ''A further reduction of pneumatic logic devices has been made possible by the substitution of computer based logic.'' WABCO also provides a discussion of the similarities between EPIC and FastBrake as well as the differences, which are primarily in the area of electronics rather than pneumatics. In conclusion, WABCO states, ''On the basis of the technical information provided, this waiver amendment can be accomplished without a compromise of safety.''

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.*, Waiver Petition Docket Number 2002–13397) and must be submitted to the Docket Clerk, DOT Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590. Communications received within 30 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. 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 November 1, 2004.

Grady C. Cothen, Jr.,

Acting Associate Administrator for Safety.

[FR Doc. 04–24770 Filed 11–4–04; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of Title 49 Code of Federal Regulations Part 236

Pursuant to Title 49 Code of Federal Regulations (CFR) part 235 and 49 U.S.C. 20502(a), the following railroad has petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR part 236 as detailed below.

Docket Number FRA–2004–19394.

Applicant: CSX Transportation, Incorporated, Mr. N. M Choat, Chief Engineer, Communications and Signal, 4901 Belfort Road, Suite 130, Jacksonville, Florida 32256.

CSX Transportation, Incorporated seeks approval of the proposed modification of the traffic control system on the single main track and sidings, on the LH & STL Subdivision, Louisville Service Lane, in Kentucky, consisting as follows:

1. At W.E. Brandenburg, milepost HR–38.3, convert the power-operated switch to electrically locked hand operation, remove the three associated controlled signals, and remove the signal system from the siding;

2. At E.E. Brandenburg, milepost HR–37.5, convert the power-operated switch to electrically locked hand operation, remove the three associated controlled signals, and install back-to-back controlled holdout signals, at milepost HR–34.7;

3. At W.E. Rock Haven, milepost HR–31.2, convert the power-operated switch to hand operation, and remove the three associated controlled signals;

4. At E.E. Rock Haven, milepost HR–30.4, convert the power-operated switch to hand operation, remove the three associated controlled signals, and remove the signal system from the siding; and

5. At Bishoff, milepost HR–10.8, convert the 23L and 23R controlled holdout signals to back-to-back automatic intermediate signals.

The reason given for the proposed change is to eliminate facilities no longer needed in present day operation.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and include a concise statement of the interest of the party in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by the docket number and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. 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*.

FRA wishes to inform all potential commenters that 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*.

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC on November 1, 2004.

Grady C. Cothen, Jr.,

Acting Associate Administrator for Safety.

[FR Doc. 04–24766 Filed 11–4–04; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of Title 49 Code of Federal Regulations Part 236

Pursuant to Title 49 Code of Federal Regulations (CFR) part 235 and 49 U.S.C. 20502(a), the following railroad has petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR part 236 as detailed below.

Docket Number FRA–2004–19401

Applicant: CSX Transportation, Incorporated, Mr. N. M Choat, Chief Engineer, Communications and Signal, 4901 Belfort Road, Suite 130, Jacksonville, Florida 32256.

CSX Transportation, Incorporated seeks approval of the proposed discontinuance and removal of the automatic block signal system on Main Track No. 1, between North Winter Park, Florida, milepost A 784.70 and Orlando, Florida, milepost A 791.70, on the Jacksonville Division, Sanford Subdivision. The proposed changes are associated with the installation of a traffic control system on Main Track No. 2, and conversion of Main Track No. 1 to ''Other Than Main Track'' operation (Rule 105), with Rule 46 governing the maximum authorized speed. The reason given for the proposed change is to eliminate facilities no longer needed in present day operation.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and include a concise statement of the interest of the party in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by the docket number and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW.,

Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. 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.*

FRA wishes to inform all potential commenters that 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.*

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC on November 1, 2004.

Grady C. Cothen, Jr.,

Acting Associate Administrator for Safety.

[FR Doc. 04–24772 Filed 11–4–04; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From Requirements

Pursuant to Title 49 Code of Federal Regulations (CFR) part 235 and 49 U.S.C. 20502(a), the following railroad has petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR part 236 as detailed below.

Docket Number FRA–2004–19395

Applicant: Union Pacific Railroad, Mr. Steven C. Beckwith, Director Service Performance, 1400 Douglas Stop 1050, Omaha, Nebraska 68179–1050.

The Union Pacific Railroad Company (UP) seeks relief from the requirements of the Rules, Standards and Instructions, 49 CFR, part 236, Section 236.110 and Section 236.586 as it pertains to the physical record keeping requirements for cab signal equipment on locomotives equipped with Harmon Cab Signal Systems.

Applicant's justification for relief: The UP received a waiver through Docket Number FRA–2001–11014, which allows the use of electronic signatures and electronic storage of daily locomotive inspection records. The UP states that there are two parts to their electronic daily inspections, and both call for the inspection of the cab signal receiver bars on locomotives equipped with Harmon Cab Signal Systems. The UP contends that the inspections are being performed, and approval of this waiver will fall in line with our current electronic daily inspection procedures. In addition this will provide further compliance with the various electronic signature and paperwork reduction laws enacted by the U.S. Congress.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and include a concise statement of the interest of the party in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by the docket number and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PI–401, 400 7th Street, SW., Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. 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.*

FRA wishes to inform all potential commenters that 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.*

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC on November 1, 2004.

Grady C. Cothen, Jr.,

Acting Associate Administrator for Safety.

[FR Doc. 04–24773 Filed 11–4–04; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. 38302S]

United States Department of Energy and United States Department of Defense v. Baltimore & Ohio Railroad Company, et al.

[Docket No. 38376S]

United States Department of Energy and United States Department of Defense v. Aberdeen & Rockfish Railroad Company, et al.

AGENCY: Surface Transportation Board.

ACTION: Notice of proposed settlement agreement; issuance of procedural schedule.

SUMMARY: On September 15, 2004, the United States Department of Energy and the United States Department of Defense (the Government) joined by Union Pacific Railroad Company (UP) filed a motion requesting approval of an Agreement that would settle these rate reasonableness disputes as between the moving parties. The Surface Transportation Board (Board) is adopting a procedural schedule for filing comments and replies in support of, or opposition to, the proposed Settlement Agreement.

DATES: The effective date of this decision is November 5, 2004. Any parties of record or interested persons, including the United States Department of Justice and the United States Department of Transportation, may file with the Board written comments concerning the proposed Settlement Agreement by December 6, 2004. Replies by the parties to the proposed Settlement Agreement must be filed by December 20, 2004.

ADDRESSES: Any filing submitted in this proceeding must refer to Docket Nos. 38302S and 38376S and must be submitted either via the Board's e-filing format or in the traditional paper

format. Any person using e-filing should comply with the instructions found on the Board's *http://www.stb.dot.gov* Web site, at the ''E–FILING'' link. Any person submitting a filing in the traditional paper format should send an original and 10 paper copies of the filing (and also an IBM-compatible floppy disk with any textual submission in any version of either Microsoft Word or WordPerfect) to: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, one copy of each filing in these proceedings must be sent to each of the following (any such copy may be sent by e-mail, but only if service by e-mail is acceptable to the recipient): (1) Stephen C. Skubel, Room 6H087 9GC–32) U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585; (2) Michael Glennon, Naval Sea Systems Command, 1333 Isaac Hull Ave, SE., Mail Stop 1150, Washington, DC 20376–1150; (3) Michael L. Rosenthal, Covington & Burling, 1201 Pennsylvania Ave., NW., Washington, DC 20004; and (4) Louise A. Rinn, Union Pacific Railroad Company, 1400 Douglas St., STOP 1580, Omaha, NE 68179.

Public Inspection: The motion, which includes the Settlement Agreement, is available for inspection in the Docket File Reading Room (Room 755) at the offices of the Surface Transportation Board, 1925 K Street, NW., in Washington, DC or on the Board's Web site at *http://www.stb.dot.gov.* Copies of the motion may be obtained from movants' representatives (Mr. Skubel or Mr. Glennon for the Government and Mr. Rosenthal or Ms. Rinn for UP) at the addresses listed above. The other filings in this proceeding will be available on the Board's Web site under ''E–LIBRARY/Filings.''

Service of Decisions, Orders, and Notices: The Board will serve copies of its decisions, orders, and notices only on those persons designated on the official service list as a party of record, a member of the United States Congress, or a Governor. All other interested persons may secure copies of such decisions, orders, and notices via the Board's Web site under ''E–LIBRARY/Decisions & Notices'' or by arrangement with the Board's copy contractor, ASAP Document Solutions (mailing address: ASAP Document Solutions, Suite 103, 9332 Annapolis Rd., Lanham, MD 20706; e-mail address: *asapdc@verizon.net;* telephone number: 202–306–4004). ASAP Document Solutions will handle the collection of charges and the mailing and/or faxing of decisions, orders, and notices to persons who request this service.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 565–1609. (Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at: 1–800–877–8339.)

SUPPLEMENTARY INFORMATION: The Government and UP jointly request the Board's approval of an Agreement to settle these rate reasonableness complaints. The complaints, filed in March 1981 against 21 major railroads under former section 229 of the Staggers Rail Act of 1980, seek reparations and a rate prescription relating to the nationwide movement of radioactive naval spent fuel, other high level radioactive wastes, and the empty containers (casks) used for their movement. The railroad defendants moved to dismiss the complaints in 1996, following the passage of the ICC Termination Act of 1995, and the proceedings have been held in abeyance for much of the time since then to permit settlement negotiations.

The Agreement applies broadly to the nationwide movement over UP of irradiated spent fuel, parts and constituents; empty casks; radioactive wastes; and buffer and escort cars. It is intended to serve as a model for settlements the Government will seek to negotiate with the remaining railroad defendants. The Government chose to negotiate with UP first because of the potential antitrust problems of negotiating with the railroad defendants as a group and in recognition of UP's central role as the destination carrier for most movements of these commodities.

The Agreement, which movants describe as flexible, comprehensive, long-term, and system wide:

(1) Establishes that the movement of these commodities constitute common carrier service; adopts guidelines for their safe handling and for security; and obligates UP to provide on an as needed basis ''extra services'' as further, or ancillary to, common carrier services;

(2) Adopts, and asks the Board to prescribe, a rate methodology to apply to all future movements of these commodities. The methodology adopts maximum revenue-to-variable cost markups (not to exceed to 1.80, 2.50, or 3.51 times the shipment cost, depending on commodity type) of UP's most current system average variable unit costs computed under the Board's Uniform Rail Costing System. Movants state that the proposed rate methodology is built on, and broadens, the rate prescription adopted in *Trainload Rates on Radioactive Materials, East R.,* 364 I.C.C. 981 (1981), and that the combination of the proposed and existing prescription should result in a national rate structure;

(3) Adopts, and asks the Board to prescribe rate methodologies to compensate UP both for ''extra services'' and dedicated train service when requested by the Government and procedures to calculate equitable compensation for emergency related costs that UP may incur;

(4) Adopts a procedure to update rates annually to reflect changes in UP's system average unit costs;

(5) Requests that UP be dismissed as a defendant in these proceedings, that UP's liability (and that of its predecessors and subsidiaries) for reparations with respect to past and future shipments be extinguished, that the liability of connecting carriers for reparations be preserved as to their portion of the charges assessed on through routes that include(d) UP, and that UP not be required to participate in rate proceedings initiated by the Government against remaining railroad defendants; and

(6) Adopts alternative dispute resolution procedures with final recourse to the Board and mechanisms to renegotiate portions of the Agreement if specific circumstances change or if changed circumstances make further adherence to the terms of the Agreement ''grossly inequitable'' to either party.

The Government separately requests that in challenging through rates that involve UP, it be permitted to establish the liability of non-settling carriers for reparations by showing the unreasonableness of their divisions or proportional rates rather than the unreasonableness of the entire through rate to reduce the administrative burdens and the increased costs that would otherwise be incurred. Additionally, the Government requests that the Board retain jurisdiction over these proceedings and continue holding them in abeyance pending settlement negotiations with remaining railroad defendants.

In support of the motion, the Government and UP claim that the Agreement will result in great savings to the parties and the Board because it will resolve cases that are pending for more than 20 years, prevent future litigation, and facilitate settlements between the Government and remaining railroad defendants. Specifically, movants claim that the Agreement will satisfy all of the Government's current and future needs for flexible and reliable common carrier service at rates that are substantially reduced from current levels and below what would likely have resulted from litigation and at the same time will

release UP from past and future liability for reparations while guaranteeing it compensation that is acceptable in view of the unique characteristics of these commodities and the other benefits of the Agreement.

Movants point out that the Agreement is based on numerous compromises which balance the needs of the parties and resolve difficult and complex issues that would otherwise take years to litigate (*e.g.*, common carrier obligation, market dominance, reasonableness standards, and such costing elements as liability exposure, costs for extra and dedicated train services, and safety precautions). They claim that the Agreement will bring certainty over a broad range of crucial operational and rate issues while providing flexibility (*e.g.*, updating mechanisms, renegotiation provisions, and dispute resolution) over the long term to minimize the potential for future disputes and accommodate changing needs and technologies.

In the movants' view, the Agreement: (1) Is in the public interest because it shifts the transportation focus from controversy and confrontation to cooperation benefitting national goals for the safe handling and storage of these commodities; (2) is consistent with the national rail transportation policy which encourages reliance on competition and the demand for service to establish reasonable rates and seeks to minimize Federal regulatory authority, promote an efficient rail transportation system, and foster sound economic conditions in transportation; and (3) affirms the Board's policy favoring the private settlement of disputes.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1.The parties to this proceeding and interested persons must comply with the procedural schedule and requirements outlined above.

2. This decision is effective on November 5, 2004.

Decided: November 1, 2004.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 04–24736 Filed 11–4–04; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–6 (Sub–No. 424X)]

The Burlington Northern and Santa Fe Railway Company—Abandonment Exemption—in Dawson and McCone Counties, MT

The Burlington Northern and Santa Fe Railway Company (BNSF) has filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon a 43.41-mile line of railroad extending between milepost 7.00 near Glendive and milepost 50.41 in Circle, in Dawson and McCone Counties, MT. The line traverses United States Postal Service Zip Codes 59330, 59339, 59315, and *59215.*

BNSF has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic to be rerouted; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on December 7, 2004, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by November 15, 2004. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by November 26, 2004, with: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to BNSF's representative: Michael Smith, Freeborn & Peters, 311 S. Wacker Drive, Suite 3000, Chicago, IL 60606–6677.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

BNSF has filed an environmental report which addresses the effects, if any, of the abandonment on the environment and historic resources. SEA will issue an environmental assessment (EA) by November 12, 2004. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 565–1539. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), BNSF shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by BNSF's filing of a notice of consummation by November 5, 2005, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: October 27, 2004.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 04–24503 Filed 11–4–04; 8:45 am]

BILLING CODE 4915–01–P

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Effective October 31, 2004, the filing fee for an OFA increases to $1,200. *See Regulations Governing Fees for Services Performed in Connection with Licensing and Related Services—2004 Update*, STB Ex Parte No. 542 (Sub-No. 11) (STB served Oct. 1, 2004).

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–68 (Sub-No. 4X)]

Lake Superior & Ishpeming Railroad Company—Abandonment Exemption—in Marquette County, MI

On October 22, 2004, Lake Superior & Ishpeming Railroad Company (LS&I), a wholly owned subsidiary of Cleveland-Cliffs, Inc., filed with the Surface Transportation Board a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon a segment of a line of railroad known as the Republic Subdivision, extending from Humboldt Jct. (milepost 85.6) south approximately 8.9 miles to the end of track at Republic Mine (milepost 94.5), in Marquette County, MI.[1] The line traverses United States Postal Service Zip Codes 49814 and 49879, and includes the stations of Humboldt Jct., Humboldt, and Republic Mine.

The line does not contain federally granted rights-of-way. Any documentation in LS&I's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by January 14, 2005.[2]

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by a $1,200 filing fee.[3]

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than November 26, 2004. Each trail use request must be accompanied by a $200 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–68 (Sub-No. 4X) and must be sent to: (1) Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001, and (2) Edward T. Lyons, Jr., 1625 Broadway, 16th Floor, Denver, CO 80202. Replies to the LS&I petition are due on or before November 26, 2004.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1539. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary), prepared by SEA, will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally would be available within 60 days of the filing of the petition, but SEA will endeavor to make the EA available by November 22, 2004. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: October 26, 2004.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 04–24324 Filed 11–4–04; 8:45 am]

BILLING CODE 4915–01–P

[1] Initially, this petition for exemption also involved two additional line segments but it was rejected in its entirety because it could not be processed as filed. Subsequently, LS&I filed a petition for reconsideration requesting reinstatement of the petition for exemption as to the above segment only. By decision served October 22, 2004, LS&I's request was granted, with the official filing date of the revised petition for exemption deemed to be October 22, 2004.

[2] Based on a filing date of October 22, 2004, the deadline for issuance of the final decision normally would be February 9, 2005. However, the Board will endeavor to issue a decision on the merits no later than January 14, 2005.

[3] The OFA filing fee increases from $1,100 to $1,200, effective October 31, 2004. *See Regulations Governing Fees for Services Performed in Connection with Licensing and Related Services—2004 Update*, STB Ex Parte No. 542 (Sub-No. 11) (STB served Oct. 1, 2004).

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Publication of General Licenses Related to the Cuba, Burma, and Western Balkans Sanctions Programs

ACTION: Notice, publication of general licenses.

SUMMARY: The Office of Foreign Assets Control (''OFAC'') of the U.S. Department of the Treasury is publishing general licenses issued in the Cuba, Burma, and Western Balkans sanctions programs.

DATES: *Effective Dates:* See each general license for the applicable effective date for that license.

FOR FURTHER INFORMATION CONTACT: OFAC's Chief of Licensing, tel. (202) 622–2480 or Chief of Policy Planning and Program Management, tel. (202) 622–4855, or the Office of Chief Counsel (Foreign Assets Control), tel. (202) 622–2410, Department of the Treasury, Washington, DC 20220 (not toll free numbers).

SUPPLEMENTARY INFORMATION:

Electronic Availability

This document is available as an electronic file on the Federal Bulletin Board the day of publication in the **Federal Register**. By modem, dial (202) 512–1387 and type ''/GO FAC,'' or call (202) 512–1530 for disk or paper copies. This file is available for downloading without charge in ASCII and Adobe Acrobat readable (*.PDF) formats. For Internet access, the address for use with the World Wide Web, Telnet, or FTP protocol is *http://fedbbs.access.gpo.gov*. This document and additional information concerning OFAC are available from OFAC's Web site *http://www.treas.gov/ofac*.

Background

In recent months, OFAC has issued a number of general licenses authorizing certain transactions otherwise prohibited by the sanctions programs OFAC administers. At the time of issuance of each general license, OFAC made that license available on its Web site (*http://www.treas.gov/ofac*). With this notice, OFAC is publishing the general licenses in the **Federal Register**. The general licenses contained in this Notice include licenses in the Cuba, Burma, and Western Balkans sanctions programs.

1. Cuba General License

Cuba General License No. 1

Certain Travel-Related Transactions in Cuba Until 12:01 a.m. Eastern Daylight Time on August 1, 2004

(a) *Family visit travelers.* A person subject to the jurisdiction of the United States who is in Cuba on June 29, 2004, under a general or specific license to visit a close relative in Cuba pursuant to 31 CFR 515.561(a) or (b) as in effect on June 29, 2004, is authorized to continue to engage in all of the transactions ordinarily incident to travel within and from Cuba authorized on June 29, 2004, until 12:01 a.m. eastern daylight time on August 1, 2004.

(b) *Fully-hosted travelers.* A person subject to the jurisdiction of the United States who is in Cuba on June 29, 2004, and qualifies as a ''fully-hosted'' traveler as set forth in 31 CFR 515.420 as in effect on June 29, 2004, is authorized to continue to receive goods and services in Cuba for personal use or consumption in Cuba until 12:01 a.m. eastern daylight time on August 1, 2004, provided that no person subject to the jurisdiction of the United States (including the traveler) makes any payment, transfers any property, or provides any service to Cuba or a national of Cuba in connection with the receipt of those goods or services.

Issued: June 25, 2004.

2. Burma General Licenses

Burma General License No. 1

Official Government and International Organization Activities

All transactions and activities otherwise prohibited by sections 1 or 2 of Executive Order No. 13310 that are for the conduct of the official business of the United States Government, the United Nations, the World Bank, and the International Monetary Fund are authorized. This license does not authorize any importation into the United States of any article that is a product of Burma. Payments pursuant to this section may not involve a debit or credit to a blocked account on the books of a U.S. financial institution. Such payments may be made to an account on the books of a third-country financial institution.

Issued: July 29, 2003.

Burma General License No. 2

Third-Country Diplomatic and Consular Funds Transfers

All funds transfer-related transactions otherwise prohibited by sections 1 or 2 of Executive Order 13310 that are for the conduct of diplomatic or consular activities of third-country diplomatic or consular missions in Burma are authorized. Payments pursuant to this general license will be authorized even though they may involve transfers to or from an account of a financial institution whose property is blocked pursuant to section 1 of Executive Order 13310, provided that the account is not on the books of a financial institution that is a United States person.

Issued: August 15, 2003.

Burma General License No. 3

Importations for U.S. Diplomatic and Consular Officials

U.S. diplomatic or consular officials entering the United States directly or indirectly from Burma are authorized to engage in all transactions incident to the importation into the United States of products of Burma as accompanied baggage or household effects, provided that such products are not intended for any other person or for sale and are not otherwise prohibited from importation under applicable United States laws.

Issued: August 15, 2003.

Burma General License No. 4

Importations for Foreign Diplomatic and Consular Officials

All transactions incident to the importation into the United States of any article that is a product of Burma that is destined for official or personal use by personnel employed by a diplomatic mission or consulate in the United States are authorized, provided that such article is not intended for any other person or for sale and is not otherwise prohibited from importation under applicable United States laws.

Issued: August 15, 2003.

Burma General License No. 5

Diplomatic Pouches

All transactions in connection with the importation into the United States or the exportation from the United States of diplomatic pouches and their contents are authorized.

Issued: August 15, 2003.

Burma General License No. 6

Noncommercial Personal Remittances

(a) United States persons who are individuals (not entities) are authorized to make non-commercial remittances to individuals in Burma, provided that a United States person's total remittances in any consecutive 3-month period do not exceed $300 per Burmese household, regardless of the number of individuals comprising the household, and provided that no beneficiary is a person whose property is blocked pursuant to section 1 of Executive Order 13310. Payments pursuant to this general license are authorized even though they may involve transfers to or from an account of a financial institution whose property is blocked pursuant to section 1 of Executive Order 13310, provided that the account is not on the books of a financial institution that is a United States person.

(b) Financial institutions that are United States persons are authorized to engage in all transactions ordinarily incident to the transfer of funds authorized by paragraph (a) above. A financial institution that is a United States person may rely on the originator of a funds transfer with regard to compliance with paragraph (a) above, provided that the financial institution does not know or have reason to know that the funds transfer is not in compliance with paragraph (a) above.

Issued: August 22, 2003.

Burma General License No. 7

Transactions Incident to Certain Imports

All transactions otherwise prohibited by sections 1 or 2 of Executive Order 13310 that are incident to the importation into the United States of an article that is a product of Burma are authorized, provided the importation occurs prior to 12:01 a.m. eastern daylight time on August 28, 2003, and further provided that the importation is not from a person whose property is blocked by section 1 of Executive Order 13310. Financing agreements with respect to such importations may be performed only according to their terms and may not be extended or renewed. Payments pursuant to this general license will be authorized even though they may involve transfers to or from an account of a financial institution whose property is blocked pursuant to section 1 of Executive Order 13310, provided that the account is not on the books of a financial institution that is a United States person.

Issued: August 15, 2003.

Burma General License No. 8

Export-Related Transactions

All transactions otherwise prohibited by sections 1 or 2 of Executive Order 13310 that are ordinarily incident to an exportation to Burma are authorized, provided the exportation is not to a person whose property is blocked pursuant to section 1 of Executive Order 13310. Payments pursuant to this general license are authorized even though they may involve transfers to or from an account of a financial institution whose property is blocked pursuant to section 1 of Executive Order

13310, provided that the account is not on the books of a financial institution that is a United States person. This general license does not authorize a financial institution that is a United States person to advise or confirm any financing by a person whose property is blocked by section 1 of Executive Order 13310.

Issued: August 22, 2003.

Burma General License No. 9

Importation of Information and Informational Material

(a) The importation of information or informational materials and all transactions directly incident to such importation are authorized. Payments pursuant to this general license are authorized even though they may involve transfers to or from an account of a financial institution whose property is blocked pursuant to section 1 of Executive Order 13310, provided that the account is not on the books of a financial institution that is a United States person.

(b) The term ''information or informational materials'' includes, but is not limited to, publications, films, posters, phonograph records, photographs, microfilms, microfiche, tapes, compact discs, CD ROMs, artworks, and news wire feeds. To be considered ''information or informational materials,'' artworks must be classified under chapter headings 9701, 9702, or 9703 of the Harmonized Tariff Schedule of the United States.

Note to General License No. 9: The exportation of information or informational materials is exempt from the prohibitions contained in the Burmese Sanctions Regulations and Executive Order Nos. 13047 or 13310.

Issued: August 28, 2003.

Burma General License No. 10

Importation of Certain Personal and Household Effects

(a) A United States person who maintained a residence in Burma prior to July 28, 2003, is authorized to import into the United States personal and household effects that are products of Burma, including accompanied baggage and articles for family use, provided the imported items were purchased by the United States person prior to July 28, 2003, have been actually used abroad by the United States person or by other family members arriving from the same foreign household, are not intended for any other person or for sale, and are not otherwise prohibited from importation.

(b) A national of Burma who arrives in the United States after July 28, 2003, is authorized to import into the United States personal and household effects that are products of Burma, including accompanied baggage and articles for family use, provided the imported items are ordinarily incident to the Burmese national's arrival in the United States, have been actually used abroad by the Burmese national or by other family members arriving from the same foreign household, are not intended for any other person or for sale, and are not otherwise prohibited from importation.

Issued: August 28, 2003.

Burma General License No. 11

Activities Undertaken Pursuant to Certain Pre-May 21, 1997 Agreements

Except as prohibited by section 3 of Executive Order 13310, United States persons are authorized to engage in any activity, or any transaction incident to an activity, undertaken pursuant to an agreement, or pursuant to the exercise of rights under such an agreement, provided that:

(a) The parties to the agreement include:

(1) The Government of Burma or a nongovernmental entity in Burma, and

(2) An entity organized under the laws of a foreign state and owned or controlled by a United States person; and

(b) The agreement was entered into prior to 12:01 a.m., eastern daylight time, on May 21, 1997.

Issued: October 21, 2003.

Burma General License No. 12

Allowable Payments for Overflights of Burmese Airspace

Payments to Burma of charges for services rendered by the Government of Burma in connection with the overflight of Burma or emergency landing in Burma of aircraft owned or operated by a United States person or registered in the United States are authorized. Payments pursuant to this general license are authorized even though they may involve transfers to or from an account of a financial institution whose property is blocked pursuant to section 1 of Executive Order 13310, provided that the account is not on the books of a financial institution that is a United States person.

Issued: October 17, 2003.

Burma General License No. 13

Importation of Burmese-origin Articles

The importation of any article that is a product of Burma and all transactions directly incident to such importation are authorized, provided the article was purchased prior to July 28, 2003, shipped from Burma to the United States prior to August 28, 2003, and is not property in which a person whose property and interests in property are blocked pursuant to section 1 of Executive Order 13310 has an interest. Financing agreements with respect to such importations may be performed only according to their terms and may not be extended or renewed. Payments pursuant to this general license are authorized even though they may involve transfers to or from an account of a financial institution whose property is blocked pursuant to section 1 of Executive Order 13310, provided that the account is not on the books of a financial institution that is a United States person.

Issued: July 28, 2004.

3. Western Balkans General License

Western Balkans General License No. 1

Legal Representation in Matters Pending Before the International Criminal Tribunal for the Former Yugoslavia

The provision by a U.S. person of professional legal services relating to the representation of persons whose property or interests in property are blocked pursuant to 31 CFR 588.201(a) in matters pending before the International Criminal Tribunal for the former Yugoslavia (''the Tribunal'') is authorized. With respect to such representation, receipt of payment of professional fees and reimbursement of incurred expenses are authorized if such payments or reimbursements are made by the Tribunal. Such payments and reimbursements from any other source must be specifically licensed. Section 501.601 of the Reporting and Procedures Regulations (31 CFR part 501) requires that records on each transaction subject to this license be maintained and available for examination for a minimum of five years following the transaction date.

Issued: July 9, 2003.

Dated: September 27, 2004.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: October 5, 2004.

Juan C. Zarate,

Assistant Secretary (Terrorist Financing and Financial Crime), Department of the Treasury.

[FR Doc. 04–24270 Filed 11–4–04; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the U.S. Treasury Auction Submitter Agreement.

DATES: Written comments should be received on or before January 5, 2005, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328, or *Vicki.Thorpe@bpd.treas.gov*.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION:

Title: U.S. Treasury Auctions Submitter Agreement.

OMB Number: 1535–0137.

Form Number: PD F 5441.

Abstract: The information is requested from entities wishing to participate in U.S. Treasury Securities Auctions via TAAPSLink.

Current Actions: None.

Type of Review: Extension.

Affected Public: Depository Institutions, Brokers/Dealers, Assessment Management Companies, Pension Funds, and other Institutional Investors.

Estimated Number of Respondents: 1000.

Estimated Time Per Respondent: 5 minutes.

Estimated Total Annual Burden Hours: 80.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: November 1, 2004.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 04–24711 Filed 11–4–04; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Authorization for purchase and request for change of United States Savings Bonds.

DATES: Written comments should be received on or before January 5, 2005, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328, or *Vicki.Thorpe@bpd.treas.gov*.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION:

Title: Authorization For Purchase And Request For Change United States Savings Bonds.

OMB Number: 1535–0111.

Form Numbers: SB 2362, 2378, and 2383.

Abstract: The information is requested to support a request by employees to authorize employers to allot funds from their pay for the purchase of savings bonds.

Current Actions: None.

Type of Review: Extension.

Affected Public: Individuals.

Estimated Number of Respondents: 1,300,000.

Estimated Time Per Respondent: 1 minute.

Estimated Total Annual Burden Hours: 21,667.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: November 1, 2004.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 04–24712 Filed 11–4–04; 8:45 am]

BILLING CODE 4810–39–P

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The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

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To authorize the President to award a gold medal on behalf of the Congress to Reverend Doctor Martin Luther King, Jr. (posthumously) and his widow Coretta Scott King in recognition of their contributions to the Nation on behalf of the civil rights movement. (Oct. 25, 2004; 118 Stat. 1746)

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Family Farmer Bankruptcy Relief Act of 2004 (Oct. 25, 2004; 118 Stat. 1749)

S. 2883/P.L. 108–370

Prevention of Child Abduction Partnership Act (Oct. 25, 2004; 118 Stat. 1750)

S. 2896/P.L. 108–371

To modify and extend certain privatization requirements of the Communications Satellite Act of 1962. (Oct. 25, 2004; 118 Stat. 1752)

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